

STATE OF MICHIGAN
COURT OF APPEALS

BERRIEN COUNTY BOARD OF ROAD
COMMISSIONERS,

UNPUBLISHED
July 1, 2010

Plaintiff-Appellee,

v

No. 288950
Berrien Circuit Court
LC No. 2007-000419-AV

DURWOOD D'AGOSTINO and WOODLAND
DEVELOPMENT LLC,

Defendants-Appellees.

Before: MARKEY, C.J., and ZAHRA, and GLEICHER, JJ.

PER CURIAM.

This is a trespass action involving a property dispute over a parcel of littoral land on Singer Lake, which is located in Lake Township, Berrien County. This Court granted defendants' application for leave to appeal an order entered by the circuit court, which reversed a portion of a district court order summarily declaring that defendants held fee title to the littoral property, subject to the right-of-way of Singer Lake Road and the associated 66-foot strip of property the fee title of which plaintiff holds. We reverse the circuit court's order and reinstate the decision of the district court.

I. BASIC FACTS AND PROCEEDINGS

Defendant D'Agostino is a principal in defendant Woodland Development, LLC. Defendant Woodland Development is the record titleholder of a parcel of real property that borders on Singer Lake. By warranty deed dated December 26, 1911, Chirlottie M. Field granted Lake Township a fee interest in a 66-foot wide strip of land for highway purposes. The 1911 warranty deed given by Field to Lake Township conveys:

A strip of land for highway, situated in E. ½ of Sec. 13 town 6, South of Range 19 West, all in Township of Lake County of Berrien & State of Mich. Said Highway to be 66 ft. wide-33 ft. each side of the following described center line.

Said Center line commencing at a point on W. line of E. ½ of S.E. ¼ of Sec. 13, 24 rds. S. of the N.W. corner of E. ½ of S.E. ¼ of Sec 13, Thence

extending N. 63 degrees 15 minutes E. 400 ft. Thence N. 21 degrees, 30 minutes E. 149 ft. Easterly line of road. [sic] is along Westerly side of Singer Lake.

This strip of land created by this deed runs through the property owned by defendants, along the southern and then eastern boundaries of the parcel and along Singer Lake. The location of this 66-foot strip essentially carves from defendants' parcel a small irregular-shaped piece of land that extends from the strip to the lake at southeast corner of defendants' parcel. The ownership of the northern portion of this irregular-shaped piece of land is at issue.

By resolution dated March 20, 1936, plaintiff took jurisdiction and control of the roadway and accepted the roadway into the county road system, pursuant to the McNitt Act, 1931 PA 130. The roadway is commonly known as Singer Lake Road or the Singer Lake spur. Plaintiff maintains a public access boat ramp on Singer Lake, near where the roadway terminates on the northeastern portion of defendants' property and where the 66-foot width of the roadway extends into Singer Lake.

According to defendants, in late 2006 or early 2007, and in reliance on the 1911 deed, plaintiff asserted ownership over a portion of the small irregular-shaped piece of land that extends from the roadway to the lake at the southeast corner of defendants' parcel. Defendants disagreed with plaintiff's interpretation of the 1911 deed and placed eight concrete barriers on the lake side of the road to prevent trespass by plaintiff or the public.

By letter dated February 1, 2007, plaintiff informed defendants that the concrete barriers encroached on a public highway and directed defendants to remove those barriers. The letter provides in part:

It has been determined by the Board of County Road Commissioners of the County of Berrien that your eight concrete barriers located approximately 33 feet easterly of the centerline of the pavement of Singer Lake Road constitutes an encroachment . . . and, as such, all these objects **MUST BE REMOVED**. The Easterly right of way line of Singer Lake Road in the vicinity of your concrete barriers is the shoreline of Singer Lake. The right of way of Singer Lake Road in the vicinity of the encroachment is approximately 100 feet wide. [Defendants' Ex 3, p 1.]

Defendants refused to remove the barriers on the ground that the barriers were not located in the right-of-way of the road, but on defendants' property.

On March 21, 2007, plaintiff commenced the instant trespass action against defendants in the Berrien District Court. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (10) and defendants sought summary disposition under MCR 2.116(I).

The district court entertained arguments on the motions. The central question raised by the parties for resolution was: Did the 1911 deed reflect Field's intent to convey to Lake Township a right-of-way that extended to the edge of the lake? Plaintiff contended that the deed did reflect such an intent. Defendants responded that the deed reflected only an intent to convey a 66-foot-wide strip of land for roadway use.

The district court granted summary disposition in favor of defendants, opining:

But again, perhaps the court even can decide this under MCR 2.116(C)(8) or (9), since really both sides actually say that it is the language of the deed that controls, as that is giving its clear meaning, and the case law and legal commentaries, treatises, that tell us how to interpret the language used in a deed to determine what in fact the intent of the grantor was.

The court notes that the deed does not talk about public access to the lake. The deed talks about highway, even though it uses terms – the term fee simple.

It does not in any point say to the water's edge. It does not say. It does not say to the lake. It does not use any of this language that is used in the case – the cases cited by the plaintiffs, for the proposition that the court should interpret this as language saying to the lake, or to the water. It doesn't say that.

It says, a strip of land for highway – and I'm going to only read the pertinent part – a strip of land for highway, said highway to be 66 feet wide, dash, 33 feet each side of the following described centerline.

And then we have the meets and bounds descriptions of the centerline, which is reflected in the diagram that both counsel have represented to the court as being accurate based upon the survey, and then concluding easterly line of road is along westerly side of Singer Lake.

It doesn't say to Singer Lake. It does not say to the water. It does not say to the edge of the water or any language that would indicate that the whole purpose of this was to provide public access all along that length of highway.

And based upon the authority cited by both sides, the court finds that this is not littoral land and is instead land along side the lake.

And for that reason, I think that the defendant has the better argument. I think that based upon cases such as *Michigan Department of Natural Resources v Carmody Lottie Real Estate*, 472 Mich 359 at 370, talking about the court needs to take the plain language of the deed for purpose of giving affect to the parties intent as manifested in the language in the instrument.

And the language of the deed unambiguously conveys the strip of land for a 66 foot wide highway extending 33 feet on either line of a particularly described centerline, of the plain and ordinary meaning of the word along would not necessarily be apparent to the reader of the deed as meaning terminating at the lake or going up to the lake or down to the water.

And so just using the plain Webster's new universal unabridged dictionary second edition definition, along indicates that it is a preposition meaning, quote, "by the length of, by the side of, as the ship sailed along the coast."

As indicated in the *Thies[v Holland]*, 424 Mich. 282, 293, 380 N.W.2d 463 (1985) case involving a roadway, which terminates at the edge of a body of water, those cases are treated differently than those involving a roadway, which runs parallel to the shore.

As in *Meridian Township[v Palmer]*, 279 Mich 586; 273 NW2d 277 (1937)], the evidence presented by the parties does not demonstrate that the public had any interest beyond an easement of passage over the 66 foot strip constituting the rose – the road.

Because I find that the evidence indicates that there is no genuine issue of material fact that the disputed area is not included within the public roadway, and that defendants are therefore not obstructing a public roadway as alleged in plaintiff's complaint, the court is granting summary disposition in favor of the defendant.

Plaintiff appealed the district court's order to the Berrien Circuit Court. After arguments were presented,¹ the circuit court reversed the district court's determination that defendants held fee title to the littoral property and remanded the matter for entry of an order recognizing plaintiff's ownership of the littoral land. The circuit court did so on the following rationale:

Plaintiff appeals from an order granting summary disposition in Defendant's favor. In dispute is a warranty deed granted, in fee, in 1911. The dispute principally concerns whether said deed conveys littoral land, and, therefore concerns who holds title to a small sliver of land along Singer Lake. The deed provides a metes and bounds description for a "strip of land for highway" The description of the land conveyed concludes with the following: "Easterly line of road if along Westerly side of Singer Lake."

Presently there is a narrow strip of land between the measured easterly side line of the 33 feet from center line description and the westerly side of the waters edge of Singer Lake. Defendant asserts littoral land was never conveyed and claims title to said narrow strip. Plaintiff asserts that littoral land was conveyed and that the narrow strip is the result of the shoreline's subsequent recession.

The District Court, which granted summary disposition, in part, to both Plaintiff and Defendant, (defendant brings no appeal) made no specific finding in the order that entered as to whether the deed in issue was ambiguous or unambiguous. The presumption taken by this Court from a reading of the Order entered is that the Trial Court found the deed unambiguous (a reading of the

¹ After conducting a hearing, the initial circuit court judge disqualified himself. The subsequent circuit court judge however listened to the recording and entertained additional arguments at a later hearing.

transcript from the hearing of October 23, 2007, at page 43-44, supports such). The Trial Court Order states, in pertinent part:

“That the phrase contained in the above-referenced deed “Easterly line of road, is along Westerly side of Singer Lake” is for reference purposes and does not grant any rights or ownership interest to Plaintiff or Plaintiff’s predecessors in title to any property located between the Easterly side of the 66 foot strip of land described in Paragraph 1 above and the Westerly shore of Singer Lake.”

Said finding/order presupposes that the land conveyed in 1911, in fee, was not littoral land. Such finding is not supported by the record before the Trial Court, which heard the matter, on cross motions for summary disposition. If anything said “reference” is not in regard to the road itself, but is in reference to the Easterly line of road” (Emphasis added by circuit court).

“In Michigan the law is clear that where property abuts a shoreline, that shoreline * * * is the boundary of the property notwithstanding its subsequently advancement or recession.” *Cutliff v Densmore*, 354 Mich 586, p 590[; 93 NW2d 307] (1958).

* * *

The lower court herein did not find the subject deed to be ambiguous. Nor was there any finding that “a mistake exists.” This Court, in regard to both, concurs. There is no doubt as to the meaning of the instrument. In *Brucker v McKinley Transport (On Rem[and])*, 225 Mich App 442, p 448[; 571 NW2 548] (1997), it was stated that, “If the contractual language is clear and unambiguous, its meaning is a question of law.” In *Gawrylak v Cowie*, 350 Mich 679, p 683[; 86 NW2d 809] (1957), the court, quoting from 26 CJS, Deeds, as follows: “In other words, it is the duty of the court to construe a deed as it is written, and if a deed is clear and unambiguous, it is to be given effect according to its language, for the intention and understanding of the parties must be deemed to be that which the writing declares. The meaning of the words used, and not what the parties may have intended by such language, is controlling.” In *Klais v Danowski*, 373 Mich 263, p 267[; 129 NW2d 414] (1964) it is stated that, “Where that lake border then was, except as it may be ascertained from the description” (Emphasis added by circuit court).

The lower court found the disputed language in the deed to be “for reference purpose” Impliedly the lower court found such was a reference to the general location of the road in relation to the general location of the lake. The lower court erred in this regard. As stated in *Gawrylak[v Cowie*, 350 Mich 679; 86 NW2d 809 (1957)] . . . “the . . . understanding of the parties must be deemed to be that which the writing declares.” The subject language is in fact a specific reference regarding the Easterly line of the road being along the Westerly side of Singer Lake. Such evidencing, unambiguously, that the parties understanding was that the subjected deeded land was in fact littoral land.

Most telling is the parties' reference in the deed not to the road, generally, but specifically to the Easterly line of the road. Such does not describe a second measurement so as to find the Easterly side of the road – but, instead, to convey the parties understanding of the fact that such is littoral land. In *Negaunee Iron Co v Iron Cliffs Co*, 134 Mich 264, p 279[; 96 NW2d 468)] (1903) the Court stated, “Deeds are contracts, and, when Courts can ascertain from the deed itself the intent of the grantor, the deed will be construed so as to give that intent effect . . .” In *Bauman v Barendgrept*, 251 Mich 66, p 69[; 699 NW2d 272] (1930) it was stated that, “It is a settled rule in this State that, where there is no reservation of them, riparian rights attach to lots bounded by natural watercourses.” See also *DNR v Carmody-Lahti*, 472 Mich 359, p 370[; 699 NW2d 272] (2005).

However, consideration is also necessary as to the words “along” and “side”. The Trial Court found that such disputed land was “land along side of the lake”. (Lower Court transcript at p. 43) The Lower Court also stated that, “the word along would not necessarily be apparent to the reader of the deed as terminating at the lake or going up to the lake, or down to the water.” (Lower Court transcript at p. 49) The Lower Court erred as to both findings.

The Lower Court essentially re-drafted the deed so that the disputed sentence “reads”, “Easterly line of road is along land along Westerly side of Singer Lake”.

In *White v Knickerbocker Ice Co.*, 254 NY 152, p 160; 172 NE 452, p. 455 (1930), it is stated, “This meaning of the word “side”, as used in descriptions of this nature finds support in *Land & Land Assn v Beardsley*, 182 AD 550; 170 NYS 523 (1918), where the words used were “along the road and North side of the lake to a Birch.” The Court said, “This objection calls for a consideration of the sense in which the word “side” is used. Assuming that the portion of the lake in question is its Northerly side, that side would extend to the center of the lake.” In *White*, [254 NY 152] at page 157, it is stated that, “The conclusion to be drawn from these cases appears to be that if the description runs the title along dry land such as the bank or shore, there is an express restriction which excludes or reserves title in the river or pond; whereas, if the boundary touches the water or is along the water or by the water, and not dry land, the presumption remains that title is carried to the center of the river or pond.”

“The deed’s subject reference that the “Easterly line of road is along Westerly side of Singer Lake” leads, both factually and legally, to the inescapable conclusion, as a matter of law, that the grantor’s intent was that the subject line is not along dry land, but touches the water—making it littoral.

II. STANDARD OF REVIEW

This Court reviews de novo a trial judge’s decision to grant or deny summary disposition. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

III. ANALYSIS

We conclude that the circuit court erred in interpreting the language of the 1911 deed and reversal is required.

In *Dept of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370-371; 699 NW2d 272 (2005), our Supreme Court stated that:

An inquiry into the scope of the interest conferred by a deed such as that at issue here necessarily focuses on the deed's plain language, and is guided by the following principles:

(1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of the parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable.

These four principles stand for a relatively simple proposition: our objective in interpreting a deed is to give effect to the parties intent as manifested in the language of the instrument.

The instrument's granting clauses are a natural starting point for discerning the parties' intent. . . . [*Id.* (citations omitted).]

The first clause of the conveyance found in the 1911 deed reveals that the grantor conveyed to the township a "strip of land for highway." The deed describes the width of the strip of land as 66 feet and demarcates the boundaries of that 66-foot width as consisting of 33 feet on either side of an exact center line, which is identified as a "line commencing at a point on W. line of E. ½ of S.E. ¼ of Sec. 13, 24 rds. S. of the N.W. corner of E. ½ of S.E. ¼ of Sec 13, Thence extending N. 63 degrees 15 minutes E. 400 ft. Thence N. 21 degrees, 30 minutes E. 149 ft." This language is clear and unambiguous and expresses the grantor's intent to convey an interest a 66-foot wide strip of land. There is nothing in this language that expressly or impliedly indicates that the grantor intended to convey any interest beyond this strip or to the edge of Singer Lake.

Plaintiff relies heavily on language found in the second clause of the conveyance providing that the "Easterly line of road. [sic] is along Westerly side of Singer Lake." Specifically, plaintiff contends that:

[Plaintiff] argues that a person surveying the centerline of the Spur would not need a 'point of reference telling him or her that the Spur is 'near' of 'by' Singer Lake; the Lake would have been visible from any point along the Spur's centerline. Therefore, there had to be another purpose for the language.

[Plaintiff] contends that the ‘along Singer Lake’ language was intended to extend the Spur’s eastern line to the shore of Singer Lake—hence the use of language ‘Easterly line of road. [sic] is along Westerly side of Singer Lake.’

There is authority for the proposition that “[a] grant of land ‘along the shore of’ or by equivalent words or other description, bounded by a natural watercourse carries title to the middle line of the lake or stream,” essentially littoral rights. 25 Mich Civ Jur, Water § 54, citing *Bauman v Barendregt*, 251 Mich 67, 231 NW 70 (1930) (disapproved of on other grounds by, *Thompson v Enz*, 379 Mich 667, 154 NW2d 473 (1967)); see also *Hartz v Detroit, Plymouth & Northville Rs*, 153 Mich 337, 339; 116 NW 1084 (1908) (“Where the boundary of the land conveyed was described as ‘east by the pond’ (an artificial one), it was held that the grantee took to the middle of the original stream the same as if no pond existed.”) and *Booker v Wever*, 42 Mich App 368, 375-376; 202 NW2d 439 (1972) (“courses and distances in a description in a deed yield to natural and ascertainable objects such as the shoreline of the lake.”)

However, in all of the above cases, the phrase to “along the” was the only description of that particular boundary in the deeds. In this case, the more definitive description in the deed would be contradicted by interpreting the “along Westerly side of Singer Lake” as a specific boundary.

Thus, this Court must reconcile the phrase, “along Westerly side of Singer Lake” with the deed language conveying the 66-foot-wide strip and the location of the strip of land as revealed in the property survey. A court is to harmonize the provisions of a deed, not construe them in such a manner as to render a significant portion of the deed a nullity. *Carmody-Lahti Real Estate, Inc*, 472 Mich at 370. In our view, this reconciliation may only be accomplished by reinforcing the grantor’s intent to convey nothing more than the 66-foot width. The reference to the easterly line of the road can reasonably be viewed as nothing more than a reference to a general location of the eastern edge of the road repeated in lay terminology. The general reference tends to reinforce the notion that the conveyed strip of land running northeast across the southern portion of the subservient parcel does not dead-end at the water’s edge of Singer Lake, but instead, bends as would an elbow of an arm and proceeds parallel to the lake at a sharper north-northeast angle. Had the grantor intended the easterly line of the road to extend to the water’s edge, the grantor would have either omitted the reference to the road’s eastern width and/or expressly extended the southern line of the strip “to the lake” or “to the water’s edge” and then the eastern line of the strip along the lake to the north-northeast. She did not do so. The southern line of the road terminates well short of the water’s edge. Consequently, the eastern line of the strip commences short of the water’s edge. To construe the language regarding the easterly line of the road as conveying an interest to the water’s edge, as the circuit court did, would be to construe the language in a manner not intended on the face of the deed and to render completely null the language of the deed granting a 66-foot wide strip as measured 33 feet on

either side of a specified and exact center line. The circuit court decision granting plaintiff summary disposition should be reversed.

Reversed and remanded for reinstatement of the district court's decision. Defendants may tax costs. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Brian K. Zahra

/s/ Elizabeth L. Gleicher