STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2333

Thomas G. Jung, et al.,
Respondents,

vs.

Lyle L. Linnell, et al.,
Appellants.

Filed December 23, 2008
Affirmed
Collins, Judge[*]

Goodhue County District Court
File No. 25-C4-05-002041

Harvey N. Jones, 1350 South Frontage Road, Hastings, MN 55033 (for appellants)

Richard D. Gorman, Catherine G. Johnson, Vogel & Gorman, Masonic Building, 454 West Fourth Street, Red Wing, MN 55066 (for respondents)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, 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

Appellants challenge the district court's determination of adjacent real property boundaries. Because the district court did not clearly err in its determination of the boundary lines as described in the deed, we affirm.

FACTS

Appellants Lyle and Judith Linnell (the Linnells) and respondents Thomas and Carol Jung (the Jungs) own adjoining parcels of land. Originally, both parcels were part of an 80-acre tract owned by Viva Linnell. In January 1993,[1] Viva Linnell deeded a portion of the land to her son Russell Linnell, Jr. (Russell), and several months later she deeded the remaining land to her son Lyle Linnell. In 2005, Russell sold his parcel to the Jungs, who subsequently brought an action to determine the boundary line between the properties.

The primary issue at trial centered on the legal description of the Jungs' property. Although Viva Linnell had accompanied Russell to view the parcel he had selected, they did not have the property surveyed immediately. Instead, after discussing the parcel's "general area" in a surveyor's office, Russell had the surveyor draft a legal description of the property. The resulting deed describes the property in two different ways:

> [1] A part of the West Half (W1/2) of the Southeast Quarter (SE1/4), Section 4, Township 113, Range 16, Welch

[1] The record contains two deeds signed by Viva Linnell. One deed is dated January 12, 1993, and was recorded the following day. The other deed is dated March 24, 1993, but states that it was merely "given to confirm the previous Deed." Both deeds contain identical language describing the property.

> Township, Goodhue County described as follows: A piece of land containing 5.7 acres more or less, starting point 400 feet from the Northwest (NW) Corner of Section 4, running South 550 feet along Township road; thence East 585 feet; thence North 550 feet; thence West 585 feet to point of beginning . . . [.] [2] [M]ore specifically described as: Part of W1/2 of SE1/4, Section 4, Township 113, Range 16, Goodhue County, Commencing at NW Corner of SE 1/4; Thence E. to Center of Township Road; Thence South 400 Ft for beginning; Thence East 585 Ft; Thence South 550 Ft, Thence West to Township Road North along Road to Beginning, containing 5.7 acres.

The descriptions became problematic when, in 1994, Russell began to build a house and hired David Johnson to survey the property. In reviewing the legal descriptions set forth in the deed, Johnson determined that the descriptions contain numerous defects. Although the first description relates the starting point to "the Northwest (NW) Corner of Section 4," Johnson testified that this was "a physical impossibility" because that starting point would be "at least a half a mile from where this property was physically located." Johnson also testified that he was "fairly certain" that the starting point intended by the parties is "the northwest corner *of the southeast quarter*" of section 4, as set forth in the second "more specific" description. But even if the parties had intended this to be the starting point in the first description, the first description is still ambiguous because whether the starting point is stated as "400 feet from the Northwest (NW) Corner" or as "400 feet from the Northwest (NW) Corner of the Southeast Quarter (SE1/4)" of section 4, there is no stated direction in which to proceed from the starting point to find the point of beginning. The second description is not free of defects either, leaving a short gap in the parcel's northern boundary line.

Nevertheless, Johnson concluded that the second description, which at least specifies a feasible starting point, better represents the parties' intent. To close the gap, Johnson assumed that the starting point is located where the township road's center intersects the quarter-section line, based on the parties' apparent intent to make the road the property's western border. Apart from this assumption, Johnson's survey followed the second description, and he subsequently prepared a new legal description correcting the second description's deficiencies.

The Linnells, however, also had the Jungs' property surveyed and urged the district court to find that the first description is correct. The Linnells focused on the "5.7 acres" language contained in both descriptions, arguing that the 6.35-acre parcel produced by their surveyor based on the first description more accurately represents the parties' intent than the 8.06-acre parcel produced by Johnson's survey. The district court rejected this argument and adopted Johnson's testimony, finding him to be "the more credible surveyor" in light of "his 40 years of experience (27 of which were as Goodhue County Surveyor) and his personal involvement with the property." In doing so, the court emphasized the importance of a definite starting point and stated that a description of quantity yields to a description of course and distance. The district court also noted the general rule that a description in a deed always should be construed to favor the grantee. Thus, the district court found that Viva Linnell and Russell had intended the deed to describe the parcel with the boundaries documented in Johnson's survey and revised legal description, and the court disregarded the first description "because it is ambiguous, contains errors, and is vague." This appeal followed.

D E C I S I O N

The Linnells challenge the district court's determination of the boundary line between their property and the Jungs'. In an action to determine boundary lines, the district court "shall determine any adverse claims in respect to any portion of the land involved which it may be necessary to determine for a complete settlement of the boundary lines." Minn. Stat. § 559.23 (Supp. 2007). The district court's determination of a boundary line is a finding of fact, which we will not disturb unless it is clearly erroneous. *Allred v. Reed*, 362 N.W.2d 374, 376 (Minn. App. 1985) (stating that determination of boundary lines "is awarded the same deference as any other factual determination"), *review denied* (Minn. Apr. 18, 1985); *see also Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (stating that factual findings are reviewed only for clear error). A district court's factual findings are clearly erroneous "only if they are not reasonably supported by the evidence," *Fletcher*, 589 N.W.2d at 102, which we view in the light most favorable to the prevailing party, *Theisen's, Inc. v. Red Owl Stores, Inc.*, 309 Minn. 60, 66, 243 N.W.2d 145, 149 (1976).

The Linnells argue that the district court erred by determining the boundary line by "practical location." This argument, however, mischaracterizes the basis of the district court's decision. Although courts often use the generic term "practical location" to describe the type of action brought under Minn. Stat. § 559.23, there is no consensus "on the theory of practical location, i.e., its nature, scope, and requisite elements." *Theros v. Phillips*, 256 N.W.2d 852, 858 (Minn. 1977) (citation omitted). A practical location must effectively "divest one party of property that is clearly and concededly his

by deed." *See id.* (describing effect of determination of boundary lines by practical location). Minnesota law recognizes three ways in which this divestiture can be accomplished:

> (1) Acquiescence: The location relied upon must have been acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations.
>
> (2) Agreement: The line must have been expressly agreed upon by the interested parties and afterwards acquiesced in.
>
> (3) Estoppel: The party whose rights are to be barred must have silently looked on with knowledge of the true line while the other party encroached thereon or subjected himself to expense which he would not have incurred had the line been in dispute.

Id.

Although the Jungs apparently concede that the practical-location-by-estoppel theory applies here, none of the above theories accurately describes the basis of the district court's decision. Although the district court made findings that could conceivably support a determination by practical location, the district court actually determined the boundary line by construing the deed's ambiguous descriptions of the Jungs' parcel. When Viva Linnell conveyed a portion of her property to Russell in January 1993, the land described by the deed became a distinct parcel. Consequently, when Viva Linnell conveyed the remainder of her property to Lyle Linnell several months later, the parcel transferred to Lyle could not have included any part of the parcel she had conveyed to Russell. *See Holmgren v. Bondhus*, 311 Minn. 157, 161, 247 N.W.2d 608, 612 (1976) ("[S]ubsequent grantees are on notice of the exact boundaries which were included in the

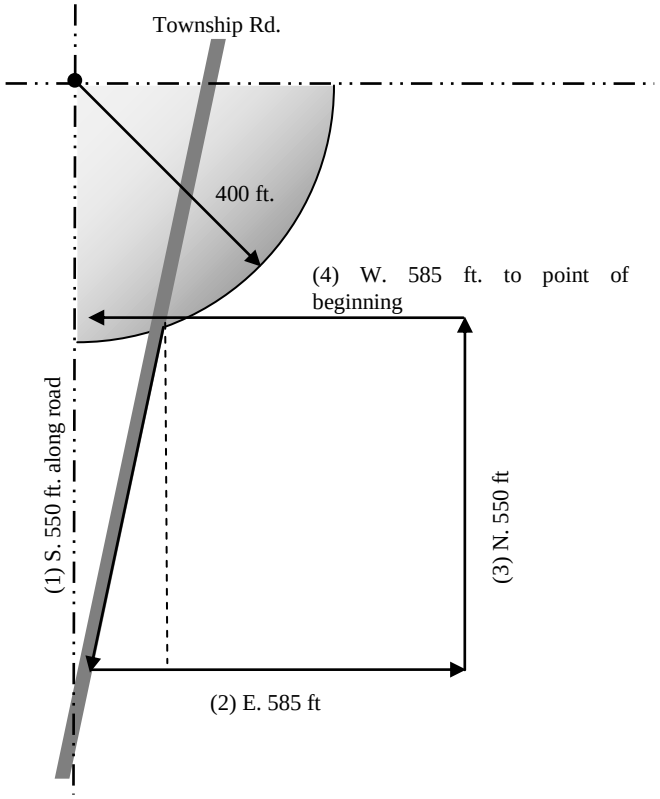
prior conveyance of adjoining property, and since the common grantor cannot twice convey the same property to different persons the second grantee must take what is left and absorb the deficiency.") As subsequent grantees, the Linnells have no rights to be barred with respect to any property contained within the boundary lines described by the deed. *Id.*

What remains for our determination, then, is the question of whether the district court clearly erred by determining the boundary lines actually described in the deed. When construing a deed, a court's primary objective is to ascertain and give effect to the parties' intent. *Dittrich v. Ubl*, 216 Minn. 396, 406, 13 N.W.2d 384, 390 (1944). If the parties' intent is ascertainable entirely from the deed's language, the proper construction presents a question of law. *Mollico v. Mollico*, 628 N.W.2d 637, 641 (Minn. App. 2001). If, however, the written description is ambiguous and requires extrinsic evidence to determine its meaning, the proper construction becomes a question of fact. *See Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979) (stating rule in context of interpretation of ambiguous contracts). Here, it is undisputed that the deed is ambiguous. Thus, the question becomes whether the district court clearly erred by finding that Viva Linnell and Russell intended to describe the boundaries eventually established by Johnson's survey. We conclude that the district court did not clearly err.

As Johnson and the district court noted, the first description is highly problematic. The first boundary it defines "run[s] South 550 feet along Township road," starting from a point "400 feet from the Northwest (NW) Corner of Section 4." But as Johnson testified and the Linnells' surveyor acknowledged, this is a "physical impossibility"

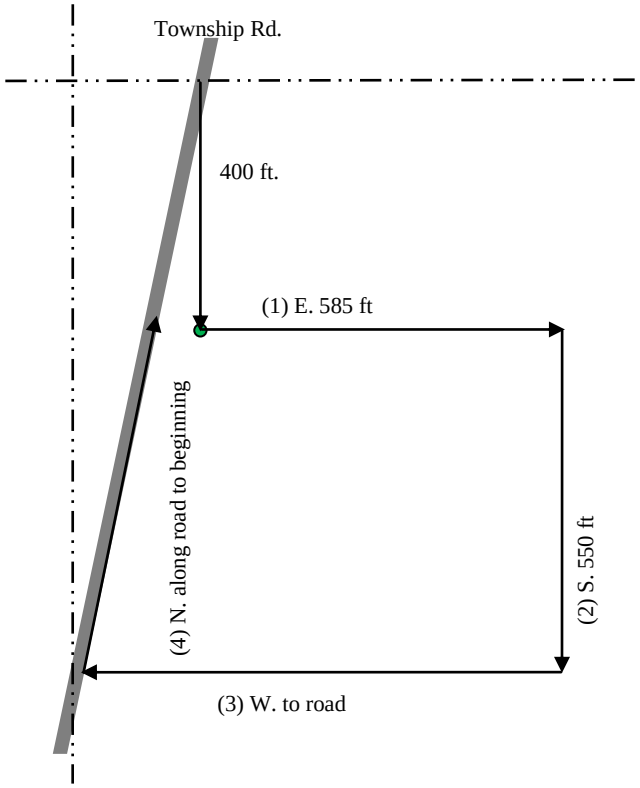
because the township road is "at least a half a mile" from the northwest corner of section 4. Further, even if that defect were remedied, the first description does not provide the direction in which to proceed 400 feet to establish the point of beginning. Thus, the point of beginning could be anywhere along the circumference of a 400-foot radius circle.

But even if that further defect also were remedied and a definite starting point and point of beginning were determined, the description *cannot* close because it defines a geometrical impossibility—a trapezoid with opposite sides of equal length (see below). According to the first description, both the eastern and western boundaries are 550 feet, and both the northern and southern boundaries are 585 feet. The western boundary, however, is defined as "running South 550 feet along Township road," and the township road runs at a distinct angle with respect to the northern and southern boundaries.



Viewed together with a 550 foot vertical side (depicted above by the broken line) and that part of the parcel's the southern boundary line west of the starting point, the called-for segment of the township road would be the 550-foot hypotenuse of a right triangle with a 550-foot leg. It is a mathematical impossibility for the length of a leg of a right triangle to equal the length of the hypotenuse of that right triangle. Therefore, the district court had ample reason to disfavor the first description.

The second description, on the other hand, provides a definitely ascertainable starting point and point of beginning. There is one obvious defect in the resulting description, however, in that the point of beginning (400 feet south of where the township road's center intersects the quarter-section line) is short distance east of the township road, leaving a gap in the parcel's northern boundary line, as depicted below.



Because the description fails to close the northern boundary line to the parcel's west boundary (described as running "North along [Township] Road to Beginning"), Johnson concluded that the parties "obviously . . . intended to have the west boundary of this parcel be the centerline of the road." And to effectuate the parties' intent, Johnson closed the gap by extending the northern boundary line the necessary distance westerly, reasonably assuming that the parties intended the starting point to be the center of the township road. Adopting Johnson's sole assumption and favoring the second description, as the district court did, is not clearly erroneous.

Finally, the Linnells' arguments regarding the deed's erroneous representations of the amount of acreage conveyed are unavailing. The first description states "5.7 acres more or less," and the second description states "5.7 acres." But even taking the Linnells' surveyor's interpretation of the deed's first description to be correct, it describes a parcel with an area of 6.35 acres. Although this is indeed closer to the 5.7-acre conveyance stated in the deed, the Linnells cite no authority requiring an erroneous description of acreage to prevail over an erroneous metes-and-bounds description. Rather, the choice between the two is a matter of which appears to best represent the parties' intent, which is a question of fact that the district court resolved in the Jungs' favor. Moreover, this resolution is consistent with the rule requiring the ambiguities in the deed to be construed in favor of the grantee, Russell, from whom the Jungs acquired the parcel. *See, e.g.*, *Int'l Lumber Co. v. Staude*, 144 Minn. 356, 359, 175 N.W. 909, 911 (1919) ("The words of a deed are to be taken as the grantor's, and any ambiguity is to be resolved in favor of the grantee.").

In sum, Johnson's interpretation of the deed based on the second description produces a physically accurate and geometrically plausible parcel by relying on a single reasonable assumption, and is more favorable to the grantee. By contrast, the Linnells' preferred interpretation of the deed based on the first description requires several assumptions and produces a result that does not conform to the laws of mathematics. Supported by clear and comprehensive findings and conclusions, the district court did not clearly err in its determination to adopt the former interpretation and reject the latter.

Affirmed.