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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0149

Ireneusz Ferski, et al.,
Appellants,

vs.

David P. Nelson, et al.,
Respondents.

Filed September 15, 2009
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-08-21115

Clinton McLagan, Clinton McLagan Attorney at Law, P.A., P.O. Box 21347, Eagan, MN 55121 (for appellants)

Jessica B. Rivas, Larkin Hoffman Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431 (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Harten, Judge.[*]

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellants challenge the district court's grant of summary judgment and the award of monetary sanctions against appellants' attorney. Appellants contend that the district court erred in concluding that driveway and utility easements existed over their property and that their arguments were frivolous. Because the relevant documents contain sufficient language to create the easements and because the district court did not abuse its discretion by sanctioning appellants' attorney, we affirm.

FACTS

In 1980, respondents David and Kathryn Nelson purchased two separate parcels of land located at 10020 Maple Avenue South and 2411 Maple Avenue South (2411 Maple) in the City of Bloomington. The lot at 2411 Maple is vacant and does not have direct access to a public street. Contiguous to 2411 Maple are four lots that were owned by John and Shirley Larson.

In 1992, the Larsons sought to develop their property and applied for a Neighborhood Unit Development (NUD). The Larsons proposed to create one common driveway that would provide access to their four lots and another lot that they did not own. The Nelsons agreed not to oppose the NUD if they were given a driveway easement for 2411 Maple. The city subsequently approved the NUD. In late 1992, the Larsons executed two documents that purportedly created driveway and utility easements across the Larsons' four lots to benefit 2411 Maple and another lot. These documents (the easement documents), titled "Declaration of Easement" and "Joint Private Utility

Easement," were later recorded. In approximately 1993, water and sewer lines were installed for the entire NUD, including 2411 Maple.

In April 1994, appellants Ireneusz and Gabriela Ferski purchased 2407 Maple Avenue South, a lot formerly owned by the Larsons that is immediately adjacent to 2411 Maple. In approximately October 2006, the Ferskis and the owners of the other three lots petitioned the city to vacate the easements serving 2411 Maple. The city determined that it lacked authority to vacate the easements because the easements did not benefit the city. The city also concluded that, due to the fact that 2411 Maple was landlocked and not platted, the Nelsons would be required to obtain a variance before any building permits would be issued. The Nelsons subsequently applied for a variance, and the city granted it.

On August 21, 2008, the Ferskis filed a complaint, seeking a declaratory judgment that the easement documents do not contain sufficient language to create easements. The Ferskis also sought an injunction to prevent the Nelsons from entering the Ferskis' property. The parties filed cross-motions for summary judgment, and the Nelsons moved for sanctions on the ground that the Ferskis' claims were frivolous. The district court granted the Nelsons' motion for summary judgment and awarded sanctions against the Ferskis' attorney in the amount of $700. This appeal follows.

D E C I S I O N

I.

When reviewing an appeal from summary judgment, we ask: (1) whether there are any genuine issues of material fact and (2) whether the district court erred in its

application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Where the intention of the parties is entirely ascertainable from an instrument, construction of that instrument is a question of law. *Mollico v. Mollico*, 628 N.W.2d 637, 641 (Minn. App. 2001).

The Ferskis maintain that express "words of grant" are required to create an easement and that neither of the easement documents contains the requisite "words of grant or conveyance" sufficient to create a driveway or utility easement over their land. We disagree.

An easement can be created by express grant, implied grant, or prescription. *Braaten v. Jarvi*, 347 N.W.2d 279, 282 (Minn. App. 1984), *review denied* (Minn. July 27, 1984), *overruled on other grounds by Haugen v. Peterson*, 400 N.W.2d 723, 726 (Minn. 1987). To create an easement, the land subject to the easement must be identified and an intention to create an easement must be expressed. *Miller v. Snedeker*, 257 Minn. 204, 215, 101 N.W.2d 213, 222 (1960); *Braaten*, 347 N.W.2d at 282.

The Ferskis assert that *Miller* and *Braaten* are distinguishable because they involved different issues. While other issues were addressed in *Miller* and *Braaten*, an underlying issue in both cases was whether an easement had been created. *See Miller*, 257 Minn. at 215, 101 N.W.2d at 222; *Braaten*, 347 N.W.2d at 282. Therefore, the rules in those cases govern here. The Ferskis cite a number of other cases and a treatise to support their argument that express "words of grant" are required to create an easement.[1]

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[1] These authorities include: *Long v. Holden*, 112 So. 444 (Ala. 1927); *Davis v. Griffin*, 770 S.W.2d 137 (Ark. 1989); *Penney v. Long*, 197 S.W.2d 470 (Ark. 1946); *McGarrigle*

But none of these authorities reach the issue of whether express "words of grant" are required to create an easement. Regardless, we are bound to follow *Miller* and *Braaten*. *See Lake George Park, L.L.C. v. IBM Mid-Am. Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) ("This court, as an error correcting court, is without authority to change the law."), *review denied* (Minn. June 17, 1998). No specific "words of grant" are needed to create an easement. Accordingly, the Ferskis' arguments regarding the lack of "words of grant" in the easement documents are meritless.

Under *Miller* and *Braaten*, the creation of an easement requires, among other things, the identification of the land subject to the easement and the expression of an intent to create an easement. *Miller*, 257 Minn. at 215, 101 N.W.2d at 222; *Braaten*, 347 N.W.2d at 282. It is undisputed that 2411 Maple is sufficiently identified in the easement documents. We therefore turn to the issue of whether the intention to create the easements is expressed in the easement documents.

We conclude that both of the easement documents unambiguously express the intent of the Larsons to create easements to benefit 2411 Maple. First, the titles of both

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v. Roman Catholic Orphan Asylum of San Francisco, 79 P. 447 (Cal. 1904); *Dennen v. Searle*, 176 A.2d 561 (Conn. 1961); *Adams v. Anderson*, 127 P.3d 111 (Idaho 2005); *Romans v. Nadler*, 217 Minn. 174, 14 N.W.2d 482 (1944); *Minneapolis W. Ry. v. Minneapolis & St. Louis Ry.*, 58 Minn. 128, 59 N.W. 983 (1894); *Patterson v. City of Duluth*, 21 Minn. 493 (1875); *Braaten*, 347 N.W.2d 279; *Lucas v. Smith*, 383 S.W.2d 513 (Mo. 1964); *Jersey City Redev. Agency v. Tug & Barge Urban Renewal Corp.*, 548 A.2d 1167 (N.J. Super. Ct. Law Div. 1987), *as supplemented* (N.J. Super. Ct. Law Div. Jan. 21, 1988); *New Home Bldg. Supply Co. v. Nations*, 131 S.E.2d 425 (N.C. 1963); *McLamb v. Weaver*, 94 S.E.2d 331 (N.C. 1956); *Gray v. Stillman*, 365 P.2d 369 (Okla. 1961); *Smith v. Williams*, 779 S.W.2d 479 (Tex. App. 1989), *rev'd & remanded*, 786 S.W.2d 665 (Tex. 1990); *Harlan v. Vetter*, 732 S.W.2d 390 (Tex. App. 1987); *Lim v. Choi*, 501 S.E.2d 141 (Va. 1998); 2 Joyce Palomar, *Patton and Palomar on Land Titles* § 343 (3d ed. 2003).

of the easement documents contain the word "easement." Second, the language of both documents shows that the Larsons intended to create the easements. The declaration-of-easement document states: "Owner desires to create a mutual easement for driveway purposes for the benefit of the Burdened Properties and the Adjacent Properties and each owner thereof, their heirs, successors and assigns." And the joint-private-utility-easement document states:

> WHEREAS, Larson desires to create a joint utility agreement for sanitary sewer service and for water service for the benefit of the Larson Property and the Nelson Property and each owner thereof, their heirs, successors and assigns, and to specify the responsibility for the maintenance thereof . . . .

Third, both of the easement documents contain statements of the parties' then-present intent to create the easements.[2] The declaration-of-easement document states: "NOW, THEREFORE, the Owner does hereby establish and dedicate for the common use and benefit of said Burdened Properties and Adjacent Properties and each owner thereof, their heirs, successors and assigns, a mutual easement for driveway purposes over and across that portion of the Burdened Properties . . . ." And the joint-private-utility-easement document states:

> NOW, THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein and other good and valuable consideration, it is hereby agreed and established as follows, to-wit:

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[2] The Ferskis contend that evidence outside of the easement documents shows that the Larsons executed these documents to provide a means of creating easements in the future when the newly created parcels in the NUD were sold. But because the easement documents are unambiguous, we are only concerned with the contents of the documents. *See Mollico*, 628 N.W.2d at 640–41.

> 1. That the sanitary sewer and water laterals for the Larson Property and the Nelson Property are located within a private utility easement over, under and across that part of Lots 2, 3, 4, and 5, Block 1, Nine Mile Creek Addition . . . .

Finally, the recording of the easement documents further shows an intention to create easements. Because the easement documents identify the land subject to the easements and clearly show the Larsons' intention to create driveway and utility easements to benefit 2411 Maple, the district court did not err by granting summary judgment to the Nelsons.

II.

The Ferskis contend that the district court abused its discretion by awarding sanctions against their attorney. We review sanctions under an abuse-of-discretion standard. *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000).

Minnesota law provides that parties and their attorneys can be sanctioned for presenting a claim to the court that is not "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Minn. Stat. § 549.211, subds. 2(2), 3 (2008); Minn. R. Civ. P. 11.02(b), 11.03.

The district court determined that sanctioning the Ferskis' counsel in the amount of $700 was warranted in this case. Citing Minn. Stat. § 549.211 (2008), the district court found that the Ferskis'

> claims are blatantly unwarranted by existing law . . . . While a mere failure of a claim does not automatically warrant sanctions, the documents at issue in this case so clearly conveyed easement rights to [the Nelsons] that [the Ferskis'] efforts to invalidate them were so lacking in merit that they can only be described as frivolous. [The Ferskis] argued that the documents did not convey easements to [the Nelsons]; however, the conveyances in those writings are so clear that it is hard to imagine what else could have been included therein or what other documents could have been created to satisfy [the Ferskis] that easements were conveyed.

The district court also found that the Ferskis violated rule 11.02 "because their claims are neither well grounded . . . nor at all warranted by existing law."

The district court's findings are supported by the record. The easement documents explicitly create driveway and utility easements. *See Miller*, 257 Minn. at 215, 101 N.W.2d at 222. We therefore conclude that the district court did not abuse its discretion in sanctioning the Ferskis' attorney.

Because we uphold the award of sanctions based on the Ferskis' claims being unwarranted by existing law, we do not address the Ferskis' argument that their claims were not presented for an improper purpose.

Affirmed.