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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1084**

Robert Jensen, et al.,
Appellants,

vs.

Carl Rindelaub, et al.,
Respondents.

**Filed April 26, 2021
Affirmed in part, reversed in part, and remanded
Cochran, Judge**

Washington County District Court
File No. 82-CV-18-3180

Thomas R. Haugrud, Thomas C. Atmore, Leonard, O'Brien, Spencer, Gale & Sayre, Ltd.,
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Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal follows a court trial involving a dispute over an easement for lakeshore access. Appellants argue that the district court (1) erred by concluding that the easement is appurtenant, (2) abused its discretion by barring expert testimony regarding the meaning of the easement language, and (3) erred by excluding evidence of the easement's historical

use. Appellants also challenge the district court's denial of their motion for a new trial on those grounds. Because we conclude that the district court did not err by concluding that the easement was appurtenant and properly excluded the expert testimony, we affirm in part. But because we conclude that the district court erred by excluding evidence of the easement's historical use, we reverse in part and remand for a new trial limited to determining the scope of the easement.

FACTS

This case involves an easement that provides "ingress and egress" to White Bear Lake. The 15-foot wide easement runs from Dellwood Avenue to White Bear Lake through lakeshore property where appellants Jane and Robert Jensen reside (hereinafter the lakeshore property). The easement provides lake access to the Jensens' neighbors, respondents Carl and Darcy Rindelaub, who live across the street on a parcel of land that does not border the lake (hereinafter the non-lakeshore property). The current dispute arose after the Jensens became concerned that the Rindelaubs planned to build a boardwalk across the easement and use motorized vehicles such as a golf cart or all-terrain vehicle on the easement.

The easement was created in 1941, long before the parties to this action owned their respective parcels. Prior to that time, a company owned all of the land that would later become the lakeshore and non-lakeshore properties. In August 1941, the company sold the non-lakeshore property to a married couple, Thomas and Elizabeth Wann. The deed to the Wanns included the easement in the legal description of the Wanns' property. In October 1941, the Wanns deeded just the easement back to the company. And four days

later, the company reconveyed the easement to the Wanns via a quitclaim deed dated October 21, 1941. The purpose of this transaction remains unclear.

The quitclaim deed identified Thomas and Elizabeth Wann as the grantees of the easement and provided the following description, in relevant part:

[T]he said party of the first part . . . does hereby Grant, Bargain, Quit-claim, and *Convey unto the said parties* of the second part as joint tenants and not as tenants in common, *their assigns, the survivor of said parties, and the heirs and assigns of the survivor, Forever*, all the tract or parcel of land lying and being in the County of Washington and State of Minnesota, described as follows, to-wit:

A perpetual easement for ingress and egress across a strip of land 15 ft. wide[.] . . . This easement shall also include the right to maintain the usual dock facilities on said fifteen foot strip on the shore of White Bear Lake.

(Emphasis added.) The company later sold the lakeshore property to a third party, and both the lakeshore and non-lakeshore properties changed hands over the years. The Jensens purchased the lakeshore property in 1978.¹ The deed conveying the property to the Jensens describes the easement, and the Jensens' certificate of title refers to the easement. In 2014, the Rindelaubs purchased the non-lakeshore property that previously belonged to the Wann family.

On August 15, 2018, the Jensens filed a petition in a proceeding subsequent to initial registration of land under Minn. Stat. § 508.71 (2020).² The Jensens' petition contained

¹ In 2003, the Jensens conveyed the lakeshore property to themselves as trustees of a revocable trust. The trust now owns the lakeshore property for the Jensens' benefit.

² Under Minn. Stat. § 508.71, an owner of registered property or other person in interest may petition the district court for amendment of a certificate of title or issuance of a new

three prayers for relief. Two prayers for relief concerned the scope of the easement, meaning the easement's permissible uses. Specifically, the Jensens requested that the district court declare that the easement terms prohibit construction of a boardwalk or any improvements within the easement area that would interfere with the Jensens' use of their property. The Jensens also requested that the district court declare that the easement by its terms is limited to pedestrian traffic only and that motorized-vehicle use is prohibited as a means of ingress or egress. The third prayer for relief concerned the nature, or the classification, of the easement. There, the Jensens requested that the district court declare that the easement is "in gross" rather than "appurtenant," such that the Rindelaubs have no rights in the easement. The Rindelaubs filed an answer requesting that the court deny all relief requested by the Jensens and affirm the Rindelaubs' ownership rights in the easement.

The parties then prepared for a bench trial. Prior to trial, the district court heard motions in limine from the parties. Relevant to this appeal, the district court granted the Rindelaubs' motion to exclude testimony about the use of the easement prior to the Rindelaubs' ownership of the non-lakeshore property. The court also granted the Rindelaubs' request to exclude expert testimony concerning whether the easement was in gross or appurtenant. The district court then held a bench trial.

The district court issued its findings of fact, conclusions of law, and order for judgment, in which it denied all of the Jensens' requests for declaratory relief. The court

certificate upon several grounds, and the district court may order those changes to be made. Minn. Stat. § 508.71, subd. 2.

concluded that (1) the easement was appurtenant to the non-lakeshore property because the language of the easement “unambiguously” indicated that the parties intended to create an appurtenant easement and, furthermore, the Jensens were barred by res judicata and collateral estoppel from arguing that the easement was in gross; (2) the Jensens failed to meet their burden to show that the Rindelaubs were prohibited from constructing improvements on the easement; and (3) the Jensens failed to meet their burden to show that the easement is limited to pedestrian traffic. Although the Rindelaubs had requested at trial that the court issue an order expressly recognizing their right to build improvements and operate motor vehicles on the easement, the district court declined to grant that relief because the Rindelaubs failed to properly notice that request in their answer. The district court then affirmed that the Rindelaubs are the holders of the easement rights set forth in the 1941 quitclaim deed.

The Jensens subsequently moved the district court for a new trial or, alternatively, to amend its findings of fact and conclusions of law. They argued that the district court erred by concluding that the easement is unambiguously appurtenant, abused its discretion by barring expert testimony as to the nature of the easement, and abused its discretion by excluding evidence of the easement’s historical use. Following oral argument, the district court issued an order denying the Jensens’ motion in its entirety.

The Jensens appeal.

DECISION

On appeal, the Jensens raise similar issues to those raised in their posttrial motion. They contend that the district court (1) erred as a matter of law by concluding that the

easement is appurtenant, (2) abused its discretion by barring expert testimony regarding the meaning of the easement language, and (3) erred as a matter of law by excluding evidence of the easement's historical use. We address these arguments in turn below.

I. The district court did not err by concluding that the easement is appurtenant.

The Jensens argue that the district court erred by concluding that the easement is appurtenant to the Rindelaub property and denying their motion for a new trial on that ground. They contend that the district court improperly determined that the language in the 1941 quitclaim deed unambiguously created an appurtenant easement and also erred by applying *res judicata* and collateral estoppel to preclude their argument that the easement is in gross. We agree with the district court that the 1941 quitclaim deed unambiguously created an appurtenant easement. We therefore do not reach the Jensens' argument regarding the district court's application of the preclusion doctrines.

“An easement appurtenant is one that is granted for the benefit of the grantee's land.” *Block v. Sexton*, 577 N.W.2d 521, 525 (Minn. App. 1998). It involves “two distinct tenements”—“the dominant, to which the right belongs, and the servient, upon which the burden or obligation rests.” *Winston v. Johnson*, 45 N.W. 958, 959 (Minn. 1890). An easement appurtenant “runs with the land” and therefore passes to subsequent owners of the land. *See Alvin v. Johnson*, 63 N.W.2d 22, 25 (Minn. 1954) (“An easement appurtenant to another lot, when created by conveyance, attaches to the possession of that other lot and follows it into whosoever hands it may come.” (quotation omitted)). In contrast, “[a]n easement in gross is the right to use another's property that is personal and revocable.” *Block*, 577 N.W.2d at 525. “[W]hether an easement is appurtenant or in gross is determined

not by contiguity but by whether the easement was intended to benefit the grantee's land.”
Id.

When an easement is created by an express grant, as it was in this case, its terms constitute a contract. *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). “The primary goal of contract interpretation is to determine and enforce the intent of the parties.” *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (quotation omitted). “When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). If, however, an agreement is susceptible to more than one reasonable interpretation, it is ambiguous, and extrinsic evidence may be considered to interpret its meaning. *Staffing Specifix, Inc.*, 913 N.W.2d at 692. Whether an ambiguity exists is a question of law, which we review de novo. *Storms, Inc.*, 883 N.W.2d at 776; *see also Scherger v. N. Nat. Gas Co.*, 575 N.W.2d 578, 580-81 (Minn. 1998) (reviewing de novo whether an easement agreement was ambiguous).

Here, to determine whether the easement at issue is appurtenant or in gross, the district court examined the language of the easement as granted in the 1941 quitclaim deed. The district court emphasized certain clauses and terms in the easement language, reasoning:

The parties to the 1941 Quit Claim Deed conveying the [e]asement . . . expressly indicated that the [e]asement was meant to be “A *perpetual* easement for ingress and egress . . .” (emphasis added). The 1941 Quit Claim Deed further clarifies the parties’ intent to grant the [e]asement to the Wanns and

“their assigns, the survivor of said parties, and the heirs and assigns of the survivor . . . *Forever* . . .” (emphasis added).

The district court reasoned that “had the parties intended the [e]asement to be in gross—and therefore revocable—there would be no reason to expressly state that the [e]asement is ‘perpetual’ or would last ‘forever’ or to grant the [e]asement to the grantee[s]’ ‘assigns,’ their ‘survivor,’ and the ‘heirs and assigns of the survivor.’” The district court concluded that “[t]hese clauses indicate *unambiguously* that the parties intended the [e]asement to survive the Wanns and run with the [non-lakeshore] property—not that it would be subject to revocation by the owners of the [lakeshore] property.” (Emphasis added.) We agree with the district court.

Based on our review of the language in the 1941 quitclaim deed, we conclude that the easement is unambiguously appurtenant to the non-lakeshore property. The company granted a “perpetual” easement to the Wanns and “their assigns, the survivor of said parties, and the heirs and assigns of the survivor, Forever.” Although words of inheritance are not dispositive, the use of those terms suggest that an easement is appurtenant. *See Lidgerding v. Zignego*, 80 N.W. 360, 361 (Minn. 1899) (discussing that the omission of words of inheritance supports a “very slight” inference that the easement is in gross). Moreover, the plain and ordinary meaning of the terms “perpetual” and “[f]orever” compels the conclusion that the original parties to the easement intended the easement to benefit the non-lakeshore property and run with that land, rather than to grant a right to an easement that is personal and revocable.

We are not persuaded otherwise by the Jensens' arguments that "[t]he language used in the [e]asement is, at best, ambiguous." First, they contend that the easement is ambiguous because the quitclaim deed does not describe a benefitted parcel or include certain phrases, such as "appurtenant" or "runs with the land." But no Minnesota case requires the use of these particular terms or phrases to create an appurtenant easement. And this argument ignores that the easement expressly states that it is "perpetual" and lasts "[f]orever." The Jensens' argument is therefore unsupported by case law and contrary to the parties' clear intent.

The Jensens also argue that the easement cannot be appurtenant because the language of the easement indicates a grant "to a finite group of people." They base this argument on the language granting the easement to "Thomas L. Wann, Jr., and Elizabeth B.C. Wann . . . their assigns, the survivor of said parties, and the heirs and assigns of the survivor." The Jensens appear to contend that this language does not contain words of inheritance but rather conveys an intent to limit easement rights to a finite group of grantees—i.e., "the Wanns, and limited heirs, successors and assigns" of the Wanns. The Jensens argue that if the original parties had intended the easement to run with the non-lakeshore property, the quitclaim deed would have simply granted the easement to "Thomas L. Wann, Jr. and Elizabeth B.C. Wann, *and their heirs and assigns.*" (Emphasis added.) We are not persuaded. We can discern no meaningful distinction between the words of inheritance that the Jensens insist must be included in a grant of an appurtenant easement and the language contained in the 1941 quitclaim deed. The language granting the easement to the Wanns and "their assigns, the survivor of said parties, and the heirs and

assigns of the survivor” does not limit the grantees to a finite group of people, but rather conveys the easement to the survivors, heirs, and assigns of the Wanns. Such language is consistent with a grant of an appurtenant easement. If the original parties to the easement had intended the easement to be in gross, and thus only personal to a limited group of people, it would be nonsensical to identify the grantees of the easement to include “assigns” and “heirs.” Similarly, it would be illogical to describe an in gross easement as “perpetual” and continuing “[f]orever” because such an easement is personal and revocable, and therefore by definition not “perpetual” or continuing “forever.”

The Jensens disagree that the terms “perpetual” and “forever” support the district court’s conclusion that the easement is appurtenant. They contend that “the term ‘perpetual’ . . . was often employed for both in gross and appurtenant easements” and “the term ‘Forever’ . . . was a standard, formulaic part of a Quit Claim Deed.” But the Jensens cite no authority to support either of those assertions. They therefore have not provided any compelling reason for us to conclude that the use of the terms “perpetual” and “forever” indicate anything other than the parties’ clear intent to create an appurtenant easement that runs with the land.

Lastly, the Jensens contend that facts surrounding the easement’s creation and subsequent events show that the easement was intended to be in gross. For instance, they contend that the Wanns’ conveyance of the easement to the original grantor company in October 1941 and the company’s immediate transfer of the easement back to the Wanns shows that the original parties intended to separate the easement from the Wanns’ land and create an easement in gross. But, as explained above, we do not consider extrinsic evidence

of the parties' intent if the easement language expresses that intent in unambiguous terms. *See Staffing Specifix, Inc.*, 913 N.W.2d at 692 (explaining that extrinsic evidence of intent may be admitted only if contract language is ambiguous). The Jensens' arguments are unavailing.

Based on the plain and ordinary meaning of the easement language, we conclude that the 1941 quitclaim deed unambiguously created an appurtenant easement, which runs with the non-lakeshore property. Accordingly, the district court did not err by ruling in favor of the Rindelaubs and denying the Jensens' motion for a new trial on that ground.

II. The district court did not abuse its discretion by excluding expert testimony concerning whether the easement is appurtenant or in gross.

The Jensens also argue that the district court erred by excluding expert testimony that they asserted would assist the court in determining whether the language of the easement was intended to create an appurtenant easement or an easement in gross and by denying the Jensens a new trial so that such testimony could be presented. We disagree.

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* at 46 (quotation omitted).

Prior to trial, the Jensens provided notice that they intended to offer testimony from an expert who would explain "what constitutes an easement in gross and what constitutes

an appurtenant easement” and “issue an opinion as to whether the easement which is the subject of this action is an easement in gross or an appurtenant easement.” The Rindelaubs filed a motion in limine, requesting that the district court “exclude any expert testimony which infringes upon the [c]ourt’s sole authority to decide legal questions concerning the application of the law.” The Rindelaubs also disclosed their own expert witness who would counter the testimony of the Jensens’ expert.

Before the district court ruled on the motions in limine, the Jensens’ proposed expert witness died. The Jensens made an informal request for a continuance to find a replacement expert, but the court denied the request. The district court then held a hearing on the motions in limine. At the hearing, the court noted that the Jensens’ now-deceased proposed expert never submitted an expert report to the court. The Jensens’ counsel stated that he had not been able to find a replacement expert witness. Following the parties’ arguments, the district court ruled on the record that it was excluding the testimony of both parties’ proposed experts. The court explained:

As to the category of expert legal opinions about what constitutes an easement in gross or an easement . . . appurtenant; those ultimate legal questions before the Court, the Court’s finding that expert testimony is not appropriate on those topics. [The Jensens’ expert] is not available, never rendered an opinion. The Jensens have not found a replacement that they can even talk about in terms of what the opinion would be, or how that would be appropriate. And [the Rindelaubs’ expert] essentially was a reaction . . . to get somebody to respond[.] . . . I’m not going to hear from those kinds of experts.

Accordingly, the district court excluded the Jensens' proposed expert testimony, both because the testimony would concern the "ultimate legal questions" in the case and because the Jensens had failed to find a replacement expert.

Following the court's judgment in the proceeding subsequent, the Jensens moved for a new trial, arguing that "[e]xpert testimony giving the Court information about the historical use of [the easement] language and what it likely meant to the drafters at the time would be helpful to the Court." In its order denying the motion, the district court reiterated its conclusion that "[t]he testimony the Jensens offer is essentially a legal opinion ordinarily reserved for legal counsel to argue." The court determined that excluding the expert testimony did not deprive the Jensens of a fair trial because the analysis of the nature of the easement was "straightforward" and "[t]estimony tantamount to a legal argument does not assist the Court in interpreting the easement any more than counsel's written trial submissions."

The Jensens now argue that the district court abused its discretion by excluding the expert's testimony and denying their motion for a new trial. They contend that an expert "is allowed to testify as to the ultimate issues in the case" and that their expert could have offered "specialized knowledge" regarding "the law and language at the time the [e]asement was drafted" in order to "condense the issues for the Court." We are not persuaded.

Two alternative grounds support excluding the Jensens' proposed expert testimony. We first note that expert testimony regarding the nature of the easement would constitute extrinsic evidence of the intent of the original parties to the easement. As such, it was

properly excluded in light of our conclusion that the easement language unambiguously creates an appurtenant easement. *See Staffing Specifix, Inc.*, 913 N.W.2d at 692 (explaining that extrinsic evidence of intent may be admitted only if contract language is ambiguous).

Second, the Jensens' argument fails on its merits. Expert testimony is admissible only where it would "assist the trier of fact to understand the evidence or to determine a fact in issue." Minn. R. Evid. 702. "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Minn. R. Evid. 704. However: "A distinction should be made between opinions as to factual matters, and opinions involving a legal analysis or mixed questions of law and fact. Opinions of the latter nature are not deemed to be of any use to the trier of fact." *Conover v. N. States Power Co.*, 313 N.W.2d 397, 403 (Minn. 1981) (quotation omitted). Here, the Jensens' proposed expert testimony would have undoubtedly involved legal analysis or mixed questions of law and fact because the expert intended to testify to the legal meaning of the terms in the 1941 quitclaim deed. In its order denying the Jensens' motion for a new trial, the district court reasoned that this proposed testimony would "complicate an otherwise straightforward analysis." Accordingly, the court's view was that such testimony would not have aided the court in deciding the legal issue before it. The district court's decision to exclude the expert testimony on this basis was neither an erroneous view of the law nor an abuse of the court's discretion.

Because the Jensens' proposed expert testimony would constitute extrinsic evidence of the original parties' intent and would also include opinions involving legal analysis, we conclude that the district court did not abuse its discretion by excluding the testimony.

III. The district court abused its discretion by excluding evidence of the historical use of the easement.

Lastly, the Jensens argue that the district court erred as a matter of law by excluding evidence of the historical use of the easement and by denying their motion for a new trial on that ground. They contend that case law establishes that the district court abused its discretion by failing to admit this evidence, which is relevant to the scope (as opposed to the nature) of the easement. In this regard, we agree.

“The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning*, 567 N.W.2d at 45-46 (quotation omitted). “Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *Id.* at 46 (quotation omitted).

The Jensens intended to offer testimony at trial about the use and maintenance of the easement by prior owners of the non-lakeshore property to support their position that the use of the easement was intended to be limited to an unimproved footpath. The proposed testimony concerned use of the easement by a married couple who had owned the non-lakeshore property prior to the Rindelaubs. The wife was the daughter of the Wanns, and she inherited the non-lakeshore property in 1957 following Elizabeth Wann’s death. She and her husband owned the property until her death, and then her husband owned the property until 2014 when the Rindelaubs purchased the property. In district court filings, the Jensens indicated that they were prepared to testify to their observation of the married couple’s use and maintenance of the easement from 1978, when the Jensens

moved onto the lakeshore property, until the non-lakeshore property was sold in 2014. And the Jensens disclosed at least three additional witnesses who could have testified to the historical use of the easement. One of their proposed witnesses had owned a neighboring property from 1965 to 1980. The Jensens asserted that their proposed testimony would show that the easement area “was never paved or improved in any manner.”

Following the Rindelaubs’ motion in limine, the district court excluded all historical-use evidence of the easement prior to 2014, determining that such evidence is not “relevant to the type of easement that it is.” The district court further explained its reasoning for excluding the evidence in its order denying the Jensens’ motion for a new trial. There, the court determined that it had not erred by excluding evidence of the easement’s use and maintenance by owners who were not original parties to the easement because

the easement’s scope is determined by its drafters. Historical use may be useful extrinsic evidence where it indicates what the drafters intended the easement’s scope to be—but the Jensens seem to propose that the Court should consider all historical use, even by non-parties to the easement, when it was originally granted. . . . *[A]ny historical use evidence the Jensens offer in this case must have a demonstrable nexus to the easement’s original parties.* . . . [T]he Jensens offer no such evidence

(Emphasis added.)

To determine whether the district court erred by excluding the Jensens’ proposed historical-use evidence, we must first examine whether the easement language is ambiguous as to improvements and motor vehicle use. *See Staffing Specifix, Inc.*, 913 N.W.2d at 692 (providing that extrinsic evidence of intent may be admitted only if

contract language is ambiguous). Whether an ambiguity exists is a question of law, reviewed de novo. *Storms, Inc.*, 883 N.W.2d at 776; *see also Scherger*, 575 N.W.2d at 580-81 (reviewing de novo whether an easement agreement was ambiguous).

Based on our review of case law and the 1941 quitclaim deed, we conclude that the easement language is ambiguous regarding whether the easement owner may make improvements or use motor vehicles on the land. In *Farnes v. Lane*, the supreme court provided a general rule for interpreting the scope of an easement:

If the easement is granted in terms which clearly and specifically allow or deny [the] use [at issue], the language of the instrument creating the right will control. Where, as here, the easement for a way is granted in *general terms* . . . the uncertainty must be resolved by applying the general principles of law relating to the construction of ambiguous writings.

161 N.W.2d 297, 300 (Minn. 1968) (emphasis added). Applying this rule to the present case, the easement plainly grants a right of way in general terms—it provides for “ingress and egress” across the lakeshore property, and it does not specifically allow or deny the use of motor vehicles. Furthermore, apart from specifically permitting “the right to maintain the usual dock facilities,” the language is silent as to the right to improve the land.

The Rindelaubs urge us to conclude that the easement’s silence as to improvements and motor vehicle use *unambiguously* permits the Rindelaubs to engage in those activities and that all extrinsic evidence was therefore properly excluded. They cite two cases to support their position that the easement language is unambiguous as to the easement’s scope. But their reliance on these cases is misplaced. First, the Rindelaubs rely on *Bruns v. Willems*, 172 N.W. 772 (Minn. 1919). In *Bruns*, the plaintiff complained that the

defendant easement holder's grading of a roadway easement interfered with his ability to drive machinery on the road. 172 N.W. at 774. The supreme court held that the easement holder had not violated the plaintiff's rights. *Id.* In its analysis, the court noted that "one possessed of a right of way easement may put it in proper condition for use and keep it in repair." *Id.* The Rindelaubs contend that *Bruns* "held that silent right-of-way easements generally allow the building of improvements." But the *Bruns* court considered extrinsic evidence in reaching its conclusion that the defendant's improvements did not unnecessarily injure the plaintiff. *See id.* at 774-75 ("The court found expressly that defendant and his grantors and predecessors in interest have maintained and repaired the cartway in such a manner as to cause no unnecessary injury or damage to plaintiff or his land."). Moreover, *Bruns* predates *Farnes* by almost 50 years. *Bruns* is not controlling in this case.

The Rindelaubs also cite *Giles v. Luker*, 9 N.W.2d 716 (Minn. 1943), to support their contention that "[i]n general, a right-of-way easement that does not explicitly exclude motor vehicles allows motor vehicles." In *Giles*, the supreme court held that the use of the word "wagon" in an easement grant was broad enough to permit the use of trucks on the land. 9 N.W.2d at 717-18. Contrary to the Rindelaubs' contention, the *Giles* court's interpretation of the easement was based on a term *actually present* in the conveyance document; the court did not interpret silence in the easement language to unambiguously permit motor vehicle traffic. The Rindelaubs' arguments are unavailing. Because the 1941 quitclaim deed conveyed the easement in general terms, the easement language is ambiguous regarding the scope of the easement.

Having concluded that the easement language is ambiguous as to its scope, the remaining question is whether the district court abused its discretion by excluding the Jensens' proposed testimony about the historical use of the easement. When interpreting an ambiguous easement, admissible extrinsic evidence includes the "practical construction," or historical use, of the easement. *Farnes*, 161 N.W.2d at 301.

Here, the district court determined that evidence of the easement's use and maintenance by the Wanns' daughter and her family was properly excluded because it is not relevant to determining the intent of the original parties to the easement. The court reasoned that "any historical use evidence the Jensens offer in this case must have a demonstrable nexus to the easement's original parties" and noted that the Jensens had failed to offer any such evidence. We conclude that the district court's decision to exclude the historical-use evidence was an abuse of discretion.

As the Jensens contend, Minnesota case law provides that the use of an easement by successors to the original parties is relevant to determining the scope of an ambiguous easement. For instance, in *Farnes*, the supreme court provided the following principle for interpreting ambiguous easement language:

In addition to the rules which apply generally as aids in the ascertainment of intent in the use of words, extrinsic evidence may be considered relating to the facts peculiar to the particular easement involved on the assumption that the *grantor intended to permit a use of the easement which was reasonable under the circumstances and the grantee expected to enjoy the use to the fullest extent consistent with its purpose.*

Id. at 300 (emphasis added). The *Farnes* court then provided a long list of questions that may be used to resolve the ambiguity of easement language. *Id.* at 300-01. These questions

included the following: “What was the practical construction given to the easement by the parties affected? Has there been a variation or abandonment of such initial uses during the intervening years?” *Id.* at 301. The *Farnes* court did not limit a district court’s inquiry to the original parties’ use of the easement but rather endorsed a broader examination of the easement’s historical use to determine whether the easement holder’s proposed use of the easement is “reasonable under the circumstances.” *See id.* at 300. Other cases support the proposition that admissible historical-use evidence includes evidence of the conduct of successors-in-interest to the easement. *See Kretz v. Fireproof Storage Co.*, 149 N.W. 648, 651 (Minn. 1914) (considering both the conduct of the original parties to an easement and the conduct of successors-in-interest and stating, “The conduct of later owners, including plaintiff, shows a practical construction of these instruments, and leaves no doubt as to their own view of the rights of defendant.”); *Bruns*, 172 N.W. at 774-75 (“The court found expressly that defendant and his grantors and predecessors in interest have maintained and repaired the cartway in such a manner as to cause no unnecessary injury or damage to plaintiff or his land. We cannot hold that the finding is without support in the record.”).

The historical-use evidence that the Jensens proposed to admit fits squarely within the inquiries that the *Farnes* court directed district courts to conduct. Moreover, because the Jensens’ proposed testimony related to the use and maintenance of the easement by the daughter of the original easement grantees, the evidence also meets the district court’s own criteria for admission because it has a “demonstrable nexus to the easement’s original parties.” Contrary to the Rindelaubs’ argument, the testimony that the Jensens intended to

offer is relevant to determining the intent of the original parties regarding the scope of the easement. The Jensens contend that the testimony would have shown that the use of the easement after 1978 was “limited to pedestrian use and no improvements had ever been constructed on the easement.” Under the *Farnes* standard, such testimony concerning the use of the easement over time would shed light on what uses of the easement are “reasonable under the circumstances.” See 161 N.W.2d at 300 (providing that an easement’s grantor is assumed to intend uses that are “reasonable under the circumstances”). Moreover, whether the daughter of the original easement grantees constructed improvements or drove motor vehicles on the easement may reflect whether the original parties to the easement intended those uses to occur.³

The district court abused its discretion by concluding that the historical-use evidence was irrelevant. And because the district court expressly based its decision not to grant the Jensens’ requests for declaratory relief regarding the use of the easement on the lack of evidence in the record demonstrating the original parties’ intent in that regard, we conclude that the exclusion of the evidence prejudiced the Jensens.⁴ We therefore remand for the

³ We note that although evidence of the prior owners’ use of the easement is relevant to determining the easement’s scope, it is not necessarily dispositive of the intent of the original parties. On remand, it will be the district court’s role, as fact-finder, to weigh the historical-use evidence. See *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 60-61 (Minn. 2019) (distinguishing between the weight and the admissibility of evidence and explaining that the role of weighing the evidence belongs to the fact-finder).

⁴ The Rindelaubs also contend that evidence of the easement’s historical use should be excluded because its admission would unfairly prejudice *them*. See Minn. R. Evid. 403 (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .”). The Rindelaubs’ argument does not persuade us that the district court properly excluded all historical-use evidence. First, the district court did not exclude the evidence on this basis. Because the district court did not

district court to conduct a new trial limited to determining the scope of the appurtenant easement.

Affirmed in part, reversed in part, and remanded.

address the question of potential unfair prejudice, the issue is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that an appellate court “must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it” (quotation omitted)). On remand, the Rindelaubs may raise an argument under rule 403 to challenge the admission of specific historical-use evidence. But, it appears that the risk of any unfair prejudice is minimal, at best, and unlikely to substantially outweigh the probative value of relevant historical-use evidence because this case involves a court trial, as opposed to a jury trial.