

STATE OF MICHIGAN
COURT OF APPEALS

GERALD MASON and KAREN MASON,

Plaintiffs-Appellees,

v

CITY OF MENOMINEE,

Defendant-Appellant.

UNPUBLISHED

September 12, 2006

No. 262743

Menominee Circuit Court

LC No. 02-010066-CH

Before: Sawyer, P.J., and Kelly and Davis, JJ.

PER CURIAM.

In this quiet title action, defendant appeals from the judgment of the circuit court entered following a bench trial granting plaintiffs unencumbered title to a parcel over which it enjoys a property interest. We reverse and remand.

Plaintiffs are the owners of residential real property in Menominee, Michigan. Defendant is the owner of real property surrounding plaintiffs' property on three sides, commonly known as the Water Tower Park. At issue is a 60 foot strip of property, running north and south through the Water Tower Park, which adjoins the eastern border of plaintiffs' property. This property was originally deeded to defendant for a proposed Twentieth Street. But Twentieth St. has never been improved and, according to the trial court's findings, had never been used as a roadway. Plaintiffs have used a portion of the parcel as their driveway extends onto it. Plaintiffs brought this action to quiet title over those portions of the "right-of-way" that their driveway extends onto.

The trial court found that defendant had abandoned the western most 48 feet of the right-of-way and granted plaintiffs title to that portion. The trial court declined to address other theories raised by plaintiffs in light of its ruling on plaintiffs' abandonment theory.

Defendant first argues that the trial court erred in treating its interest in the disputed parcel as an easement because the conveyance was for a fee simple. We agree. An action seeking to quiet title is equitable in nature. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). In equitable actions, we review a trial court's findings of fact for clear error and its conclusions of law de novo. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003); MCR 2.613(C).

Whether a deed conveys a fee simple or an easement is determined by ascertaining the “parties’ intent as manifested in the language of the instrument.” *Dep’t of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005). Our Supreme Court has recognized the following principles regarding deed interpretation and construction:

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 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.” [*Id.*, quoting *Purlo Corp v 3925 Woodward Avenue, Inc*, 341 Mich 483, 487-488; 67 NW2d 684 (1954) (citations omitted).]

The plain language of the deed controls where it evinces the parties’ intent. *Carmody-Lahti, supra*.

“[A] deed *granting* a right-of-way typically conveys an easement, whereas a deed *granting land itself* is more appropriately characterized as conveying a fee or some other estate” *Id.* at 371 (emphasis in original). In *Quinn v Pere Marquette R Co*, 256 Mich 143, 150; 239 NW 376 (1931), our Supreme Court observed that “[w]here the grant is not of the land but is merely of the use of the right of way, or, in some cases, of the land specifically for a right of way, it is held to convey an easement only.” But *Quinn* also recognized that a deed may also contain a mere statement of use that does not limit the grant of a fee. *Id.* at 151.

In *Mahar v Grand Rapids Terminal R Co*, 174 Mich 138, 139-140; 140 NW2d 535 (1913), our Supreme Court concluded that the following language conveyed an easement, not a fee:

That the said parties of the first part, for and in consideration of the future construction, continued maintenance and operation of a first-class, standard-gauge steam railroad . . . and for other good and sufficient consideration, . . . have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell, convey and *quitclaim* unto the party of the second part, his successors or assigns, *for a right of way for a railroad forever* [Emphasis added.]

In the case at bar, the conveyance granting defendant the disputed parcel was in the context of a quit claim executed by a predecessor in title to plaintiffs, Alfred and Catharine Rasor, in 1956 and embodied in the following language:

A strip of land Sixty (60) Feet in width extending North and South through the Center of the Southeast Quarter of the Southwest Quarter (SE¼-

SW¹/₄) of Section Twenty-seven (27), Township Thirty-two (32) North, Range Twenty-seven (27) West, *for a right-of-way for Twentieth (20) Street*. [Emphasis added.]

While there are some similarities between the language of the deed in this case and that of the deed in *Mahar*, there are also some differences. For example, in *Mahar* the deed begins with reciting the fact that the deed is for the purpose of a railroad right-of-way. In the case at bar, the mention of a road right-of-way comes only as a clause at the end of the conveyance.

Furthermore, we find very instructive how the parties treated the land thereafter. In 1958, the Rasors conveyed a 200 foot by 300 foot portion of their property to the Malmstens. This parcel is the one eventually purchased by plaintiffs in 1986. This parcel does not contain the disputed 60 foot strip deeded to defendant in 1956 for purposes of the construction of Twentieth St. Also of interest is the 1971 deed by the Rasors to defendant of the parcel that became Water Tower Park. That deed conveyed an entire quarter-quarter section with various exceptions. Among those exceptions was the parcel now owned by plaintiffs (since the Rasors had sold that parcel a number of years before), as well as the 60-foot strip deeded in 1956 to defendant for the improvement of Twentieth St.

We find this second exclusion from the 1971 deed is interesting for two reasons. First, if the Rasors had intended their 1956 deed of “Twentieth St.” to only be a right-of-way to defendant rather than a title in fee, why was it not included in the 1971 deed? Instead of being conveyed, it was included in the list of the portions of the quarter-quarter section that the Rasors did not own. For that matter, why did they not include all, or at least half, of the strip in the 1958 deed to the Malmstens? That is, if the Rasors believed that they had only deeded an easement for a right-of-way in 1956, it would stand to reason that they would have included the 60-foot strip in either the 1958 deed to the Malmstens, the 1971 deed to defendant, or half in each (subject to the 1956 easement). On the other hand, if the Rasors viewed the 1956 transaction as deeding title in fee to defendant, they would not have included the 60-foot strip in either the 1958 or the 1971 deeds because they no longer owned it. And they would have included it in the list of exceptions in the 1971 deed along with the other portions of the quarter-quarter section that they did not own and therefore did not convey. Their actions reflect this second interpretation. An interpretation we find consistent with the language used in the deed.

The second interesting point of the 1971 deed is that, if neither the 1958 deed to the Malmstens nor the 1971 deed to defendant, conveyed title in fee to the 60-foot strip, then title must remain in the Rasors or their heirs. If so, then even if we treat the 1956 deed as merely a conveyance of an easement for purposes of a right-of-way, then any abandonment of that right-of-way would necessarily revert to the Rasors or their successors in interest. And, more to the point, it would not revert to plaintiffs as they do not have title in fee to the strip.

But, ultimately we need not decide who has title to the strip under the second point above as we conclude that the 1956 deed clearly conveyed title in fee to defendant, not just an easement for a right-of-way. We agree with defendant that the reference in the 1956 deed to a right-of-way is merely a statement of use, not a restriction or reflective of an intent only to deed an easement. See *Briggs v Grand Rapids*, 261 Mich 11; 245 NW 555 (1932); see also *Quinn, supra* at 151. Therefore, in light of the language employed in the 1956 deed, as well as how the grantors subsequently treated the disputed property in subsequent transactions, we are convinced

that the parties intended the 1956 deed to be a transfer of title in fee to defendant. Accordingly, the trial court erred in applying an abandonment theory, as there was no easement to abandon.

In light of our resolution of the above issue, we need not address the additional issues raised by defendant on appeal. Because plaintiffs had raised additional theories in the trial court, which the trial court specifically declined to address in light of its resolution of the abandonment issue, we remand this matter to the trial court to resolve any remaining issues. We express no opinion on the merits of those theories, including the doctrine of acquiescence upon which the dissent relies. These theories should first be addressed in the trial court.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly