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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

LA PALOMA PROPERTY OWNERS ASSOCIATION, INC., an Arizona not for profit corporation, Plaintiffs/Appellees, v. CATALINA FOOTHILLS UNIFIED SCHOOL DISTRICT #16, a political Subdivision of the State of Arizona, Defendant/Appellant.	2 CA-CV 2010-0053 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20070499

Honorable Carmine Cornelio, Judge

AFFIRMED

Stubbs & Schubart, P. C.
By G. Lawrence Schubart — Tucson
Attorneys for Plaintiffs/Appellees

DeConcini McDonald Yetwin & Lacy, P.C.
By Lisa Anne Smith — Tucson

and

Snell & Wilmer L.L.P.
By Jeffrey Willis — Tucson
Attorneys for Defendant/Appellant

E C K E R S T R O M, Judge.

¶1 Appellant Catalina Foothills Unified School District (the District) appeals from the trial court's judgment granting declaratory relief in favor of appellee La Paloma Property Owners Association. The court found that the parties agreed in a stipulated judgment that the District would have only pedestrian access between the parcel of land it had condemned in eminent domain and the private road within the subdivision abutting the parcel. The District contends the court erred in so finding. For the following reasons, we affirm the judgment.

Factual and Procedural Background

¶2 On appeal from a declaratory judgment, we view the facts and the reasonable inferences therefrom in the light most favorable to affirming the judgment. *Cornman Tweedy 560, LLC v. City of Casa Grande*, 213 Ariz. 1, ¶ 2, 137 P.3d 309, 310 (App. 2006). In 1994, the District entered into a stipulated judgment to obtain by eminent domain title to Block 24, a parcel of land within the La Paloma subdivision in Pima County. The District obtained the parcel to be used as the site for a new elementary school. Block 24 is on the corner of two public streets, Skyline Drive and Sunrise Drive. The eastern side of the parcel is bordered by a private street, Campo Abierto. La Paloma is the owner of the streets and other common areas of the subdivision.

¶3 After negotiations with the owner of Block 24 and La Paloma, the District agreed to relinquish the use of Campo Abierto except for a negotiated right of pedestrian

access for the schoolchildren living in the subdivision. In accordance with that agreement, the stipulated judgment provided that La Paloma "hereby grants to [the District] a pedestrian access easement from the property which it controls to the Property condemned hereby." The stipulated judgment also condemned the covenants, conditions, and restrictions (CC&Rs) governing the parcel, as long as the property is used "as a school site." Included in the CC&Rs is the right of all La Paloma property owners to access the private roads of the subdivision.

¶4 In February 1994, the attorney for the landowner trust, T. Patrick Griffin, delivered to the attorney for the District a signed copy of the stipulated judgment and a letter that included the following:

> 1. Promptly following entry of the Stipulated Judgment by the court, the parties to the Stipulated Judgment will join in another stipulation which will amend the Stipulated Judgment by changing the word "commercial" in line 1 on page 6 to "residential."
>
> 2. As soon as practical following vesting of title in Catalina Foothills Unified School District, the school district will impose a one foot no-access easement on the eastern boundary of the property so that access from the property to the adjacent residential subdivisions will be restricted to pedestrians at the "access point" referred to in paragraph 5 of the Stipulated Judgment. The form and substance of the one foot no-access easement shall be subject to the approval of Tanis Duncan, as counsel for La Paloma Property Owners Association.

¶5 In accordance with the first portion of the letter, the parties stipulated to amend the stipulated judgment and the trial court signed a nunc pro tunc judgment correcting the original judgment. The District's counsel, Richard Yetwin, stated in a

letter to the District that "[t]he two stipulations which are mentioned in the [Griffin] letter appear to be consistent with our understanding of this transaction" and "we have agreed to impose a one foot no-access easement on the eastern boundary of the property subject to the access point referred to in the Stipulated Judgment."[1] But the District did not comply with the second portion of the Griffin letter, and La Paloma took no action to ensure the District's compliance. La Paloma did, however, remind the District of the agreement in 2000, stating in a letter to the District that "the judgment makes it clear that access to the property is from Skyline Drive, not Campo Abierto."

¶6 In 2006, the District informed La Paloma that it intended to build an early childhood learning center on the site rather than an elementary school and disclosed its intent to use Campo Abierto as an access point for vehicles and pedestrians. In its letter to La Paloma, the District stated, "We understand Campo Abierto is a private street and are hoping that we can come to some agreement that would allow us access to our property from the street." When La Paloma declined to give the District permission to use Campo Abierto, the District responded that it had never agreed to limit vehicular access to the private streets of the subdivision and that "[t]his is borne out by the absence of any restriction in the judgment of the right of access to Campo Abierto."

¶7 Because of this disagreement, and in order to determine the rights of the parties under the stipulated judgment, La Paloma filed a complaint for declaratory relief

[1]Our record contains several other documents reflecting the District agreed to the terms that were set forth in Griffin's letter. But because it does not dispute there was such an agreement on appeal, we need not describe each document supporting the existence of the agreement.

in January 2007. In its answer, the District admitted it had received the Griffin letter setting forth the agreement about recording the no-access easement but denied that the subsequent stipulated judgment incorporated that agreement.

¶8 In July 2008, after the trial court denied its first motion for summary judgment, the District filed a subsequent motion for partial summary judgment "on the issue of whether any claim arising out of any obligation embodied in the February 8, 1994, letter from Patrick Griffin to Richard Yetwin is barred by the statute of limitations." The trial court granted the motion in part, precluding La Paloma from claiming that the Griffin letter itself created "an independent contractual basis upon which the plaintiffs may pursue their claim." But, the court added, "[t]his does not make the letter inadmissible."

¶9 In July 2009, the District filed a third motion for summary judgment, contending that because the Griffin letter could not be relied on by La Paloma as an independent basis for its claim against the District and nothing else precluded the District from using Campo Abierto, it was entitled to judgment as a matter of law. The trial court denied the motion in a lengthy minute entry, finding the stipulated judgment was ambiguous and that therefore, "parol[] evidence will be admissible."[2] After a two-day bench trial, during which the attorneys who had participated in the original negotiations

[2]It appears that after the denial of its motion for summary judgment, the District filed an action in eminent domain to condemn a portion of Campo Abierto. The last document in our record pertaining to that case is La Paloma's petition for review to the Arizona Supreme Court challenging an order of immediate possession issued in favor of the District.

testified, the trial court concluded the stipulated judgment itself precluded vehicular access between Block 24 and Campo Abierto. This appeal followed.

Discussion

¶10 The District argues the trial court erred when it interpreted the stipulated judgment to preclude vehicular access to and from Block 24 using the private roads of the subdivision. "A judgment entered by stipulation is called a consent judgment," *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573, 716 P.2d 28, 30 (1986), and is in the nature of a contract. *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236-37 (1975); *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 212 Ariz. 64, n.12, 127 P.3d 882, 890 n.12 (2006). The interpretation of the stipulated judgment is therefore a legal question we review de novo. *See Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, ¶ 17, 226 P.3d 411, 415 (App. 2010). However, we will uphold the trial court's factual findings if they are supported by reasonable evidence. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 27, 181 P.3d 219, 229 (App. 2008); *Kocher v. Ariz. Dep't of Revenue*, 206 Ariz. 480, ¶ 9, 80 P.3d 287, 289 (App. 2003).

Griffin Letter and Stipulated Judgment

¶11 "In construing stipulations, the primary rule is . . . to ascertain and give effect to the intention of the parties and the stipulation must be construed in light of the circumstances surrounding the parties and in view of the result which they were attempting to accomplish." *Harsh Bldg. Co. v. Bialac*, 22 Ariz. App. 591, 593, 529 P.2d 1185, 1187 (1975); *accord Gear v. City of Phoenix*, 93 Ariz. 260, 265, 379 P.2d 972, 975

(1963). Because the CC&Rs originally attached to Block 24 guaranteed vehicular access to Campo Abierto, La Paloma maintains, and the trial court reasoned, the provision of the stipulated judgment condemning those CC&Rs adequately expressed the parties' undisputed intent to deny the District vehicular access.[3] We agree.

¶12 The District contends that the Griffin letter, which purported to supplement the stipulated judgment and expressly memorialized that the District would have only limited pedestrian access to Campo Abierto, demonstrated that the parties believed the stipulated judgment did not address the issue of vehicular access. In addition, the District contends that the Arizona law of eminent domain required it to acquire the parcel with all rights associated therewith, including any appurtenant easements. From this the District posits that the parties intentionally avoided mention of the access limitation in the stipulated judgment and instead sought to memorialize that agreement exclusively in the Griffin letter. As the District points out, Yetwin and Griffin testified that the no-access easement was purposefully omitted from the stipulated judgment, and Yetwin's testimony suggested this may have been done to create the largest estate possible for the District.

¶13 However, other testimony showed that the parties believed the stipulated judgment adequately memorialized the parties' intent to limit access to Campo Abierto and the pertinent provision in the Griffin letter was merely included to place the public on notice of the access limitation. We defer to the trial court in the event there is conflicting

[3]The trial court also noted that the stipulated judgment included express language granting the District pedestrian access to the road, a provision that would be unnecessary if the judgment did not limit access in any respect.

testimony because it "had the opportunity to assess the credibility, attitude and condition of the parties at trial." *In re Pima County Severance Action No. S-1607*, 147 Ariz. 237, 239, 709 P.2d 871, 873 (1985).

¶14 Moreover, to the extent the language of the stipulated judgment remains ambiguous notwithstanding the evidence presented regarding the intended meaning of the judgment, "a secondary rule of construction provides that ambiguity is to be strictly construed against the drafting party," which is the District in this case.[4] *Harris v. Harris*, 195 Ariz. 559, ¶ 15, 991 P.2d 262, 265 (App. 1999). And, the trial court's interpretation of the terms of the stipulated judgment to mean that the condemnation of CC&Rs and the express grant of a pedestrian easement adequately communicated the parties' intent to deny vehicular access to Campo Abierto is reasonable.

Eminent Domain

¶15 The District also maintains that when it obtained the property by eminent domain it obtained all rights associated with the property, including any appurtenant easements, as a matter of law.[5] To support this contention, the District relies on A.R.S. § 12-1113 and *In re Forsstrom*, 44 Ariz. 472, 495, 38 P.2d 878, 888 (1934), *overruled on other grounds by Mohave County v. Chamberlin*, 78 Ariz. 422, 281 P.2d 128 (1955).

[4]Without citing any authority, the District claims the rule does not apply because other attorneys reviewed it and had the opportunity to make revisions.

[5]We note that the District at best obliquely addressed this argument below, and thus, we could find it waived for our consideration. *See Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, ¶ 18, 169 P.3d 120, 125 (App. 2007). However, in our discretion, we have addressed the issue to the extent necessary to decide this appeal. *See id.*

When interpreting a statute, our primary goal is to ascertain and give effect to the legislature's intent. *In re Estate of Winn*, 214 Ariz. 149, ¶ 8, 150 P.3d 236, 238 (2007). In determining that intent, we "look to the policy behind the statute and the evil which it was designed to remedy." *Calvert v. Farmers Ins. Co. of Ariz.*, 144 Ariz. 291, 294, 697 P.2d 684, 687 (1985). We also rely on "the words, context, subject matter, and effects and consequences of the statute." *Id.*

¶16 Section 12-1113(1) provides that a condemning authority takes title to land in fee simple when condemning land "for public buildings or grounds." In *Forsstrom*, this court interpreted the term "fee simple" in the virtually identical predecessor statute to § 12-1113 to mean that whatever right or interest is taken by the state under such circumstances is taken "in its entirety and as a perpetuity." 44 Ariz. at 495, 38 P.2d at 888. The District relies on the term "fee simple" in § 12-1113 and the language interpreting that term in *Forsstrom* to contend eminent domain law required it to have acquired the largest estate possible when it acquired Block 24 by the stipulated judgment, which, it maintains, necessarily includes any easements appurtenant to Block 24.

¶17 But § 12-1113 was not adopted to guarantee the state more property rights in its exercise of eminent domain than those for which it bargained. Rather, that statute was designed to prevent the state from asserting eminent domain as to only a limited interest in a parcel and thereby depriving the property owner of full compensation for the lost value of the property. *See, e.g., Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 488-89, 851 P.2d 109, 113-14 (App. 1992) (to justly compensate owner for taking right

of way that completely deprived owner of use of property, town took "fee simple" interest, not merely easement, in landowner's property).

¶18 "In condemnation proceedings, the rule that statutory requirements are to be strictly followed is for the 'benefit of the landowner.'" *Coastal Marine Serv. of Texas, Inc. v. City of Port Neches*, 11 S.W.3d 509, 511 (Tex. App. 2000), *quoting City of Bryan v. Moehlman*, 282 S.W.2d 687, 690 (Tex. 1955). In accordance with this principle, when interpreting § 12-1113, this court has stated, "a policy of strict construction protects private property rights from overreaching by the government." *Orsett/Columbia Ltd. P'ship v. Superior Court*, 207 Ariz. 130, ¶ 10, 83 P.3d 608, 611 (App. 2004). Strict construction in this context means that "[t]he language used by the Legislature may be accorded a full meaning that will carry out its manifest purpose and intention in enacting the statute, but the operation of the law will then be confined to cases which plainly fall within its terms as well as its spirit and purpose." *Coastal Marine Serv.*, 11 S.W.3d at 511, *quoting Coastal States Gas Producing Co. v. Pate*, 309 S.W.2d 828, 831 (Tex. 1958). Here, were we to construe the statute as the District would have us do, we would provide the District more than that for which it paid compensation, thereby enforcing the statute in a manner that would be at odds with its purpose.

¶19 Assuming arguendo that "fee simple" as that term is used in § 12-1113(1) would necessarily include all easements appurtenant to a parcel,[6] nothing in § 12-1113(1)

[6]As acknowledged in *Forsstrom*, the term "fee simple" has also been understood as a term describing how an estate in land is passed. 44 Ariz. at 495, 38 P.2d at 888; *see also Black's Law Dictionary* 629 (7th ed. 1999) (defining "fee" as "[a]n inheritable interest in land, constituting maximal legal ownership").

prohibits the state from negotiating with the property owner a partial condemnation of the property. Rather, that provision merely states that a fee simple interest is "subject" to condemnation "for public buildings or grounds." *Id.* We cannot overlook that the condemnation of property "for public buildings or grounds" necessarily involves recharacterizing the intended use of that property and therefore modifying the benefits and servitudes that run with it. Here, for example, the stipulated judgment recharacterized Block 24 from a subdivision parcel, which required access to the remainder of the subdivision, into grounds for a public school, which the parties agreed should not have such access. We are therefore skeptical that the legislature intended to prohibit the parties from extinguishing benefits or servitudes to a parcel as part of a condemnation settlement process. This is especially so here where that flexibility benefits the property owner and conforms to settled condemnation principles that protect the property owner. *See Orsett/Columbia*, 207 Ariz. 130, n.2, 83 P.3d at 610 n.2 (recognizing principle of condemnation law that limits condemnor to taking no more interest in property than is reasonably necessary to serve public purpose desired). Were we to conclude otherwise, we would obstruct the ability of parties to negotiate optimal and mutually beneficial settlements to condemnation proceedings.[7]

[7]At oral argument, the District maintained that § 12-1113(1) only prohibits passing title in less than fee simple, but does not prohibit subsequent agreements as to uses and servitudes. But we find no language in the statute supporting such a nuanced and hyper-technical understanding of legislative intent.

Plat

¶20 The District further contends it gained the right of "use and convenience" of the private roads within La Paloma when it acquired Block 24 subject to the easement appurtenant granted by the dedication of the La Paloma Plat. The relevant portion of the plat reads:

> Common Area "A" (private drives) and Common Area "B" (open space) as shown hereon are reserved for the private use and convenience of all owners of property within this subdivision and are granted to Pima County and all utility companies for the installation and maintenance of utilities (exclusive of cable TV) and sewers.

But, as we have found, the parties' intent that the District have only pedestrian access to the private road was sufficiently expressed by the terms of the stipulated judgment—one entered long after the dedication of the plat. Nor have we found any authority suggesting that parties cannot negotiate away benefits bestowed on a parcel by the original plat.[8] Thus, we are not persuaded that the language in the plat, standing alone, would override the parties' subsequent agreement, as expressed in the stipulated judgment, to bar vehicular access between Block 24 and Campo Abierto.[9]

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[8]The contrary authority relied on by the District is ultimately unpersuasive as it recognizes that instruments purporting to create easements should be interpreted according to the intent of the parties. *See Hilley v. Lawrence*, 972 A.2d 643, 649 (R.I. 2009).

[9]The District also argues that the trial court's refusal to address the implications of the plat led to reversible error. But the District did not ask the trial court to make findings of fact and conclusions of law. Thus, we presume the court found every fact necessary to support its ruling and we must affirm the judgment if any reasonable interpretation of the evidence justifies the decision. *Garden Lakes Cmty. Ass'n, Inc. v. Madigan*, 204 Ariz. 238, ¶ 9, 62 P.3d 983, 985 (App. 2003). And the record supports the

Attorney Fees

¶21 La Paloma requests its attorney fees incurred on appeal pursuant to A.R.S. § 12-341.01(A) and (C). The District correctly acknowledges that attorney fees may be properly awarded in this contract action to the successful party pursuant to § 12-341.01(A). We therefore award La Paloma its reasonable attorney fees pursuant to that subsection, upon its compliance with Rule 21, Ariz. R. Civ. App. P. Accordingly, we need not address La Paloma's contention that it would be entitled to a fee award under § 12-341.01(C), the subsection dealing with bad faith litigation.

Disposition

¶22 The judgment is affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

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conclusion the trial court considered and rejected the argument about the plat, ultimately finding the terms of the stipulated judgment controlling.