STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1721

Isanti Pines Tree Farm, LLC,
Appellant,

vs.

Arthur J. Swanson,
Respondent,

Julie A. Swanson,
Respondent.

Filed April 24, 2017
Reversed and remanded
Larkin, Judge

Isanti County District Court
File No. 30-CV-16-209

Steven E. Uhr, Law Office of Steven E. Uhr, PLLC, Eden Prairie, Minnesota (for appellant)

Arthur J. Swanson, Julie A. Swanson, Princeton, Minnesota (pro se respondents)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant servient-estate owner challenges the district court's grant of summary judgment to respondents, conveyors of the servient-estate to appellant's predecessor in

interest, arguing that the district erred in determining that its quiet-enjoyment claim was time-barred. We reverse and remand.

FACTS

Prior to 1997, John Vande Waa and Diane Vande Waa owned two adjacent parcels of land in Isanti County (Eastern and Western Parcels). In 1997, the Vande Waas sold the Eastern Parcel to respondents Arthur Swanson and Julie Swanson pursuant to a contract for deed. The contract for deed stated that the Vande Waas and their "heirs and assigns" reserved "a non-exclusive easement for ingress, egress and utility purposes over, under and across the North 66 feet" of the Eastern Parcel. On October 23, 1998, the Vande Waas delivered a warranty deed to the Swansons. The warranty deed included the description of the easement.

On October 28, the Swansons conveyed a portion of the Eastern Parcel that was subject to the easement to LSM Construction Inc. (LSM) by warranty deed. The deed did not mention the Vande Waas' easement. The property was later conveyed to appellant Isanti Pines Tree Farm LLC, LSM's successor in interest.

In 2012, the Vande Waas sold the Western Parcel to Charles Smida and Judith Smida pursuant to a contract for deed. The contract for deed included a description of the easement over the Eastern Parcel.

In December 2013, the Smidas sued Isanti Pines, seeking (1) a declaratory judgment that they were the holders and owner of a right in an easement over and across Isanti Pines' property; (2) an order requiring Isanti Pines to remove equipment, refuse, a gate, and other materials from the easement which impeded their access to and use of the easement; and

(3) to hold Isanti Pines liable for trespass based on its actions in impeding the Smidas' use and enjoyment of the easement.

In February and March of 2014, Isanti Pines brought third-party claims against the Swansons, alleging that they misrepresented that there was no easement on the Eastern Parcel and that they breached the covenant of seisin by not defending Isanti Pines against third-party easement claims. Isanti Pines also sought "to quiet title against any and all claims of the [Smidas] and the Vande Waas" and brought a trespass counterclaim against the Smidas.

The parties moved for summary judgment. The district court granted the Smidas' motion for summary judgment on their claims. The district court also granted the Smidas', Vande Waas', and Swansons' motions for summary judgment on Isanti Pines' claims. In rejecting Isanti Pines' breach-of-warranty claim against the Swansons, the district court found that the alleged breach occurred on October 23, 1998, the date the parties signed the warranty deed, and that the claim was therefore barred by the statute of limitations. Isanti Pines appealed, and this court affirmed. *Smida v. Isanti Pines Tree Farm, LLC* (*Isanti Pines I*), No. A15-0437, 2015 WL 7693536, at *1 (Minn. App. Nov. 30, 2015), *review denied* (Minn. Feb. 24, 2016).

In March 2016, Isanti Pines sued the Swansons, alleging that they had breached the covenant of quiet enjoyment. The district court granted summary judgment for the Swansons. The district court noted that it had granted summary judgment to the Swansons on Isanti Pines' breach-of-warranty claim in *Isanti Pines I*, because the claim was time-barred. The district court concluded that Isanti Pines' quiet-enjoyment claim was also

time-barred, reasoning that "the relationship between the covenant of warranty and the covenant of quiet enjoyment are almost identical so that if there is a breach of one of the covenants there is also a breach of the other covenant." Isanti Pines appeals.

D E C I S I O N

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). There is no genuine issue of material fact for trial when "the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Where reasonable minds might draw different conclusions from the evidence presented, summary judgment is inappropriate. *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 665 (Minn. 2015).

This court reviews a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). In doing so, this court "view[s] the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.*

I.

A claim for breach of contract must be commenced within six years from the time it accrues. Minn. Stat. § 541.05, subd. 1(1) (2016). A cause of action for breach of contract accrues at the time the contract is breached. *Levin v. C.O.M.B. Co.*, 441 N.W.2d 801, 803 (Minn. 1989); *see also Bachertz v. Hayes-Lucas Lumber Co.*, 201 Minn. 171, 176, 275 N.W.2d 694, 697 (1937) ("[A] cause of action for breach of contract accrues immediately on a breach, though actual damages resulting therefrom do not occur until afterwards." (quotation omitted)). The construction and applicability of statutes of limitations are questions of law that this court reviews de novo. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998).

Isanti Pines contends that the district court erred in concluding that the timeliness of its quiet-enjoyment claim was determined in *Isanti Pines I*. Isanti Pines notes that its breach of warranty claim in *Isanti Pines I* was based on the covenant of seisin, and not on the covenant of quiet enjoyment. Isanti Pines argues that its cause of action for breach of the covenant of quiet enjoyment did not accrue until it was evicted from possession of the easement by the district court's 2014 order in *Isanti Pines I*, which required Isanti Pines to allow the Smidas to use the easement.

The record supports Isanti Pines' argument. In *Isanti Pines I*, Isanti Pines alleged that "[the] Swansons granted a Warranty Deed to [their] predecessor in privity LSM Construction, Inc., this Warranty Deed carried a covenant of seisin guaranteeing the title the Swansons conveyed was free of encumbrances. No exceptions were identified either in the purchase agreement or in the Deed itself." Isanti Pines further alleged that "[t]hird

parties have claimed a right to the property and the Swansons have not defended these adverse claims."

In *Isanti Pines I*, the district court found that the alleged breach consisted of "the Swansons failing to convey the Isanti Pines Property to LSM free of any encumbrances via the Warranty Deed signed on October 23, 1998." The district court reasoned that because the breach-of-warranty claim alleged in *Isanti Pines I* accrued when the warranty deed was signed, Isanti Pines' March 2016 warranty-deed claim was time-barred. This court affirmed, holding that "[t]he covenants in the warranty deed were broken as soon as the Swansons delivered the deed to LSM" and that "[b]ecause an easement is a permanent encumbrance on the property that cannot be removed absent the agreement of a third party, there were immediate damages in the amount that the easement diminished the value of the land." *Isanti Pines I*, 2015 WL 7693536, at *2. In doing so, this court stated, in a footnote, that Minn. Stat. § 507.07 (2014) "provides that every warranty deed contains implied covenants of seisin, right to convey, freedom from encumbrances, quiet enjoyment, and duty to defend." *Id.* at *1 n.1.

The covenant of seisin is breached if the covenantor does not have possession, right of possession, and complete legal title over the property conveyed by warranty deed. *Allen v. Allen*, 48 Minn. 462, 464, 51 N.W. 473, 473 (1892). The covenant of quiet enjoyment is breached if "an outstanding superior title is asserted in hostility to the title of the covenantee, and the covenantee, in good faith, yields to such paramount title." *Efta v. Swanson*, 115 Minn. 373, 376, 132 N.W. 335, 336 (1911).

The covenants of seisin and quiet enjoyment "are broken at different times, and it is obvious that what may be a discharge of one is not necessarily a discharge of another and distinct covenant." *Ogden v. Ball*, 40 Minn. 94, 99, 41 N.W. 453, 455 (1889). A breach of the covenant of seisin occurs at the time of conveyance. *Allen*, 48 Minn. at 464, 51 N.W. at 473. In contrast, the covenant of quiet enjoyment is "prospective in [its] operation, and [is] not broken until . . . eviction, actual or constructive." *Ogden*, 40 Minn. at 99, 41 N.W. at 455. This is because "[a] covenant for quiet enjoyment goes only to the possession, and not to the title." *Moore v. Frankenfield*, 25 Minn. 540, 541 (1879). Thus, "there must be an actual lawful eviction from the premises, or some disturbance of that possession, to constitute a breach of the covenant." *Id.* "[T]he mere fact of the existence of an outstanding superior title in a third person is not enough, and will not constitute a constructive eviction, or a disturbance of the possession of the covenantee. There must also be a hostile assertion of such title by the holder." *Ogden*, 40 Minn. at 96, 41 N.W. at 454; *cf. Allis v. Nininger*, 25 Minn. 525, 529 (1879) (noting that the covenant of warranty is breached when title is "actually asserted against the covenantee, and the premises claimed under it, and the covenantee is obliged to yield and does yield his claim to such superior title").

Isanti Pines argues that "the evidence is not in dispute that [it] was never evicted from the full and exclusive use of the easement until the order of the district court in *Isanti Pines I* requiring it to allow the Smidas to use the easement." Isanti Pines points out that the Swansons "have never claimed there was an eviction and have never claimed that Isanti Pines has yielded to the paramount title of [the] Vande Waas, who conveyed the property

to the Smidas." Isanti Pines argues that because it "had and exercised the exclusive use of the easement" until the 2014 district court order, its quiet-enjoyment claim did not accrue until the district court in *Isanti Pines I* issued that order. We agree.

The mere existence of third-party rights in a property does not, in itself, constitute an eviction for the purposes of a quiet-enjoyment claim. *Ogden*, 40 Minn. at 96, 41 N.W. at 454. Indeed, the supreme court has held that a quiet-enjoyment claim does not accrue until a third party asserts its property rights and the covenantee, in good faith, yields to those rights. *See Efta*, 115 Minn. at 376, 132 N.W. at 336 (discussing requirements for a quiet-enjoyment claim involving a third party with superior title to real property). The record does not suggest, and the Swansons do not argue, that Isanti Pines yielded to Swansons' assertion of its right to the easement prior to the 2014 district court order in *Isanti Pines I*.

Because the only reasonable conclusion drawn from the record is that Isanti Pines was not evicted, and its quiet-enjoyment claim therefore did not accrue, until 2014, Isanti Pines' 2016 quiet-enjoyment action was brought within the six-year statute of limitations under Minn. Stat. § 541.05, subd. 1(1).

II.

The Swansons contend that this court should affirm the district court's grant of summary judgment in their favor "because Isanti Pines' claims alleged against [them] are barred by the doctrine of res judicata and collateral estoppel as a matter of law."

"Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under

new legal theories." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). Res judicata bars a subsequent claim when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* at 840.

"Collateral estoppel precludes the relitigation of issues which are both identical to those issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment." *Ellis v. Minneapolis Comm'n on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982). The application of collateral estoppel is appropriate where:

> (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Id. (quotation omitted).

Fundamental to both the doctrines of res judicata and collateral estoppel "is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies." *Hauschildt*, 686 N.W.2d at 837 (quotations omitted).

The Swansons base their res judicata and collateral estoppel arguments on the assertion that this court held that *all* of the covenants in the warranty deed were breached when the Swansons delivered the deed to LSM. As noted above, this court stated that "[t]he covenants in the warranty deed were broken as soon as the Swansons delivered the deed to LSM" and listed the covenant of quiet enjoyment as one of the implied covenants

contained in every warranty deed. *Isanti Pines I*, 2015 WL 7693536, at *1 n.1, *2. But this court did so in the context of discussing the covenants of seisin and the right to convey, which are generally breached at the time of conveyance, and not the covenant of quiet enjoyment, which is breached upon eviction. *Id.* at *2; *Ogden*, 40 Minn. at 99, 51 N.W. at 455.

"Considerations made in a judicial opinion that are unnecessary to the decision in the case are dicta." *State v. Hess*, 684 N.W.2d 414, 421 n.6 (Minn. 2004). Any statement this court made regarding the covenant of quiet enjoyment is nonbinding dicta because a quietp-enjoyment claim was not raised in *Isanti Pines I* and a decision regarding the covenant of quiet enjoyment was thus not necessary. In sum, the Swansons' possible breach of the covenant of quiet enjoyment was not distinctly put in issue or directly determined by either the district court or this court in *Isanti Pines I*. Thus, Isanti Pines' quiet-enjoyment claim is not barred under the doctrines of res judicata and collateral estoppel.

III.

In addition to asking this court to reverse the district court's order granting the Swansons' motion for summary judgment, Isanti Pines asks us to "enter an Order granting [its] Cross Motion for Summary Judgment." We decline to do so because "[a] reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In rejecting Isanti Pines' motion for summary judgment, the district court did not analyze Isanti Pines' quiet-enjoyment claim on the merits. Instead, it

concluded that the claim was time-barred. A determination regarding the merits of the claim must be made in the first instance in district court. Moreover, Isanti Pines does not offer legal argument to support its assertion that it is entitled to summary judgment on its quiet-enjoyment claim. Issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

We remand for reconsideration of Isanti Pines' motion for summary judgment in light of our determination that Isanti Pines' quiet-enjoyment claim is not barred by the statute of limitations or the doctrines of res judicata and collateral estoppel.

Reversed and remanded.