

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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FRED W. HALBERG and RILLA JO HALBERG,

Plaintiffs/Counter Defendants-  
Appellees,

v

THOMAS W. PFEIFFELMANN,

Defendant/Counter Plaintiff/Cross  
Plaintiff/Third Party Plaintiff-  
Appellant,

and

PRENTISS M. BROWN, JR., MARIANA B.  
RUDOLPH, PAUL W. BROWN, LINDA M.  
BROWN, RUTH B. EVASHEVSKI, BARBARA  
B. LAING, JAMES J. BROWN, DOROTHY M.  
BROWN, MARGARET D. BROWN, PATRICIA  
B. WATSON, and LEILA R. WALKER,

Third-Party Defendants,

and

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY,

Cross Plaintiff-Cross Defendant,

and

MACKINAC COUNTY ROAD COMMISSION,

Cross-Defendant.

UNPUBLISHED  
October 23, 2012

No. 303403  
Mackinac Circuit Court  
LC No. 09-006770-CH

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Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

In this dispute concerning the ownership of real property, defendant Thomas Pfeiffelmann appeals as of right the trial court's order denying his motion for summary disposition and granting the competing motion for summary disposition brought by plaintiffs Fred and Rilla Halberg. We affirm, albeit for reasons other than those relied on by the trial court.

We have carefully examined and scrutinized the extensive lower court record, including all of the deeds, surveys, maps, and diagrams. The dispute concerns a strip of land, measuring 27 feet wide and 200 feet in length, that is located on the east side of the Halbergs' property and the west side of Pfeiffelmann's property, running the entire length of those properties. The origins of the dispute can be traced back several decades earlier when the width of a right of way as to the extension of Marley Street, located vertically adjacent to the east side of what is now Pfeiffelmann's property, was depicted as measuring 120 feet in drawings by the Michigan Department of Transportation (MDOT) in relationship to condemnation proceedings, but where the actual construction of the Marley Street extension only involved the utilization of a 66-foot right of way. Extending a line 33 feet west of the centerline of Marley Street, for purposes of a 66-foot right of way, when compared to extending a line 60 feet west of the centerline of Marley Street, for purposes of a 120-foot right of way, created a 27-foot discrepancy with respect to defining the boundary line between the east side of what is currently Pfeiffelmann's property and the Marley Street right of way. And this 27-foot discrepancy eventually carried over to the strip of land in dispute here between the Halbergs' property and Pfeiffelmann's property, given that various deeds and surveys over the years were silent on the matter or used either the 33-foot mark (66-foot right of way) or the 60-foot mark (120-foot right of way), measured from the centerline of Marley Street toward the west, as the starting or reference point for describing properties, which properties were otherwise generally described in relationship to footage measurements within a section known as Private Claim #3. If the 33-foot mark from the Marley Street centerline is used, Pfeiffelmann's property extends further east than with a 60-foot mark, ostensibly resulting in his entire property shifting to the east and placing the 27-foot disputed strip within the Halberg's boundaries. If the 60-foot mark is used, Pfeiffelmann's property does not extend as far to the east as with the 33-foot mark, ostensibly resulting in his entire property shifting to the west, thereby encompassing the 27-foot disputed strip of land.

We first find as a matter of law that the 1985 warranty deed from Prentiss Brown to Pfeiffelmann, which transferred to Pfeiffelmann the northern half of his currently-held property, conveyed a parcel extending eastward to the 33-foot mark west of the Marley Street centerline, where the deed specifically referenced a boundary line measuring "33 feet" from the west of "the centerline of Marley Street extended." Accordingly, the northern half of Pfeiffelmann's property does not encompass the northern half of the 27-foot strip presently in dispute. Therefore, as to that portion of the disputed property, upon which lies a section of the Halbergs' driveway, the Halbergs hold legal title. This is true considering that the Halbergs' property is directly adjacent to and abuts Pfeiffelmann's property and that the legal description in the Halbergs' warranty deed, which refers to the property being "West of Marley street extended," absent any reference to right of way or centerline measurements, speaks of footage distances that are, ultimately and necessarily, measured in direct relationship to and correlation with the location of Pfeiffelmann's property and the boundaries of Private Claim #3.

With respect to the 1985 warranty deed from Larry and Olga Rubin to Pfeiffelmann, which transferred to Pfeiffelmann the southern half of his current property three days before the northern half was transferred, it conveyed land extending eastward to a boundary line lying west “of Marley Street extended *as now surveyed*.” (Emphasis added.) There was no mention of a 33-foot or 60-foot mark from the centerline of Marley Street, nor was mentioned a 66-foot or 120-foot right of way. The legal description, including the language “as now surveyed,” is identical to the legal description contained in the warranty deed under which Larry Rubin had first acquired the parcel back in 1958. The only survey, at that point in time and as reflected in the record, would have been one showing a 120-foot right of way with a 60-foot mark from the centerline of Marley Street. And Pfeiffelmann argues that, therefore, the 1985 Rubin-to-Pfeiffelmann deed must be construed to have set an eastern boundary line for Pfeiffelmann’s property that was located 60 feet west of the Marley Street centerline, not 33 feet, which in turn pushed his entire property westward, thereby encompassing the 27-foot strip in dispute, at least as to the southern half. We hold that, even were we to agree that the language in the 1985 deed could be interpreted as argued by Pfeiffelmann, the intent of the grantors, the Rubins, as well as Pfeiffelmann’s intent, was to execute and close on a conveyance that placed the eastern boundary line at a point that was 33 feet west of the centerline of Marley Street.

In 1985, the survey by Neil Hill, which utilized a 60-foot mark, had not yet been completed; it was done in 1989. In 1983, two years before the Rubin-to-Pfeiffelmann conveyance, the problem regarding the width of the right of way was brought to the attention of the Mackinac County Road Commission (MCRC). MCRC minutes indicated that Larry Rubin was one of the persons who met with the MCRC “to discuss a survey problem on Marley Street.” The minutes, after noting that Rubin owned an affected parcel, provided:

Mr. Rubin added that he has had a survey done, and he was informed that there is a problem with property lines of several owners in the area. Mr. Rubin explained that county road right of way is usually 66 feet; however, the State built the road in question as an extension of Marley Street with 120 feet of right of way. Mr. Rubin added that he would request the [MCRC] to declare 66 feet right of way rather than 120 feet to solve the problem. Mr. Jim Brown stated . . . that all the descriptions start at the West line of Private Claim #3, with the assumption of 66’ of right of way for the road. He added that it was assumed that the West line of Marley Street extension right of way would be 33’ from centerline, and property owners have built according to that information[.]

The commissioners voiced approval to correct the problem that was brought to their attention by the landowners, and on August 15, 1983, the MCRC executed a quitclaim deed transferring any interest it held in the 27-foot strip along Marley Street that had been part of the original 120-foot right of way. We note, as pointed out by Pfeiffelmann, that the deed, for reasons unknown, conveyed the land to named grantees, Leila Walker and the Brown heirs, yet failed to include the Rubins, although the Rubins’ property, as located in Private Claim #3, was included in the conveyance’s property description. In a stipulated order to quiet title against the MCRC that was entered in November 2010 based on a conclusion that the MCRC never had the authority to make the 1983 conveyance, the parties stipulated that the MCRC had, in 1983, “attempted to convey title . . . to the private land owners by Quit Claim Deed dated August 15, 1983.” The stipulated order also provided that the MCRC had abandoned the 27-foot area in

1958 “through nonuse” and that it “should rightfully be titled in Pfeiffelmann” “as the fee simple holder.”<sup>1</sup> Regardless of whether the MCRC had the authority to make the 1983 conveyance and despite the fact that neither Larry nor Olga Rubin were named as vendees in that conveyance, the Rubins were certainly under the impression, given the circumstances, that when they made the 1985 conveyance to Pfeiffelmann, it was based on the 33-foot mark, not a 60-foot mark. To the extent that Pfeiffelmann argues, based on the problematic 1983 MCRC deed and the lack of reference to the Rubins as vendees, that the 1985 Rubin-to-Pfeiffelmann deed could not possibly have conveyed land measured up to the 33-foot mark because the Rubins lacked title up to that mark, the 2010 stipulated order acknowledging abandonment by the MCRC in 1958, or even 1983, negated any problems, as the Rubins would have held title in 1985 up to the 33-foot mark with such an abandonment by the MCRC.

Even though the “as now surveyed” language in the 1985 Rubin-to-Pfeiffelmann deed, which again was included in the 1958 deed transferring the property to Larry Rubin, could be interpreted as incorporating a 60-foot mark from the centerline of Marley Street, it was clearly not the intent of the parties to the 1985 transaction to only include property up to the 60-foot mark. We find as a matter of law that, if not a patent ambiguity, a latent ambiguity most certainly existed with respect to the 1985 Rubin-to-Pfeiffelmann deed and that the deed must be interpreted to have conveyed property up to the 33-foot mark from the Marley Street centerline.

“A deed is a contract[.]” and, “[a]s with any instrument, a deed must be read as a whole in order to ascertain the grantor’s intent.” *In re Rudell Estate*, 286 Mich App 391, 402, 409; 780 NW2d 884 (2009) (citation omitted). Contracts, such as deeds, are subject to the parol evidence rule, which precludes the use of extrinsic evidence when interpreting unambiguous contractual language, but ambiguous contracts open the door to the admission of extrinsic evidence to establish the actual intent of the parties. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). An ambiguity can be either patent or latent, and the *Shay* Court further elaborated:

This Court has held that extrinsic evidence may not be used to identify a patent ambiguity because a patent ambiguity appears from the face of the document. However, extrinsic evidence may be used to show that a latent ambiguity exists. . . . A latent ambiguity exists when the language in a contract appears to be clear and intelligible and suggests a single meaning, but other facts create the “necessity for interpretation or a choice among two or more possible meanings.” To verify the existence of a latent ambiguity, a court must examine the extrinsic evidence presented and determine if in fact that evidence supports an argument that the contract language at issue, under the circumstances of its formation, is susceptible to more than one interpretation. Then, if a latent ambiguity is found to exist, a court must examine the extrinsic evidence again to ascertain the meaning of the contract language at issue. [*Id.* at 667-668 (citations omitted).]

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<sup>1</sup> The stipulated order could also be read to suggest that the abandonment did not officially occur until 1983 as evidenced by the attempted conveyance.

Here, given the events that transpired before the MCRC and Larry Rubin's involvement therein, he clearly intended a conveyance to Pfeiffelmann that placed the eastern border of the property at a line 33 feet west of the Marley Street centerline. Indeed, Pfeiffelmann's own deposition testimony indicated that such was Rubin's intent, as reflected in discussions between Pfeiffelmann and Rubin while examining the property. In his deposition, Pfeiffelmann testified that he understood the transaction to encompass up to Marley Street and the 33-foot mark, stating, "I believe I was getting it, yes." Accordingly, there was, minimally, a latent ambiguity and, given the documentary evidence, that ambiguity must be resolved in favor of a finding as a matter of law that the 1985 Rubin-to-Pfeiffelmann deed conveyed property measured by reference to the 33-foot mark from the centerline of Marley Street. We recognize that Pfeiffelmann also testified that it was his belief, based on his conversation with Larry Rubin, that not only was he obtaining land up to the 33-foot mark on the east side of the property, but that he was also obtaining the 27-foot disputed strip on the west side (south half), thereby giving him a parcel measuring 227 feet from east to west. However, the warranty deed clearly reflected that Pfeiffelmann was only obtaining 200 feet. While this could arguably give rise to a separate latent ambiguity, Pfeiffelmann makes no argument on appeal that he obtained a parcel measuring 227 feet in width; he claims that his property is 200 feet wide. Moreover, three days after Pfeiffelmann was deeded the southern portion of his property, he obtained, as discussed above, the deed to the northern half, which deed also gave a measurement of 200 feet from east to west, and which deed unambiguously utilized the 33-foot mark from the Marley Street centerline. On de novo review, *Lignons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011), and viewing the evidence in a light most favorable to Pfeiffelmann, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), we must conclude that the southern portion of Pfeiffelmann's property did not encompass the southern half of the 27-foot strip of land in dispute. Therefore, as to the entire disputed strip of property, the Halbergs hold legal title.

Pfeiffelmann does not present any argument on appeal regarding his claim for the disputed property made below under the doctrine of adverse possession; therefore, we need not address the matter. None of Pfeiffelmann's remaining appellate arguments are relevant to or would circumvent our holding. Albeit for reasons different than those relied on by the trial court, we find in favor of the Halbergs and affirm. See *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989); *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003) (trial court rulings may be affirmed on appeal where the right result issued, albeit for different or wrong reasons).<sup>2</sup>

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<sup>2</sup> We do note that the trial court relied, in part, on a repose theory advanced by this Court in *Adams v Hoover*, 196 Mich App 646; 493 NW2d 280 (1992). Pfeiffelmann fails to even address *Adams*, wherein this Court stated that "[p]ublic policy clearly favors consistency in ascertaining boundary lines, especially where, as here, a multitude of boundaries has been established in reliance upon the location of the . . . center post." *Id.* at 651. As reflected in our discussion of the MCRC's minutes from 1983, a multitude of boundaries had been established and construction projects completed upon the assumption and belief by landowners that Marley Street had a 66-foot right of way, with the location of parcels being identified, directly or indirectly, in relationship to a point located 33 feet from the centerline of Marley Street. If legal

Affirmed. Having fully prevailed on appeal, the Halbergs are awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

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title in the disputed strip was recognized in favor of Pfeiffelmann, it would likely set in motion more litigation because other boundary lines, such as the line between the Halbergs and their neighbor to the west, is also ultimately predicated on a 66-foot right of way. Reversal is unwarranted.