STATE OF MICHIGAN

COURT OF APPEALS

PAUL HEYSTEK,

Plaintiff/Counter-Defendant-Appellant,

v

PATRICK L. BAYER III, JARROD BERENDS, DEANNE BERENDS, JENNESSEE GEORGE, MICHAEL MAISTROS, SHARON MAISTROS, DAVE GOODMAN, BETH GOODMAN, TAMELA VANDERARK, MARK STAMBAUGH, and KATHERINE STAMBAUGH,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
September 15, 2009

No. 279260
Barry Circuit Court
LC No. 06-000008-CH

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

This action involves a property dispute regarding the use of lot 53 by lot owners within the Parker's Lakewood Plat in Yankee Springs Township in Barry County, which consists of 35 lots that abut Gun Lake and 35 backlots. Plaintiff owns lot 51, which is adjacent to lot 53. Defendants are backlot owners. Following a bench trial, the trial court found that defendants had non-riparian easement rights over lot 53, and prescriptive rights to install and maintain a dock and moor boats. Plaintiff appeals as of right. We affirm in part and reverse in part.

I. Fee v Easement

In 1965, the plat developer, Raymond Parker, executed a deed conveying interests in lot 53 to groups of lot owners.

Whether language in a deed is ambiguous is a question of law for the court to decide. If it is not ambiguous, the meaning of the deed is also a question of law. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). The ultimate "objective in interpreting a deed is to give effect to 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). Unambiguous language must be enforced as written

without consideration of other evidence. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003).

We agree with plaintiff that the trial court erred in finding that the 1965 deed conveyed only an easement, and not a fee interest. "[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." *Carmody-Lahti, supra* at 371 (emphasis in original). "Where the land is first conveyed, and then a provision afterwards inserted, showing what the land is to be used for, it is held in many cases that the fee is conveyed . . . ." *Jones v Van Bochove*, 103 Mich 98; 100; 61 NW 342 (1894).

The 1965 deed states that for valuable consideration the grantor does "grant, bargain, sell, remise, release and forever QUIT CLAIM" to the grantees "and to their heirs and assigns, FOREVER, all of that certain piece or parcel of land . . . Lot fifty-three in Parker's Lakewood Plat . . . ." While it contains a use restriction for ingress and egress purposes to Gun Lake from Parker Drive, it does not contain the terms "easement" or "right-of-way."

In *City of Huntington Woods v Detroit*, 279 Mich App 603, 620-621; 761 NW2d 127 (2008), this Court found that similar language was indicative of a fee simple conveyance, explaining:

> Our starting point in this analysis is the language of the Rackham Deed, which provides that it is does "grant, bargain, sell, remise, release, alien and confirm" to defendant "forever, all that certain piece or parcel of land situate and being in the Township of Royal Oakland" as described by metes and bounds. The deed provides for specific "express conditions and limitations" regarding use of the property by defendant with rights of reversion "if any of the foregoing conditions shall be broken then the estate hereby granted shall be forfeited and the said premises shall revert to the parties of the first part and their heirs and assigns who shall thereupon have the right to re-enter and re-possess the same."
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> . . . Notably the terms "easement" and "right-of-way" are not contained in the deed. Rather, the deed indicated the conveyance was for a "certain piece or parcel of land." Therefore, based on the plain and unambiguous language of the Rackham Deed, we reject plaintiffs' assertion and find that a fee simple in the land was conveyed to defendant, rather than an easement.

In contrast, the Court in *Carmody-Lahti, supra* at 371, found that the deed at issue there conveyed an easement rather than a fee interest because it purported to "convey a 'right of way' that 'consist[s]' of a 'strip of land . . . across [the parcels described in the deed].'" The conveyance of the interest across the land, versus the land itself, indicated the intent to convey an easement. *Id*. at 373.

The habendum clause in the 1965 deed also evinces an intent to convey a fee. It states, in part, "To Have and to Hold the said Lot fifty three to the [grantees] and to their heirs and assigns . . . ." In contrast, the habendum clause in *Carmody-Lahti, supra* at 373, provided "that Mineral

Range Railroad was 'to have and to hold the said strip of land with the appurtenances, for the purpose and uses above stated and subject to the reservations aforesaid . . . forever . . . .'" The Court stated, "The reference in the habendum clause to the 'purpose and uses above stated and . . . the reservations aforesaid' demonstrates the parties' intent to convey only the limited property interest previously described in the deed." *Id*. at 373-374. Therefore, we conclude that the plain language of the 1965 deed demonstrates Parker's intent to convey a fee interest.

II. Deed Restriction v Statement of Purpose

The next question is the meaning and effect of the ingress/egress clause in the 1965 deed, which states:

> This conveyance is made with the following restrictions.
>
> No. 1- The use of this lot is limited to the use of ingress & egress to and from the shore of Gun Lake from Parker Drive which is the plat road; and is restricted of same, (only) by lot owners in Parker's Lakewood Plat that is legaly [sic] qualified to use same; according to the records of The Register of Deeds of Barry County, Michigan.

Generally, in the absence of a reverter clause in a deed, "'a statement of use is typically merely a declaration of the purpose of conveyance, without effect to limit the grant.'" *Huntington Woods, supra* at 627, quoting *Quinn v Pere Marquette R Co*, 256 Mich 143, 151; 239 NW 376 (1931); accord *Briggs v City of Grand Rapids*, 261 Mich 11, 14; 245 NW 555 (1932) (deed conveying property to city "for park purposes" did not limit the grant); *Quinn, supra* at 151 (language "to be used for railroad purposes only" did not limit the grant). There is no reverter clause or other conditional language in the 1965 deed to suggest a right of re-entry. Therefore, we conclude that the ingress/egress clause is a non-restrictive statement of purpose.[1] Thus, the grantees are free to use the property for any lawful purpose consistent with the rights afforded to riparian owners, which includes the right to erect a dock, moor boats, and recreational lounging. *Hess v West Bloomfield Twp*, 439 Mich 550, 562; 486 NW2d 628 (1992).

III. Identifiable Grantees

Plaintiff argues that the 1965 deed was legally invalid because it lacked sufficiently identifiable grantees. Before trial, the parties stipulated that the owners of lots 40 to 70 were co-

[1] We recognize that in *Huntington Woods, supra* at 628-630, language in a deed restricting use of the property to a "public park or golf course or for other similar purpose" was determined to constitute a deed restriction despite the absence of a reversionary clause or other conditional language. However, the *Huntington Woods* Court distinguished its case from *Briggs, supra*, on the basis that the property in *Briggs* was purchased for valuable consideration. It was not a case where the property was donated or dedicated for park purposes. *Huntington Woods, supra* at 628. Because lot 53 was conveyed for valuable consideration, this case is factually distinguishable from *Huntington Woods* and, instead, is governed by the rule of law in *Briggs*.

owners of lot 53 pursuant to either the 1965 or 1969 deed. After trial, the trial court determined that the parties' stipulation was unenforceable because it was based on an erroneous interpretation of the law. Plaintiff argues that the trial court erred in setting aside the parties' stipulation.

To be valid, the deed must sufficiently describe the grantee so as to distinguish him from the rest of the world. *Stamp v Steele*, 209 Mich 205, 209-210; 176 NW 464 (1920). The grantees in the 1965 deed are listed as "[n]umerous owner's [sic] of lots in Parker's Lakewood Plat, including Lewis Liska who presently resides on Rte. 2." The deed clearly identifies at least one grantee, Lewis Liska, and thus the deed is not invalid.

However, to the extent that the deed simply names "[n]umerous owner's [sic] of lots in Parker's Lakewood Plat." as grantees, we conclude that the deed is ambiguous. When the terms of a contract or deed are ambiguous, the trier of fact must determine the intentions of the parties upon entering into the contract. *UAW-GM Human Resources Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 597 NW2d 411 (1998). As mentioned the parties stipulated before trial that the intended grantees were lot owners 40 through 70. Stipulations of fact are binding on a trial court, but stipulations of law are not. *Gates v Gates*, 256 Mich App 420, 426; 664 NW2d 231 (2003); see also *Bradway v Miller*, 200 Mich 648, 655; 167 NW 15 (1918). The trial court later rejected the stipulation as a conclusion of law. However, because the phrase in the deed identifying grantees was ambiguous, the question of who the grantees are is a question of fact, not law. Accordingly, we conclude that the trial court erred in setting aside the parties' stipulation.[2]

Given the disposition of the three previous issues, we need address plaintiff's arguments regarding defendants' prescriptive easement rights. One cannot have a prescriptive easement in his own property. *Slatterly v Madiol*, 257 Mich App 242, 261; 668 NW2d 154 (2003).

IV. Violation of Township Ordinances

Plaintiff argues that the trial court erred in finding that defendants' use of lot 53 did not violate Yankee Springs Township's anti-funneling and single-family residence ordinances, because such usage constituted a permissible nonconforming use. However, "public rights actions must be brought by public officials vested with such responsibility." *Gyarmati v Bielfield*, 245 Mich App 602, 605; 629 NW2d 93 (2001) (citation omitted). Thus, only the township, and not plaintiff, had standing to enforce the alleged ordinance violations. *Id.* Because there had not been any formal determination by the township regarding whether the ordinances at issue were violated and plaintiff did not bring a mandamus action against the township, plaintiff did not have standing to enforce the ordinances. We therefore affirm the trial

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[2] Because we conclude that Parker's 1965 deed conveyed a fee interest in the subject property, making defendants co-owners of lot 53 pursuant to the 1965 deed, we need not consider whether Parker conveyed his interest in the subject property through the deed purportedly executed in 1969, or whether Parker's estate conveyed Parker's interest in the subject property through a 2007 deed.

court's finding of no cause of action on plaintiff's ordinance violation claims, albeit for different reasons. *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005).

V. NREPA Violation

Plaintiff argues that the trial court erred in finding that defendants' use of lot 53 did not constitute a "marina" under part 301 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.30101 *et seq*.

Plaintiff raised this issue with the Department of Environmental Quality ("DEQ"), the entity responsible for issuing permits for marinas, but the DEQ never made a final determination. Whether plaintiff's claim was ripe for judicial review depends on whether the DEQ had exclusive jurisdiction to first decide the issue. If the statutory language establishes the intent to endow the state agency with exclusive jurisdiction, circuit courts must decline to exercise jurisdiction until all administrative proceedings are complete. *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 356; 733 NW2d 107 (2007). This Court reviews de novo a trial court's interpretation of a statute. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

Permit issuance under part 301 of the NREPA is within the exclusive jurisdiction of the DEQ. See MCL 324.30102, MCL 324.30104, MCL 324.30105(5), and MCL 324.30106. The DEQ has established specific procedures regarding part 301 in accordance with MCL 324.30110(1). See AC R 281.811 - 281.846. Also, part 301 gives only the DEQ, not a private person, the right to sue for a violation. MCL 324.30112(1). Further, MCL 324.30110(2) provides that a person aggrieved by any action or inaction of the DEQ can request a hearing. These statutes establish the Legislature's intent for the DEQ to have exclusive jurisdiction over a licensing violation claim.

Plaintiff refers to MCL 324.30110(4) in support of his position that he properly raised this issue in the circuit court. MCL 324.30110(4) states:

> This section does not limit the right of a riparian owner to institute proceedings in any circuit court of the state against any person when necessary to protect his or her rights.

We read this provision as indicating an intent not to limit a person's right to seek common-law remedies, not as authorization to bring suit in circuit court for an alleged statutory violation without first receiving a decision from the DEQ. Because we conclude that the Legislature intended for the DEQ to have exclusive jurisdiction over plaintiff's claim, the trial court was without jurisdiction to decide this issue until plaintiff first exhausted his administrative remedies. See *Rush v Sterner*, 143 Mich App 672, 681; 373 NW2d 183 (1985).

Accordingly, we affirm the trial court's finding of no cause of action on plaintiff's NREPA violation claim, albeit for different reasons. *Computer Network, supra* at 313.

VI. Conclusion

We reverse the trial court's finding of an easement. We hold the 1965 deed conveyed a fee interest. We further hold the ingress/egress clause is a non-restrictive statement of purpose. We also conclude the deed is ambiguous in regard to the identification of grantees and that the trial court erred in setting aside the parties' stipulation regarding the intended grantees. We affirm the trial court's judgment finding of no cause of action on plaintiff's ordinance violation claims and its judgment of no cause of action on plaintiff's NREPA claim.

Affirmed in part, reversed in part, and remanded for modification of judgment consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shapiro