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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

RALPH WALDMAN et al., Plaintiffs and Respondents, v. CLAY O. ROMERO et al., Defendants and Appellants.	A129126 (Mendocino County Super. Ct. No. SCWL-CVG-09-53989)

Ralph and Ramona Waldman (the Waldmans) obtained a judgment against adjacent landowners Clay and Melanie Romero (the Romeros) quieting title to a roadway access easement to the Waldmans' residential property. The Romeros challenge that judgment on numerous grounds. We find none of the Romeros' contentions meritorious, and affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1966, the Bank of California (the Bank) took fee simple title to certain real estate located in Mendocino County. The property in question was commonly referred to as the Brooktrails Vacation Village Subdivision. The following year, the Bank dedicated a portion of that property to the Brooktrails Resort Improvement District. The "owner's certificate," which is the instrument recording the dedication, states that "Parcel A-1" was dedicated for use as "a school site" and the other parcels were dedicated "for all purposes as prescribed in Section 13070 of the Public Resources Code . . . ." The dedication contained a reservation stating that "if said public areas are ever abandoned from public use, said property shall revert to the grantors, their successors, or assigns."

In June 1979, the board of directors of the Brooktrails Community Services District (BCSD) voted to grant a deed of access to Ralph Waldman's predecessors in title.[1] The resolution approving the easement required that the deed contain a provision assuring continuous passage of the district's authorized equipment. A condition in the deed required the grantees, at their own expense, to improve the easement for roadway purposes and to keep and maintain the roadway in good repair. It also required the easement to be used in a manner consistent with the uses "now or hereafter provided in Section 13070, Public Resources Code, or the Community Services District Law." Exhibit A to the deed granting the easement contained a three-page surveyor's description of the easement. The deed was recorded on June 26, 1979, as Document 11305 in Book 1213, page 520 of the Mendocino County records.

On that same day, a grant deed was recorded in which Ralph Waldman's predecessors in title conveyed to him the real property he currently owns.[2] The deed to Waldman also conveyed "[t]hat certain 20 foot non-exclusive easement as described in deed from [BCSD] to grantors herein recorded June 26, 1979, in Book 1213, page 520, Mendocino County Records." Waldman has lived on the property continuously since purchasing it in 1979. He has improved and maintained the easement since then, and it is the only means of access to the Waldman property.

In 1984, the Bank brought a quiet title action in Mendocino County Superior Court against BCSD, Willits Unified School District, Mendo-Lake Community College District, and a number of Doe defendants alleging that Parcel A-1 was legally unsuitable for use as a school site because of its proximity to the Willits Airport. The Bank alleged that Parcel A-1 had therefore been abandoned and had reverted to the Bank's ownership pursuant to the terms of the dedication. BCSD quitclaimed its interest in the property to

[1] Brooktrails Resort Improvement District was reorganized as a community services district in 1976. BCSD is the successor-in-interest to Brooktrails Resort Improvement District.

[2] Ralph Waldman acquired the property as an unmarried man. It is unclear from the record when he married, but it is apparent that his wife is now a co-owner of the property.

the school district and the community college district. The Bank's quiet title action was never adjudicated but instead was settled by the parties in September 1985. As part of the settlement, Willits Unified School District conveyed title to Parcel A-1 to the Bank by a quitclaim deed recorded January 10, 1986. The Waldmans were not named as defendants in the Bank's action and were not a party to it.

On March 2, 2007, the Romeros purchased Parcel A-1, the property over which a portion of the Waldmans' easement runs. It appears that the Waldmans' easement was not discovered in the title search prior to the Romeros' purchase. Shortly thereafter, Clay Romero discovered a gate located in the middle of his parcel with locks belonging to BCSD. On March 17, 2007, Romero posted a notice on the gate asking Ralph Waldman to contact him "about establishing an agreement for the use of Meadowlark Trail as a point of ingress and egress for [his] property."[3] When Waldman and Romero later spoke, Waldman told Romero about the deeded easement and gave Romero the book and page number of the easement deed. After Romero located the document, he called Waldman and expressed his view that there were problems with the wording of the deed's text.[4]

On April 14, 2009, the Romeros wrote the Waldmans a letter claiming that research had revealed the deeded easement did not give the Waldmans the right to cross the Romeros' property. The Romeros offered the Waldmans permission to cross Parcel A-1, but explained that "this permission is revocable at any time" and that any subsequent owners of Parcel A-1 might not "continue with such permission."

The Waldmans later filed an action to quiet title to the easement and for declaratory relief. The action named the Romeros, the California Land Trust, and First American as defendants.[5] The matter was tried to the court in April 2010, and Clay

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[3] Meadowlark Trail is the former name of the access route that passes over Parcel A-1.

[4] Clay Romero contacted his title insurer, First American Title Company (First American), about the easement in May 2007. First American was unaware of the easement and paid Romero $4,000 as compensation.

[5] The record before us contains none of the pleadings in the action. It appears from the trial court's judgment that the California Land Trust and First American filed

Romero appeared in propia persona.[6] After hearing the evidence, the trial court ruled from the bench that the Waldmans had a valid deeded easement. It also ruled that the Waldmans had met the requirements of adverse possession and thus had a prescriptive easement in any event. It further found the Waldmans had established an equitable easement.

The trial court filed a judgment after trial on May 24, 2010. It filed an amended judgment on July 14, 2010. After describing the easement with specificity, the amended judgment ruled that the Waldmans "have a valid express easement appurtenant to their property" over the existing road located on the Romeros' property. The Romeros then filed this appeal.

II. DISCUSSION

The Romeros challenge the trial court's written findings regarding the validity of the Waldmans' express easement, as well as the trial court's oral findings that the Waldmans established a prescriptive easement and an equitable easement. We conclude that we must uphold the trial court's judgment that the Waldmans possess a valid and binding express easement. We will affirm the judgment on that basis.

A. *Standard of Review*

We review the trial court's findings of fact for substantial evidence. (*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1598, fn. 2.) Here, because it appears neither party requested a statement of decision, "we must assume that the trial court made whatever findings are necessary to sustain the judgment and we indulge all presumptions in favor of the order. [Citation.]" (*Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140.) To the extent we must construe the instrument granting the easement, we exercise our independent review. (*Gray v. McCormick* (2008) 167 Cal.App.4th 1019, 1024.)

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disclaimers in the court below. They did not appear at trial and are not parties to this appeal.

[6] Clay Romero also appears in propria persona before this court. Although the briefs refer to "Appellants," no appearance has been entered on behalf of Melanie Romero.

B. *BCSD Was Statutorily Empowered to Grant the Easement.*

The Romeros first contend that the Waldmans failed to prove BCSD had the power to grant private easements. They argue that since BCSD had no authority to grant a private easement in 1979, the Waldmans cannot have a valid easement today. We disagree, because we conclude that the granting of easements fell within the statutory powers BCSD enjoyed as a community services district in 1979.

The Waldmans correctly point out that the current Community Services District Law (Gov. Code, § 61000 et seq.) grants community services districts the power "to hold, manage, occupy, dispose of, convey and encumber" real property acquired by the district. (Gov. Code, § 61060, subd. (d).) Furthermore, the statute authorizes such districts to provide fire protection services. (Gov. Code, § 61100, subd. (d).) The Waldmans therefore argue that granting the easement was within BCSD's delegated powers and was consistent with the purposes of the original dedication of the property to BCSD.

We have no quarrel with the Waldmans' reading of the current version of the Community Services District Law, but the current version of the statute is not dispositive of the question before us. Easements are interpreted according to the statutory and decisional law in effect at the time they are granted. (*Anderson v. Time Warner Telecom of California* (2005) 129 Cal.App.4th 411, 418.) "All applicable laws are presumed to be known by the parties and to form a part of the agreement as if those laws were expressly referred to and incorporated. [Citation.]" (*Ibid*.) We must therefore look to the statutes in effect in 1979, the year Ralph Waldman acquired the easement.

Although the Community Services District Law has been amended since 1979, at that time the statute provided that "[a] district may hold, use, enjoy, lease or dispose of any of its property." (Former Gov. Code, § 61611, added by Stats. 1955, ch. 1746, § 3, p. 3214, repealed by Stats. 2005, ch. 249, § 2.) In addition, one of the enumerated purposes of community services districts was "[p]rotection against fire." (Former Gov. Code, § 61600, subd. (d), added by Stats. 1955, ch. 1746, § 3, p. 3213, repealed by Stats. 2005, ch. 249, § 2.) Furthermore, former Government Code section 61622 granted each district "the power generally to perform all acts necessary to carry out fully the provisions

of this division." (Former Gov. Code, § 61622, added by Stats. 1955, ch. 1746, § 3, p. 3215, repealed by Stats. 2005, ch. 249, § 2.)

This review of the statutory powers of community services districts demonstrates that in 1979, BCSD possessed the power to "dispose" of its property. It also had the power to provide for fire protection. Given these statutory grants of authority, it is plain that BCSD was authorized to dispose of its property by conveying an access easement to Ralph Waldman. Evidence at trial established that the easement route is also used for fire protection and emergency evacuation. Thus, the grant of the easement was within the scope of BCSD's enumerated statutory powers. Moreover, even if one were to assume that the granting of easements fell outside of BCSD's *expressly* enumerated powers, it would nevertheless have been authorized by former Government Code section 61622, which conferred on community services districts implied powers necessary to carry out their functions. (See *Zack v. Marin Emergency Radio Authority* (2004) 118 Cal.App.4th 617, 632–633, 637 [community services district has implied power to construct emergency communications system as part of its statutory authority to provide fire and police protection services]; *Community Services Districts,* 55 Ops.Cal.Atty.Gen. 379, 380 (1972) [community services district has implied power under § 61622 to require security deposits for new customers and to impose reconnection charges after services are terminated for delinquent payment].) Accordingly, we hold that BCSD had the power to grant an access easement in 1979.

C. *Substantial Evidence Supports the Trial Court's Finding That the Easement Burdens the Romeros' Property.*

The Romeros next challenge to the trial court's judgment is based on discrepancies in the description of the easement. They claim, for example, that the deed granting Waldman the access easement does not list Parcel A-1 as encumbered. Attached to the deed as Exhibit A, however, is a surveyor's metes and bounds description of the easement. The deed refers specifically to this exhibit and incorporates it by reference. On its second page, the surveyor's description mentions Parcel A-1, and at trial, a professional land surveyor testified that the easement described in Exhibit A to the deed

burdened the Romero parcel. In addition, the surveyor prepared a map showing that the easement traverses the Romeros' property.

The Romeros concede that Exhibit A to the deed "agreeably describes the actual path of the easement road," but complain that "the text of the [deed] describes the path of the road in a completely different area." Even if we assume this is true, it is well established that the metes and bounds description prevails over less certain descriptions. (*White v. State of California* (1971) 21 Cal.App.3d 738, 763–764.) The trial court found that the metes and bounds description was accurate and that it was confirmed by the testimony of the surveyor. The trial court's finding that the Waldmans' easement burdens Parcel A-1 is therefore supported by the original metes and bounds description attached to the deed, the surveyor's testimony, and the map prepared by the surveyor for trial. Since substantial evidence supports the trial court's finding, we are not at liberty to disturb it. (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 705–706.)

D. *The Bank's Quiet Title Action Did Not Extinguish the Easement.*

The Romeros' claim that the Bank's quiet title action removed the easement encumbering their property is without merit. They assert that full unencumbered ownership of Parcel A-1 returned to the Bank when, in settling that action, Willits Unified School District quitclaimed its interest to the Bank, because the deed "did not reserve easement #11305 as an exception to this transfer of ownership." The Romeros also note that the Waldmans did not come forward and assert any claim to the easement in the quiet title action.

Although the Romeros do not use the legal terms "collateral estoppel" or "issue preclusion," their argument is essentially that the Bank's quiet title action represents a prior adjudication of the validity of the Waldmans' easement. Even though the Romeros do not frame the argument in the language of preclusion, we may look to the substance of this contention and analyze it under the appropriate legal doctrine. (See *Third Eye Blind, Inc. v. Near North Entertainment Ins. Services, LLC* (2005) 127 Cal.App.4th 1311, 1324 [examining party's argument as one involving issue preclusion although party avoided mentioning the doctrine].) Doing so, we find several flaws in it.

Issue preclusion "bars the relitigation of *specific issues* that were actually litigated in an earlier proceeding and decided adversely to the party against whom the doctrine is asserted." (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 531 (*Ferraro*).) Thus, the doctrine may be successfully invoked only if the issue as to which preclusion is asserted: (1) is identical to one presented in the former proceeding; (2) was actually litigated in the former proceeding; and (3) was necessarily decided in that proceeding. (*Ibid*.) In addition to those requirements, the prior proceeding must be one that resulted in a final judgment on the merits and be one to which the party against whom preclusion is asserted was a party, or in privity with a party. (*Ibid*.) It is apparent that these requirements are not satisfied here.

First, the only issue the Bank sought to litigate in its quiet title action was whether Parcel A-1's unsuitability for use as a school site had caused the property to revert to the Bank's ownership under the terms of the original dedication. The validity of the Waldmans' easement simply was not raised in the Bank's action. The issues raised in the Bank's action and in the action before us are therefore not " 'identical' to one presented in the first matter." (*Ferraro, supra,* 161 Cal.App.4th at p. 531.) Second, because the Bank's quiet title action was settled and appears to have been dismissed with prejudice prior to trial, nothing was actually litigated or necessarily decided in that action. (*Le Parc Community Assn. v. Workers' Comp. Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1174.) The settlement of an action by the parties ordinarily does not give rise to issue preclusion. (*Arizona v. California* (2000) 530 U.S. 392, 414.)

Nor did the Bank's quiet title action result in a final judgment on the merits. The record contains only a minute order noting the settlement and vacating the trial date. The doctrine of issue preclusion thus has no application here because there is no judgment. (*Rice v. Crow* (2000) 81 Cal.App.4th 725, 737, fn. 1; 18A Wright et al., Federal Practice & Procedure (2d ed. 2002) Stipulations & Consent Judgments, § 4443, pp. 255–256 ["[t]o support preclusion at all, there must be a judgment in some form; a settlement agreement by itself is effective only as a contract"].) And even if the parties' settlement had been reduced to a judgment, that judgment would have no preclusive effect against

the Waldmans because it is undisputed that they were not parties to the Bank's quiet title action. (*Elliott v. McCombs* (1941) 17 Cal.2d 23, 31.)

We therefore reject the Romeros' argument that the Bank's unadjudicated quiet title action extinguished the Waldmans' easement.

E. *None of the Covenants and Conditions of the Deed Have Been Declared Invalid or Unenforceable.*

Finally, the Romeros argue that the "termination clause" of the deed is applicable, and therefore the trial court should have invalidated the easement. This argument refers to paragraph 7 of the original deed granting the easement. That paragraph states: "In the event that any provision, covenant or condition herein provided shall ever be declared by any court of law to be invalid or unenforceable then these presents and the estate hereby created shall cease and terminate and shall no longer have any force or effect whatsoever and no person whomsoever shall or may have the right to use said easement for access purposes or otherwise."

A plain reading of the quoted language demonstrates that it has no application here. There is nothing the record showing that a "court of law" has ever declared any of the provisions, covenants, or conditions in the deed "to be invalid or unenforceable." Since a judicial declaration of invalidity or unenforceability is a precondition to the operation of this "termination clause," and there is no evidence of any such declaration, it follows that the easement has not been terminated under paragraph 7.

The Romeros also seek to support their argument by pointing to paragraphs 2 and 3 of the deed. But paragraph 2 merely vests in BCSD the right to recover the cost of maintaining the access roadway by taxing the easement holder and to enforce such right by placing a lien on the dominant tenement. There is no claim that the Waldmans have failed to maintain the roadway, and even if there were, the rights granted under paragraph 2 belong only to BCSD, not to the Romeros.

The Romeros contend the Bank's original owner's certificate dedicating the property "does not permit the granting of a private easement going thru [*sic*] a dedicated public school site . . . ." According to the Romeros, the grant of an easement is not

compatible with the original dedicated use as a school site, and thus the condition in paragraph 3 of the deed has been violated. Contrary to the Romeros' contention, however, there is nothing in the language of the dedication that would prohibit the grant of an easement. When property is dedicated for school purposes, the grantee ordinarily acquires an interest in fee. (See *Cherokee Valley Farms, Inc. v. Summerville Elementary Sch. Dist.* (1973) 30 Cal.App.3d 579, 586 [dedication of property for construction of school buildings vests public entity with same interest as though property had been acquired by eminent domain].) The holder of a fee can certainly transfer a lesser interest such as an easement.

Moreover, paragraph 3 of the deed requires only that the easement be located and used in a manner compatible with the uses for which the property surrounding the easement "was dedicated to the District, viz. those now or hereafter provided in Section 13070 Public Resources Code, or the Community Services District Law." As we explained in part B *ante,* the uses to which the easement has been put are fully consistent with those provided in section 13070 of the Public Resources Code and the Community Services District Law. It follows that there has been no violation of the covenants or conditions of the deed conveying the easement.

F. *Conclusion*

We find no error in the trial court's decision that the deed of access easement recorded on June 26, 1979 as Document No. 11305 in Book 1213, Page 520 of the official records of Mendocino County is a valid and binding express easement appurtenant to the Waldmans' property. As we have concluded that the Waldmans hold an express easement, we need not explore whether they have established either a prescriptive or an equitable easement.[7]

[7] Nor will we address the Romeros' argument that the trial judge should have disqualified himself on the ground that he was biased in favor of the Waldmans' counsel. (See Code Civ. Proc., § 170.1, subd. (a)(6)(B).) The Romeros did not make this argument below, and it may not be made for the first time on appeal. (E.g., *People v. Guerra* (2006) 37 Cal.4th 1067, 1111; see Code Civ. Proc., § 170.3, subd. (c)(1) [statement setting forth grounds for disqualification of a judge "shall be presented at the

III. DISPOSITION

The judgment is affirmed.

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Bruiniers, J.

We concur:

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Simons, Acting P. J.

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Needham, J.

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earliest practicable opportunity after discovery of the facts constituting the ground for disqualification"].)