STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1302

Keith D. Bexell, et al.,
Respondents,

vs.

Jonathan Brand, et al.,
Appellants.

Filed May 31, 2022
Affirmed
Wheelock, Judge

Anoka County District Court
File No. 02-CV-20-2572

Steven J. Lodge, Lodge Law Office, Coon Rapids, Minnesota; and

John A. Markve, Markve & Zweifel, PPLC, Maple Grove, Minnesota (for respondents)

Ernest F. Peake, Paul M. Shapiro, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellants)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellants challenge the district court's denial of their motion for judgment as a matter of law and the court's subsequent determination that an easement burdening appellants' land allows for ingress, egress, utilities, and drainage. Because the district

court's denial of appellants' motion for judgment as a matter of law was based on a proper determination that the easement agreement was ambiguous as to use, the district court's factual findings were sufficiently supported by the record, and the district court's findings were sufficiently detailed, we affirm.

FACTS

Appellants Jonathan and Jennifer Brand challenge the district court's determination that their neighbors, respondents Keith and Rebecca Bexell, are entitled to use an established easement through the Brands' land for drainage and utilities as well as ingress and egress.

Warren Hoffman owned a parcel of land bordered by a road along the western edge. He subdivided the property into western and eastern parcels for potential development, and in 2007, he sold the 37-acre western portion to Lexington Sand. From 2007 to 2013, Hoffman accessed the eastern parcel from the road using a trail that crossed west to east over the parcel owned by Lexington Sand because there was no other way to access the 40-acre eastern parcel that he still owned. In 2013, Lexington Sand executed a quitclaim deed in exchange for consideration that formally granted an easement crossing the western parcel along the 66-foot-wide trail to the eastern parcel "for public road, drainage utility purposes over and across the property." Hoffman and Lexington Sand recorded the 2013 quitclaim deed with the county. Hoffman used the easement a few times a year to transport farming equipment to and from his property and for hunters to access his land.

In 2016, to facilitate a sale of the western parcel, which is unbuildable on its north end, Lexington Sand and Hoffman modified the 2013 easement by quitclaim deed. The

easement was shifted southward and reduced in width from 66 to 40 feet. The quitclaim deed provided for a "40.00 foot wide easement lying over, under and across the Northwest Quarter of the Southeast Quarter of Section 24, Township 32, Range 23, Anoka County, Minnesota," but did not specify uses. Lexington Sand, through its owner (the Brands' seller), then sold the burdened land to the Brands and told them that Hoffman used the easement only for occasional ingress and egress for farm equipment and hunting parties.

In 2019, the Bexells bought the eastern parcel with the intent of building a home on the property. The Bexells began to bring contractors out to their parcel using the easement, but any further construction ceased when the Brands told the city that the easement did not allow for utilities. The Bexells sued for declaratory relief.

At a bench trial, Hoffman testified that he did not remember seeing the 2016 quitclaim deed and did not know why the easement had been changed but that he did recognize his signature on the deed. After the Bexells closed their case-in-chief, the Brands moved for judgment as a matter of law, which the district court denied.

The Brands' seller then testified on behalf of the Brands, stating that the language allowing for a public road, drainage, and utilities in the 2013 quitclaim deed was likely left over from an "original ghost plat" and did not reflect the way the easement had actually been used. He explained that he needed to move the easement in 2016 because it cut off the only buildable area on the western parcel, so they "knocked [the easement] down" to 40 feet and moved it away from the buildable area. He also testified his understanding of

the 2016 quitclaim deed was that Hoffman had intended to use the easement only in the same way he historically used it—to travel back and forth to the eastern parcel.[1]

The district court determined that the 2016 quitclaim deed was ambiguous as to use of the easement because it was silent as to use. The district court then evaluated extrinsic evidence on the issue of use. It concluded that to the extent that the Brands' seller testified that he and Hoffman intended to limit the potential uses of the easement through the 2016 quitclaim deed, his testimony was not credible because Hoffman had continually expressed an interest in developing the eastern parcel and because adding restrictions to the easement without any compensation was against Hoffman's interests. The district court found that the purpose of the 2016 quitclaim deed was to move the easement southward and make it narrower so that the western parcel was buildable; the purpose was not to limit how Hoffman used the easement. Based on these findings, the district court granted declaratory relief to the Bexells, holding that the 2016 quitclaim deed "created an easement burdening the Brand Property that provides for a road for ingress and egress to the Bexell Property [as] well as a drainage and utility easement."

The Brands appeal.

[1] Although the Bexells objected to this testimony, the district court admitted it as the seller's "understanding" of what Hoffman intended.

DECISION

I. The district court did not err by denying the Brands' motion for judgment as a matter of law.

The district court may grant judgment as a matter of law if "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01. Judgment as a matter of law is not appropriate "[i]f reasonable jurors could differ on the conclusions to be drawn from the record." *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009).

We review de novo a district court's decision to deny a motion for judgment as a matter of law and view the evidence in the light most favorable to the non-moving party. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). "We affirm the denial of a motion for judgment as a matter of law unless no reasonable theory supports the verdict." *Id.* at 618-19. "This means that to reverse, the evidence must be so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Id.* at 619 (quotations omitted). The Brands argue that the district court erred by denying their motion for judgment as a matter of law because the Bexells' case-in-chief did not support a determination that the 2016 quitclaim deed allowed for drainage and utilities or that the easement was ambiguous regarding allowed uses.

An easement is "an interest in land in the possession of another which entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists." *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 789 (Minn. 1970). "Every easement is a particular easement privileging the owner thereof to make particular uses of

a servient tenement. The sum total of these particular privileges of use makes up the extent of the easement." *Id.* When an easement is created by an express grant, its terms constitute a contract. *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003), *rev. 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). "The parameters of an easement created by a grant depend entirely upon the construction of the terms of the grant." *Bergh & Misson Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997) (quotation omitted). Generally, the grant of an easement should be strictly construed against the grantor. *Id.*

"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 that we review de novo. *Storms, Inc.*, 883 N.W.2d at 776. "[I]f the terms of an instrument of conveyance are ambiguous, interpretation of the instrument is a question of fact." *Apitz v. Hopkins*, 863 N.W.2d 437, 439 (Minn. App. 2015).

Where an easement is granted in general terms, "the uncertainty must be resolved by applying the general principles of law relating to the construction of ambiguous writings." *Farnes v. Lane*, 161 N.W.2d 297, 300 (Minn. 1968). In resolving ambiguous easement grants, district courts may consider extrinsic evidence "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.*

The Brands argue that no reasonable theory would have supported the Bexells' case that the easement allowed for utilities and drainage. First, the Brands argue that the 2016 easement grant was unambiguous, and the grant only allowed for ingress and egress to the benefitting property. We agree that in general, "silence alone does not necessarily create an ambiguity as a matter of law," *Facilities, Inc. v. Rogers-Usry Chevrolet, Inc.*, 908 So.2d 107, 115 (Miss. 2005), but in this case, we agree with the district court that the 2016 quitclaim deed's silence regarding use was ambiguous and reasonable minds could conclude that the Bexells have a right to use the easement for utilities and drainage.

The Brands rely heavily on *Minnesota Athletic Club* to support their assertion that if a writing describing an easement contains no express limits on use, then rights are limited to their "lowest level." In *Minneapolis Athletic Club*, the owner of two buildings (grantor) who had granted an easement to the defendants (grantees) sued the grantees when the grantees refused to allow the grantor to build a skyway over the alley that would be high enough for vehicles to pass beneath. 177 N.W.2d at 788. The easement granted "'a right of way over and the privilege of the free use as a private alley' of the 8-foot strip of land immediately behind [the grantor's] clubhouse." *Id.* The supreme court also noted that the writing describing the easement went on to state that it reserved the right of way "so as to complete the alleyway behind both properties." *Id.*

The supreme court determined that the language was not ambiguous in *Minnesota Athletic Club* and that, while the grantees had acquired a right of way over the alley, they did not by implication acquire "the right to have the way kept open to the sky for light and air." *Id.* at 790. The supreme court then noted that generally, "the grant of an easement over land does not preclude the *grantor* from using the land in a manner not unreasonably interfering with the special use for which the easement was acquired," and the easement should not be "enlarged beyond the objects originally contemplated or expressly agreed upon by the parties." *Id.* at 789-90 (emphasis added). Therefore, the supreme court held that the grantor retained full dominion over his land subject merely to the right-of-way. *Id.* at 790.

Minneapolis Athletic Club does not convince us that when a writing describing an easement is silent with regard to use, the written agreement is not ambiguous, and we must infer certain restrictions on the use of the easement. *Minneapolis Athletic Club* dealt with an easement that did describe the allowed use, stating it allowed "a right of way over and the privilege of the free use as a private alley." *Id.* at 788. Further, the case was brought when the owner of the benefitted land tried to prevent the owner of the burdened land from using the easement land in a way that would not infringe upon the use the terms of the easement allowed the benefitted land. Here, in contrast, the owners of the burdened land hope to prevent the owners of the benefitted land from using the easement for anything other than ingress and egress.

The Bexells rely on *Giles v. Luker*, in which the supreme court said, "The general rule is that a right of way arising by grant and not by prescription which is not restricted

by the terms of the grant is available for the reasonable uses to which the dominant estate may be devoted." 9 N.W.2d 716, 718 (Minn. 1943). In *Giles*, the defendant granted the plaintiff an easement to have a permanent right of way by foot or wagon over a road on the defendant's property, and the defendant objected when the plaintiff began to use large trucks to haul gravel on the easement. *Id.* at 717. The supreme court determined that so long as the plaintiff complied with restrictions to ensure the gravel hauling was not very disruptive, she was allowed to use the easement for hauling gravel. *Id.* at 718.

The Brands argue that the rule in *Giles* that a right of way without restrictive terms is available for "reasonable uses" can only apply to grants that have "express language about use." This argument is unavailing because *Giles*'s rule explicitly applies to rights of way "not restricted by the terms of the grant." *Id.* Although the grant of the right of way here is "not restricted by the terms of the grant," it is different from the grant in *Giles* because there is no language regarding reasonable uses of the benefitted estate in the 2016 quitclaim deed. The district court did not err by determining that this lack of guidance rendered the 2016 quitclaim deed ambiguous and that the court should therefore consider extrinsic evidence.

The Brands then argue that even if the easement grant was ambiguous, the Bexells did not present evidence "concerning the intent of the original parties to the easement or concerning the easement's historical use." However, as discussed below where we address the Brands' argument that the district court's findings were not based on evidence in the record, the district court was able to determine the original parties' intent from the evidence presented, including Hoffman's intent to sell the eastern parcel for development. We do

not discern error in the district court's determination that the 2016 quitclaim deed was ambiguous.

II. The district court's findings of fact are supported by the record.

We defer to a district court's findings of fact unless they are clearly erroneous. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). Clear error is not present where the record contains "reasonable evidence" that supports the court's findings, and this court reviews the evidence in the light most favorable to the judgment. *Id.* (quotation omitted). The findings of fact are clearly erroneous if we have "the definite and firm conviction that a mistake has been made." *Id.* (quotations omitted).

"A trial court possesses broad discretion over the admission and exclusion of evidence and the trial court's rulings should not be disturbed by a reviewing court unless the rulings constitute a clear abuse of discretion or are based on an erroneous view of the law." *Bergh & Misson Farms, Inc.*, 565 N.W.2d at 26. Legal questions are subject to de novo review. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

Here, the district court found that the Bexells purchased their parcel from Hoffman with the intent to build a home on the property and to use the easement to bury necessary utilities. It also found that the Bexells that the easement allowed for ingress and egress and for drainage and utilities to the eastern parcel. The court found that Hoffman had originally owned both parcels and that he sold the western parcel to Lexington Sand while at the same time discussing with the Brands' seller the potential to develop the Bexells' current eastern parcel into residential real estate. The court found that the 2013 quitclaim deed was replaced by the 2016 quitclaim deed when the location and width had to be changed so that

Lexington Sand could sell the western parcel to the Brands. The court then determined that the language describing permitted uses in the 2013 quitclaim deed was intentional because "both parties knew that Mr. Hoffman's intent with respect to the Bexell Property was to develop the property and he required an easement for access and egress, drainage and utilities." The court also noted that there was no evidence that the parties intended to alter the existing easement with the 2016 quitclaim deed other than to change the width and location of the easement.

The court expressly discredited the Brands' seller's testimony that both he and Hoffman intended to restrict the purpose and permitted uses of the original 2013 easement using the 2016 quitclaim deed. It noted that Lexington Sand did not pay Hoffman in return for greater restrictions, that it was unlikely that Hoffman would have willingly rendered the eastern parcel less valuable and more difficult to develop, and that the 2016 quitclaim deed reflected only an intent to change the location of the easement to make the western parcel the Brands purchased buildable.

A. The district court did not err by considering the 2013 quitclaim deed as extrinsic interpretive evidence.

First, the Brands argue that the district court erred by using the 2013 quitclaim deed as extrinsic evidence to interpret the ambiguous language of the 2016 quitclaim deed.[2] The 2013 quitclaim deed was admitted as an exhibit at trial.

[2] If the Brands suggest the 2013 quitclaim deed should not have been included as evidence, that argument is waived. It appears that the Brands did object on relevance grounds to the introduction of the 2013 quitclaim deed but do not now argue this was an evidentiary error in their brief. *See Christie v. Est. of Christie*, 911 N.W.2d 833, 837 n.4 (Minn. 2018) ("To

The Brands argue that the 2013 quitclaim deed language is irrelevant because the 2016 quitclaim deed extinguished it. They acknowledge that they are arguing that the 2013 quitclaim deed was "legally irrelevant" but nonetheless say that this was an error in the findings of fact. As to the district court's findings of fact relating to the 2013 quitclaim deed, we conclude that the district court did not err by making findings based on the language of the 2013 quitclaim deed and testimony surrounding the 2013 easement.

If the Brands are arguing that the district court made a legal error by considering the 2013 quitclaim deed, the argument fails; the deed was not "evidence which has no tendency to aid in the construction of the writing or to explain any ambiguity therein." *Anchor Cas. Co. v. Bird Island Produce, Inc.*, 82 N.W.2d 48, 53 (Minn. 1957) (quotation omitted). The Brands argue that prior easement grants cannot be considered for "*any* substantive purpose," presumably not even for understanding the circumstances surrounding the creation of an ambiguous agreement, but the Brands do not offer legal support for this argument. We therefore conclude that the 2013 quitclaim deed is extrinsic evidence that "may be considered relating to the facts peculiar to the particular easement." *Farnes*, 161 N.W.2d at 300.

The Brands then argue that the district court erred by finding that "[t]he easement was modified by the replacement easement, which changed the width of the easement from 66 feet to 40 feet." The two quitclaim deeds state that the 2013 easement was 66 feet wide and the 2016 easement was 40 feet wide, supporting the district court's finding. The

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the extent that this suggestion in their briefs and at oral argument was, in fact, an argument, it is waived.").

Brands argue that this finding is incomplete because it does not state that the language restricting usage of the easement was removed; however, the district court discussed the removal of that language in other parts of the order, including in its evaluation of testimony, and the district court did not say that the change in width was the *only* difference between the 2013 and 2016 easements. The district court's finding is therefore supported by the evidence, and it did not err by considering the 2013 quitclaim deed.

B. Reasonable evidence supports the district court's finding that the 2016 quitclaim deed was intended to modify only the easement's width and location.

The Brands argue that Hoffman's and the Brands' seller's testimonies as the parties to the 2016 quitclaim deed do not support the district court's finding that they intended to modify only the easement's width and location. The district court found:

> 37. There is no evidence that the parties intended to do anything with the replacement easement other than modify the width of the easement.
>
> 38. [The Brands' seller] testified that in agreeing to a replacement easement the parties intended to modify the purpose of the easement to only allow ingress and egress from the Bexell property for farming and hunting purposes. This testimony was not credible.

Hoffman testified that he did not remember the 2016 quitclaim deed at all and did not remember the reason for the writing or his intent when signing it. Hoffman testified that he had originally tried to sell his parcel of land for development and that he had used the easement irregularly for accessing the eastern parcel for agriculture maintenance or hunting when he owned it.

The Brands are correct that the district court erred by stating that there was "no evidence" that the parties intended to do anything other than modify the width of the easement. The record includes evidence that the parties also intended to move the easement southward. Although the district court stated that there was "no evidence" of any intention to modify the easement's use, its findings reflect that it considered the evidence relied on by the Brands and found it not credible. Appellate courts defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And immediately after its "no evidence" comment, the district court described the Brands' seller's testimony and found it not credible.[3]

If the Brands argue the district court abused its discretion by determining that the testimony of their witness was not credible, their argument fails. Again, appellate courts defer to district court credibility determinations. *Id.* The district court is not bound to believe a witness's testimony, even if that witness testifies that he can remember the parties' intentions when making the agreement. The district court's findings regarding Hoffman's historic intentions to use the eastern parcel for development, the 2013 easement, the 2013 quitclaim deed, and the language of the 2016 quitclaim deed that was silent on allowed use and focused on relocating the easement, all informed the district court's determination that the Brands' seller's testimony that the parties intended to limit permitted

[3] The district court addressed this exact point in its order denying the Brands' motion for amended new findings or new trial, stating that "Findings of Fact 37 and 38, read in conjunction, make it clear that [the Brands' seller's] testimony regarding the purpose of the replacement easement was rejected by this court."

uses of the easement by signing the 2016 quitclaim deed was not credible. Based on these findings, we defer to the district court's credibility determination.

C. Reasonable evidence supports the district court's findings of Hoffman's intent.

The Brands argue that the district court's findings are "untethered" from the extrinsic evidence at trial—specifically the original intent of the grantor and grantee and the historical use of the property. The district court found that Hoffman had planned to sell the eastern parcel for residential use that required an easement allowing for ingress and egress as well as utilities and drainage. The district court found that the 2013 easement and quitclaim deed reflected Hoffman's intent and that the 2016 quitclaim deed did not include any language establishing a restriction to that use. Hoffman's testimony regarding his intent to develop the eastern parcel for residential purposes and the language of the writings support these findings of fact.

The district court reasoned that, because Hoffman had planned to sell the eastern parcel for residential development and ultimately did so, he could not have intended to restrict the use of the easement to ingress and egress only for hunting and farming. The Brands appear to ask us to weigh the evidence differently from the district court to find in their favor, which is not within our purview. *See Kenney*, 963 N.W.2d at 221 ("[C]lear-error review does not permit an appellate court 'to weigh the evidence as if trying the matter *de novo*.'"). The district court's finding that Hoffman did not intend to limit his use of the easement in the 2016 quitclaim deed is thus supported by the record.

III. The district court did not err by failing to make specific findings about the easement's permissible uses.

The Brands' final argument is that the district court erred by failing to make specific findings in its order. They argue that the district court did not issue findings on what kinds of materials could be used for constructing the road, what insurance must cover, or how maintenance costs should be shared. The Brands argue that such findings are required by the rule that a court must make findings that "permit meaningful appellate review." *Nat'l Union Fire Ins. Co. v. Evenson*, 439 N.W.2d 394, 398 (Minn. App. 1989).

The issue before the district court was to what extent and in what manner the Bexells are allowed to use the easement in light of the 2016 quitclaim deed. The district court made detailed findings regarding the historical use of the easement, the current and previous quitclaim deeds describing the easement, and the purpose of modifying the easement and identified which evidence it found credible. Based on these findings, the district court determined that the Bexells are allowed to use the easement for ingress, egress, drainage, and utilities. These findings are sufficient for this court to conduct meaningful appellate review. The Brands offer no legal authority for their argument that the district court must make findings as to specific materials, insurance, or maintenance.

Affirmed.