

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT POLO CLUB,

Plaintiff/Counter-Defendant,

and

CHUKKER COVE HOME OWNERS
ASSOCIATION, aka CHUKKER COVE
PROPERTY OWNERS ASSOCIATION,

Intervening Plaintiff-
Appellant/Cross-Appellee

v

FIRST NATIONAL BANK IN HOWELL,

Defendant/Cross-
Defendant/Intervening Defendant-
Appellee/Cross-Appellant.

and

TOWNSHIP OF HARTLAND,

Defendant-Intervening Defendant,

and

BERGIN ROAD ASSOCIATES LLC,

Defendant/Intervening
Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED

November 25, 2014

No. 317676

Livingston Circuit Court

LC No. 10-025384-CZ

Before: K. F. KELLY, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Chukker Cove Home Owners Association (Chukker Cove) appeals following partial summary disposition and entry of a partial consent judgment. First National Bank in Howell (FNBH) cross-appeals. We affirm.

Bergin Road Associates, LLC (Bergin), a Michigan limited liability company, entered into a mortgage with FNBH. The mortgaged property was a 166-acre parcel (parcel 9), located in the township of Hartland. Within parcel 9, Bergin leased a 60-acre portion to the Detroit Polo Club (DPC). Bergin defaulted on its mortgage in 2009, and FNBH commenced a foreclosure by advertisement. Parcel 9 was sold at sheriff's sale on August 26, 2009, to FNBH, the highest bidder. Chukker Cove is comprised of homeowners who live on the adjacent properties to parcel 9. After a series of litigation between Bergin, DPC, and FNBH, regarding the foreclosure proceeding for parcel 9, Chukker Cove filed a motion to intervene and an intervenor's complaint for declaratory judgment against FNBH for terminating a recreational use easement on parcel 9 and denying Chukker Cove access to the recreational land.

Chukker Cove argues that the recreational use easement expressly granted in the "Chukker Cove Development Declaration Agreement" (declaration agreement) covered all of parcel 9 and that the trial court erred when it did not follow the easement's plain language or common sense in ruling the easement granted was confined to three areas. We disagree.

"The extent of a party's rights under an easement is a question of fact, and a trial court's determination of those facts is reviewed for clear error. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). Additionally, "[t]he scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal." *Wiggins v City of Burton*, 291 Mich App 532, 550; 805 NW2d 517 (2011). "[G]reat deference' [is] generally afforded to trial courts, which are in a better position to examine the facts." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007). "The task of determining the parties' intent and interpreting the limiting language is strictly confined to the 'four corners of the instrument' granting the easement." *Blackhawk*, 473 Mich at 42. "The language of an express easement is interpreted according to rules similar to those used for the interpretation of contracts." *Wiggins*, 291 Mich App at 551.

In this case, the four corners of the declaration agreement state:

1. Grant of Recreational Use Easement. Subject to the limitations stated below there is hereby granted to each Lot, as the Dominant Tenement, a non-exclusive use in, over and across the Recreational Land as described in Exhibit B attached hereto. This Recreational Land is currently leased to the Detroit Polo Club for their recreational use. Each Owner, in partial consideration for receipt of an interest in a Lot and for the uses hereby granted, is deemed to have agreed to be bound and is hereby bound by the limitations and restrictions stated herein.

2. Limits on Use This grant of use and Recreational Use Easement is strictly limited as follows:

* * *

F) Rights and Access to the Recreational Land shall include the trail designated by Developer, woods, and Grubb Lake, with the exception of the surface area of the actual Polo playing fields and any adjoining buildings, structures, paddocks, or other improvement constructed by the Detroit Polo Club.

These Polo fields and accompanying structures will be set by and are for the exclusive use of the Detroit Polo Club.

Exhibit B to the declaration agreement provides legal descriptions for “[a] 20.00 Foot Wide Private Easement for Ingress and Egress for non-motorized use[,]” “Easement for Open Space” and “35.00 foot wide private easement for bridle path and surface water drainage[.]”

Chukker Cove argues that, because parcel 9 is depicted in its entirety, all of parcel 9 is subject to the recreational easement. This argument is unconvincing because the easement specifically describes and depicts three specific areas as the easement. Following Chukker Cove’s logic, the easement would not only cover all of parcel 9, but it also would also cover 15 individual lots owned by members of Chukker Cove that are included in the sketch depicting the 35-foot bridle path easement. Therefore, the easement is unambiguous in granting an easement over a 20-foot wide ingress and egress path, a 35-foot wide bridle path, and the depicted open space area; and this Court will not consider the extrinsic evidence provided by Chukker Cove to interpret the easement differently. See *Little v Kin*, 468 Mich 699, 700 n 2; 664 NW2d 749 (2003); *Blackhawk*, 473 Mich at 48-49. This Court is not convinced the trial court made a mistake based on its interpretation of the scope of the easement. *Hill*, 276 Mich App at 308, citing *A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 588; 654 NW2d 572 (2002).

Next, Chukker Cove asserts that the trial court should have construed and reformed the easement. Chukker Cove failed to address this issue with the trial court and has, therefore, waived this issue on appeal. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Even if Chukker Cove did preserve this issue, Chukker Cove “has abandoned this issue by failing to provide any analysis in the text of [its] brief on appeal.” *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009), citing MCR 7.212(C)(7); *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995). In its brief, Chukker Cove cites to one unreported case to support this issue. No other authority is cited to support its claim in equity requiring reformation, and it is well settled that “[a]n unpublished opinion is not precedentially binding under the rule of stare decisis.” MCR 7.215(C)(1).

On cross-appeal FNBH claims the trial court erred when it determined that FNBH was not a “successor” to the developer pursuant to the declaration agreement. We disagree.

“The primary goal in interpreting contracts is to determine and enforce the parties’ intent.” *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). “In interpreting a contract, it is a court’s obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning.” *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). “If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties’ intent as a matter of law.” *Id.* “[C]ontract terms should not be considered in isolation and contracts are to be interpreted to avoid absurd or unreasonable conditions and results.” *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 297; 778 NW2d 275 (2009).

The term “developer” is defined in the declaration agreement as follows: “‘Developer’ shall mean and refer to Bergin Road Associates, L.L.C. and its successors and assigns.” FNBH’s

assertion that, when it purchased parcel 9 at auction, it gained “developer” status is unconvincing. Following FNBH’s interpretation, every purchaser of land from Bergin would then be a “developer.” This construction of the terms would create “absurd or unreasonable conditions and results[,]” and this Court avoids interpreting contracts in such a manner. *Hastings Mut Ins Co*, 286 Mich App at 297. The more convincing argument is that the declaration means successors and assigns to the business entity, not successors and assigns in fee simple of the real property. This interpretation is supported by other portions of the declaration agreement and it avoids absurd results of every purchaser being given status of “developer.” Therefore, under the declaration agreement, FNBH does not have the status of “developer.”

FNBH next argues that the trial court erred when it determined that FNBH did not have the authority to modify the recreational use easement. We disagree.

The declaration agreement states:

3. Developers Right to Use. . . . This grant of use by the Developer of the Recreational Lands as described in Exhibit “B” is subject to change and modification by the Developer at any time so long as developer owns any property in Chukker Cove. When Developer no longer owns any property in Chukker Cove the management of this easement shall be by the Association.

Because FNBH is not a “developer” under the declaration agreement, the language, “so long as developer owns any property in Chukker Cove” means that, as soon as FNBH obtained the fee simple of parcel 9, Bergin no longer owned any property in Chukker Cove and terminated any ability by the developer to change or modify the easement. Additionally, under the declaration agreement, the management of the easement shifted to Chukker Cove upon FNBH’s purchase of parcel 9. Therefore, FNBH does not have any right to modify or terminate the three easements.

Affirmed. No costs, no party having prevailed in full.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Patrick M. Meter