STATE OF MINNESOTA
IN COURT OF APPEALS
A11-996

Dale Arndt, et al.,
Appellants,

Roger Fulton, et al.,
Plaintiffs,

vs.

James Beier, et al.,
Respondents.

Filed December 5, 2011
Affirmed
Collins, Judge[*]

Olmsted County District Court
File No. 55-CV-10-1524

Christopher D. Nelson, Dunlap and Seeger, P.A., Rochester, Minnesota (for appellants)

Kent A. Gernander, Streater & Murphy, P.A., Winona, Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant Dale Arndt challenges the grant of summary judgment in favor of respondent James Beier, arguing that the district court erred by concluding that Beier has appurtenant easement rights across the east 150 feet of a commercial driveway owned by Arndt. Because the easement is appurtenant to the land and encompasses the east 150 feet of the driveway, and no issue of material fact remains, we affirm.

FACTS

Arndt owns commercial property in Rochester, described as the westerly half of Lot 9, Block 9, Golden Hills Addition, on which he operates Carwash USA. The easterly half of Lot 9 is owned by Roger Fulton, on which he operates Mr. Pizza of Rochester. To the north of Lot 9 is Lot 8. Beier owns Lot 8 (except the south 30 feet), as well as Lot 7 to its north, on which he operates Whiskey Creek Wood Fire Grill. The south 30 feet of Lot 8 is owned by Arndt and used by the adjacent property owners as a commercial driveway.[1] The driveway provides these three businesses with access to a public highway (Broadway).

Arndt's ownership of the driveway property dates to 1968, when he entered into a contract for deed to purchase it from Lloyd and Mildred Quarve, Beier's predecessors in interest to Lots 7 and 8. In 1971, to provide public access for Fulton's predecessors in interest, the parties entered into a "Driveway Easement Agreement" granting a

[1] The driveway is legally described as the "South 30 feet of Lot Eight (8), Block Nine (9), Golden Hills Addition, Olmsted County, Minnesota."

non-exclusive easement to Fulton's predecessors in interest across the east 150 feet of the driveway, "subject to the equal rights on the part of [Arndt and the Quarves], of ingress and egress over and upon [the driveway] to and from other lands retained by them, which right is hereby expressly reserved."[2] As stated in the agreement: "The easement hereby granted shall run with the land and bind the heirs, executors, administrators and assigns of all of the parties to this Agreement." Arndt obtained title to the driveway by warranty deed on December 30, 1980, "[t]ogether with and subject to the rights and obligations contained in [the 1971 Driveway Easement Agreement]." On October 1, 1991, the Quarves sold Lots 7 and 8 to Beier by warranty deed, "[t]ogether with and subject to the rights and obligations set forth in [the 1971 Driveway Easement Agreement]."

Until 2008, Beier utilized only the east 30 feet of the driveway, adjacent to Broadway, for public access to his property. In 2008, the City of Rochester informed Beier that this access point was too close to Broadway and caused "car stacking" on the Broadway right-of-way. Beier then relocated the access point some 75 feet to the west, well within the east 150 feet of the driveway. According to Arndt and Fulton, this new access point increased traffic congestion along the driveway and added wear and tear to the driveway surface. They brought this action seeking a declaratory judgment that Beier had no rights to the driveway easement. In ruling on the parties' motions for summary judgment, the district court concluded that the 1971 Driveway Easement Agreement created an easement appurtenant across the east 150 feet of the driveway, the 1980

[2] The 1971 Driveway Easement Agreement legally defines the driveway easement as being over the "East 150 feet of the South 30 feet of Lot Eight (8), Block Nine (9), Golden Hills Addition, Rochester, Minnesota."

warranty deed reserved those easement rights, and, therefore, Beier retained appurtenant easement rights across the east 150 feet of the driveway. This appeal followed.

D E C I S I O N

The district court shall grant summary judgment if, based on the entire record, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. This court conducts a de novo review of the district court's summary judgment to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

"An easement is an interest in land possessed by another which entitles the grantee of the interest to a limited use or enjoyment of that land." *Scherger v. N. Natural Gas Co.*, 575 N.W.2d 578, 580 (Minn. 1998). Easements may be either in gross or appurtenant to some other estate. *Lidgerding v. Zignego*, 77 Minn. 421, 424-25, 80 N.W. 360, 361 (1899). "An easement in gross is the right to use another's property that is personal and revocable." *Block v. Sexton*, 577 N.W.2d 521, 525 (Minn. App. 1998). It benefits "a particular person and not a particular piece of property" and the beneficiary need not, and usually does not, own land adjacent to the easement. *Black's Law Dictionary* 586 (9th ed. 2009) (defining "easement in gross"). In contrast, "[a]n easement appurtenant is one that is granted for the benefit of the grantee's land." *Block*, 577 N.W.2d at 525. An easement appurtenant runs with the land and, therefore, passes to subsequent owners of the land. *See Swedish-Am. Nat'l Bank of Minneapolis v. Conn. Mut. Life Ins.*, 83 Minn. 377, 382, 86 N.W. 420, 422 (1901); *Heuer v. Cnty. of Aitkin*, 645

N.W.2d 753, 759 (Minn. App. 2002). Whether an easement is in gross or appurtenant to another estate is "determined by the relation of the easement to such estate, or the absence of it, and in the light of all the circumstances under which the grant was made." *Lidgerding*, 77 Minn. at 425, 80 N.W. at 361. Where doubt exists as to the real nature of an easement, it is presumed to be appurtenant and not in gross. *Id.* at 424-25, 80 N.W. at 361.

The easement at issue here was created through a reservation in the 1980 warranty deed conveying the driveway from the Quarves to Arndt, by expressly incorporating the 1971 driveway easement agreement into the deed. The terms of an express easement constitute a contract, and the easement's scope depends on construction of the contract terms. *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). "[T]he primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). Unambiguous words used by the parties to express their intent will not be viewed in isolation, but will instead be given their plain and ordinary meaning in accordance with the obvious purpose of the contract as a whole. *Id.* at 323-24.

Arndt argues that the parties to the 1971 driveway easement agreement did not intend for the easement reserved by the Quarves to run with the land, but instead intended for that easement to be personal and in gross to the Quarves. In support of this argument, Arndt contends that the 1971 driveway easement agreement created two distinct easements: one "granted" to Fulton's predecessors in interest, and one "reserved" to the

Quarves. Because the agreement specified that the easement "granted" was to run with the land, but contained no such words of inheritance for the easement "reserved," Arndt argues that the parties did not intend for the easement "reserved" to run with the land. We disagree.

The nature of an easement depends, not on specific words of inheritance, but on whether the easement was intended to benefit the land. *Lidgerding*, 77 Minn. at 425, 80 N.W. at 361. To determine the intent of the parties in this regard, we analyze the terms of the 1971 driveway easement agreement, not in isolation, but in view of its overall purpose. *See Motorsports Racing*, 666 N.W.2d at 323-24. The purpose of the agreement is clear: to create and preserve an easement across the driveway as a means of access to and from the businesses owned by the adjacent property owners. The easement does not benefit a particular person, but instead benefits the adjacent lands by providing access to the businesses located on those lands. Because the easement was created to benefit the land, the easement is appurtenant to the land.

We are guided by *Lidgerding*, which held that an access easement was appurtenant to the land, even though the grant did not contain words of inheritance, such as the words "heirs and assigns." 77 Minn. at 424-25, 80 N.W. at 361. The easement there allowed a landowner to access a highway from his own land by way of an easement across adjacent land. *Id.* at 425, 80 N.W. at 361. The easement was used solely as a means of access to the highway, and it was apparently worthless except for use in connection with the land. *Id.* Likewise, the easement here is used solely as an access easement and is apparently

worthless except for use in connection with the adjacent land. No words of inheritance are necessary to conclude that it is appurtenant to the land.

Arndt points out that the court in *Lidgerding* indicated that an express limitation of an easement to the life of the grantee may raise an inference that the easement was intended to be in gross. *See Lidgerding*, 77 Minn. at 425, 80 N.W. at 361. However, no such words of limitation are present in the case before us. Furthermore, the *Lidgerding* court indicated that such inference could be overcome "if the nature of the right and its apparent use were such as to indicate that it related wholly to the convenience or occupation of real estate." *Id.* The nature of the easement here wholly relates to the convenience and occupation of the land. Arndt also argues that the easement in *Lidgerding* served as the grantee's sole access to the highway. However, he fails to explain why this distinction is significant and fails to provide authority for the proposition that the nature of an easement changes depending on how many access points there are to the property.

Alternatively, Arndt argues that any appurtenant easement rights extend only along the east 30 feet of the driveway, as contemplated by the 1968 contract for deed, not the east 150 feet of the driveway, as found by the district court. "The extent of an easement depends entirely upon the construction of the terms of the agreement granting the easement." *Scherger*, 575 N.W.2d at 580. The 1980 warranty deed expressly reserved an easement across the driveway by conveying the land "[t]ogether with and subject to the rights and obligations contained in [the 1971 driveway easement agreement]." The 1971 agreement, in turn, clearly and unambiguously defines the

easement as the east 150 feet of the driveway. Thus, although the 1968 contract for deed may have only contemplated an easement along the east 30 feet, the parties later agreed to an easement across the east 150 feet. *See Bernard v. Schneider*, 264 Minn. 104, 107-08, 117 N.W.2d 755, 757 (1962) (recognizing that the terms of a deed constitute the final agreement of the parties, even if there is a departure from the terms of the contract). When Beier purchased Lots 7 and 8 from the Quarves, he did so "[t]ogether with and subject to the rights and obligations set forth in [the 1971 driveway easement agreement]." Accordingly, the district court did not err in concluding that Beier enjoys appurtenant easement rights across the east 150 feet of the driveway.

Affirmed.