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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

GERALD C. FREEMAN and JANICE B. FREEMAN, husband and wife,
Plaintiffs/Appellants,

v.

DONALD R. SORCHYCH and SHARI JO SORCHYCH, husband and
wife, *Defendants/Appellees.*

No. 1 CA-CV 12-0872

FILED 12-17-2013

Appeal from the Superior Court in Maricopa County

No. CV 2011-092693

The Honorable Mark F. Aceto, Judge

AFFIRMED

COUNSEL

Mahaffy Law Firm, P.C., Chandler

By Steven C. Mahaffy

Counsel for Plaintiffs/Appellants

Carol Lynn de Szendeffy, Attorney at Law, Carefree

By Carol Lynn de Szendeffy

Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Samuel A. Thumma joined.

NORRIS, Judge:

¶1 This appeal arises out of the superior court's entry of summary judgment against Plaintiffs/Appellants Gerald C. and Janice B. Freeman finding they do not have an exclusive easement over certain property owned by Defendants/Appellees Donald R. and Shari Jo Sorchych. On appeal, the Freemans challenge that finding, *see infra* ¶ 7, as well as orders entered by the superior court awarding sanctions, *see infra* ¶ 10, and attorneys' fees, *see infra* ¶ 13. As we explain, we reject the Freemans' challenges to the superior court's finding and orders and affirm its judgment.

FACTS AND PROCEDURAL HISTORY

¶2 Through a "Special Warranty Deed," recorded in the records of Maricopa County, Arizona on July 20, 1983, Baker Enterprises, Ltd., as grantor, conveyed to Alan Simberloff a parcel of property in Maricopa County, Arizona. The Special Warranty Deed reserved to Baker an "exclusive easement" on a 33 foot-wide strip of land ("33 foot strip") within the property. In full, the Special Warranty Deed reservation read as follows:

Reserving unto the Grantor herein an exclusive easement for ingress, egress, utilities and water lines over the South 33 feet of the within described property.

¶3 Subsequently, Simberloff conveyed a portion of the property to a third party. That conveyance was made subject to existing recorded easements, rights of way, and encumbrances. After several intermediate conveyances, the Freemans acquired this portion ("Freeman parcel") in November 1991.

¶4 Simberloff also conveyed a different portion of the property which was contiguous to the Freeman parcel to a different third party, the

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Fosters, by a joint tenancy deed recorded July 25, 1983. The Sorchychs acquired this portion (“Sorchych parcel”) from the Fosters in November 2000. The transfers were made subject to existing encumbrances, covenants, and easements of record. The exclusive easement for the 33 foot strip described in the Special Warranty Deed lies along the southern boundary of the Sorchych parcel.

¶5 In February 2011, the Freemans sued the Sorchychs and requested a declaratory judgment that pursuant to the exclusive easement reserved by the Special Warranty Deed, the 33 foot strip was for their sole and exclusive use and the Sorchychs had no right to use the exclusive easement for any purpose or to grant permission to others to use it.

¶6 The parties filed cross-motions for summary judgment. As the superior court correctly recognized, the core issue presented in the cross-motions was whether, pursuant to the exclusive easement, the Freemans had the exclusive right to use the 33 foot strip. The superior court granted the Sorchychs’ motion, denied the Freemans’ motion, and found the Sorchychs had established the Freemans “do not have the exclusive right to use the property in question.”¹

DISCUSSION

I. Exclusivity and the 33 Foot Strip

¶7 The Freemans argue they were entitled to summary judgment because the exclusive easement reserved by the Special Warranty Deed granted them the exclusive use of the 33 foot strip to the exclusion of the Sorchychs and, for that matter, anyone else. Acknowledging that when Barker sold to Simberloff, Barker reserved the exclusive easement as part of the property transferred to Simberloff, the

¹The superior court also noted the Sorchychs had conceded the Freemans, among others, “may use” the 33 foot strip. Subsequently, the court explained it was “simply repeat[ing] what [the Sorchychs] had stated in a pleading. In other words, the Court was noting that, at a certain point in time, [the Sorchychs] had indicated that they did not intend to take steps to prevent [the Freemans] from using the subject property.” In their briefing on appeal, the Sorchychs also acknowledge the Freemans have “prescriptive rights across a sufficient portion of the land burdened by the exclusive easement for access to their parcel.”

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Freemans argue that when Simberloff sold to the Fosters, he likewise reserved the exclusive easement. Accordingly, the Freemans argue, when the Fosters sold the property to the Sorchychs, the Sorchychs purchased the property subject to the exclusive easement reserved by Simberloff. We disagree.²

¶8 “An easement is a right to use the land of another for a specific purpose.” *Scalia v. Green*, 229 Ariz. 100, 102, ¶ 7, 271 P.3d 479, 481 (App. 2011) (citation omitted). Where the easement is by an express grant, the document defines the rights of the parties. *Id.* (citations omitted). We give effect to the intent of the parties, and when the document is unambiguous, we determine the intent from the “four corners of the document.” *Id.* at 104, ¶ 19, 271 P.3d at 483 (citations omitted). Once recorded, the easement created by the document “runs with the land and burdens the servient estate’s successors.” *Id.* at 102, ¶ 7, 271 P.3d at 481 (citation omitted).

¶9 Here, the Special Warranty Deed is unambiguous. It expressly reserved the exclusive easement “unto the Grantor” and clearly defined the grantor as Barker. The grantor was not Simberloff and the property purchased by Simberloff became subject to the exclusive easement reserved by Barker. The Freemans are successors in interest to Simberloff, not Barker. Accordingly, the superior court correctly found the Freemans did not have the exclusive right to use the 33 foot strip pursuant to the exclusive easement reserved by the Special Warranty Deed.

II. Sanctions

¶10 The Freemans also argue the superior court abused its discretion by awarding them only \$2,400 out of the \$10,499 in Arizona Rule of Civil Procedure 11 sanctions they had requested because the Sorchychs had failed to disclose in the summary judgment proceedings

²The Freemans also argue the superior court failed to address the issue they raised in their request for declaratory relief -- whether the exclusive easement granted them the exclusive use of the 33 foot strip. As discussed, however, the court found the Sorchychs had “established” the Freemans did not have “the exclusive right to use the property in question.” The court thus addressed the issue raised by the Freemans.

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they had executed a gift deed of the 33 foot strip to the Town of Cave Creek -- which the town subsequently quitclaimed back to the Sorchychs. We disagree.

¶11 Rule 11 authorizes the court to impose “an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses . . . including a reasonable attorney’s fee” if a party violates the requirements of that rule. *Ariz. R. Civ. P. 11(a)*. The sanction should bear some relationship to the expenses directly caused by the sanctioned conduct. *Taliaferro v. Taliaferro*, 188 Ariz. 333, 341, 935 P.2d 911, 919 (App. 1996). We review all aspects of a superior court’s decision regarding Rule 11 sanctions for an abuse of discretion. *James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Prot.*, 177 Ariz. 316, 318, 868 P.2d 329, 331 (App. 1993).

¶12 In awarding the sanctions, the court reviewed the Freemans’ declaration of attorneys’ fees and costs as well as “all other related pleadings.” Although the court did not explain why it believed \$2,400 was an appropriate sanction, in reviewing the Freemans’ statement of fees and costs, it could have concluded their counsel spent more time than necessary on certain items, as the Sorchychs argued. On the record here, we cannot conclude the court abused its discretion in awarding \$2,400 in sanctions under Rule 11.

III. Attorneys’ Fees

¶13 In ruling for the Sorchychs, the superior court also granted their request for an award of attorneys’ fees under Arizona Revised Statutes (“A.R.S.”) section 12-341.01 (Supp. 2013). On appeal, the Freemans argue that because they were seeking a declaratory judgment, A.R.S. § 12-341.01 was inapplicable and the Sorchychs were only entitled to an award of costs and not attorneys’ fees under A.R.S. § 12-1840 (2003). *See State Farm Mut. Auto. Ins. Co. v. O’Brien*, 24 Ariz. App. 18, 22, 535 P.2d 46, 50 (1975). Although we agree A.R.S. § 12-1840 does not authorize a court to award attorneys’ fees in a declaratory judgment action, A.R.S. § 12-341.01 applies to declaratory judgment actions that satisfy the requirements of that statute. *Nationwide Mut. Ins. Co. v. Granillo*, 117 Ariz. 389, 394, 573 P.2d 80, 85 (App. 1977); *see Maleki v. Desert Palm Prof’l Props., L.L.C.*, 222 Ariz. 327, 334, ¶¶ 33-34, 214 P.3d 415, 422 (App. 2009) (fees available under A.R.S. § 12-341.01 in action by commercial tenant against landlord for declaration under lease); *John Deere Ins. Co. v. W. Am. Ins. Grp.*, 175 Ariz. 215, 218-19, 854 P.2d 1201, 1204-05 (App. 1993) (fees

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available under A.R.S. § 12-341.01 to insurer in a declaratory judgment action to determine which insurer provided primary coverage); *Mountain States Tel. & Tel. Co. v. Kennedy*, 147 Ariz. 514, 517, 711 P.2d 653, 656 (App. 1985) (fees awarded under A.R.S. § 12-341.01 in declaratory judgment action involving determination of rights under a deed).

¶14 The two cases cited by the Freemans in support of their argument that the court should not have awarded the Sorchychs fees under A.R.S. § 12-341.01 are distinguishable. In *O'Brien*, the court did not address the applicability of A.R.S. § 12-341.01 in a declaratory judgment action because that statute had not yet been enacted. See generally 1976 Ariz. Sess. Laws, ch. 170, § 2 (2d Reg. Sess.). And, in *Hanley v. Pearson*, the court held fees under the statute were not available, not because the case was a declaratory judgment action, but because the essential basis of the dispute concerned the interpretation of a statute and thus the matter did not arise out of a contract under A.R.S. § 12-341.01. 204 Ariz. 147, 151, ¶ 18, 61 P.3d 29, 33 (App. 2003).

¶15 The Freemans also argue the Sorchychs were not entitled to a fee award under A.R.S. § 12-341.01 because neither they nor the Sorchychs were parties to the Special Warranty Deed which, they argue, served only as the “factual predicate” to their request for the declaratory relief. We disagree.

¶16 As discussed, the issue raised by the Freemans and decided by the superior court was whether the Freemans had an exclusive easement over the 33 foot strip under the Special Warranty Deed. The Special Warranty Deed was not merely the factual predicate of the dispute, but was at the center of the dispute. Although the Freemans and the Sorchychs were not parties to the Special Warranty Deed, they acquired property that was subject to the exclusive easement reserved by the Special Warranty Deed, and the court was required to construe the Special Warranty Deed to resolve the Freemans’ claim for declaratory relief. See *Squaw Peak Cmty. Covenant Church of Phx. v. Anozira Dev., Inc.*, 149 Ariz. 409, 414-15, 719 P.2d 295, 300-01 (App. 1986) (awarding fees under A.R.S. § 12-341.01 in action for injunction to prevent interference with easement).

FEES AND COSTS ON APPEAL AND CONCLUSION

¶17 In the exercise of our discretion and pursuant to their request, we award the Sorchychs their reasonable attorneys’ fees on

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appeal pursuant to A.R.S. § 12-341.01 as well as costs on appeal pursuant to A.R.S. § 12-342 (2003), contingent upon their compliance with Arizona Rule of Civil Appellate Procedure 21.

¶18 In conclusion, the exclusive easement reserved by the Special Warranty Deed did not grant the Freemans the exclusive right to use the 33 foot strip. Further, the superior court did not abuse its discretion in awarding sanctions and did not misapply A.R.S. § 12-341.01. We therefore affirm the superior court's judgment in favor of the Sorchychs.



Ruth A. Willingham · Clerk of the Court
FILED : mjt