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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-363**

Christine M. Haissig, et al.,
Appellants,

vs.

Barbara A. F. Odom, et al.,
Respondents,
James B Green, et al.,
Respondents,
David A. Beddor, et al.,
Respondents.

**Filed December 7, 2010
Affirmed
Stauber, Judge**

Carver County District Court
File No. 10CV08904

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Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal in this lakeshore-easement dispute, appellants (1) challenge the extent, if any, to which the easement conveyed the riparian rights at issue to respondents; (2) argue that the district court erred in concluding that the easement documents are ambiguous with respect to swimming, boatlifts, and the length of boats that can be kept at the common area; and (3) argue that after consideration of extrinsic evidence, the district court's conclusions regarding the scope of the easement are clearly erroneous. We affirm.

FACTS

This appeal arises from a dispute regarding the scope of an easement encumbering property owned by appellants Christine Haissig and Wesley Hawkinson. Appellants' property is part of a seven-lot subdivision known as Christmas Acres. The affected lots in the subdivision include Lots 1, 2, 3, 5, 6, and 7. Appellants own Lot 3; respondents John and Barbara Odom own Lot 1; respondents James and Christine Green own Lot 2; respondent David Beddor owns Lot 7; and respondents Marilyn Beddor and the Estate of Frank Beddor, Jr., own Lots 5 and 6.¹

In 1979, Marilyn Beddor and her late husband Frank Beddor, Jr., purchased the parcel of land that is now Christmas Acres. After purchasing the parcel, the Beddors subdivided the parcel into seven lots. Lots 3, 4, and 5 have lakeshore frontage on

¹ Each respondent will be individually referred to by name, but will collectively be referred to as "respondents."

Christmas Lake; the other four lots do not. However, because Frank Beddor “recognized that Christmas Lake was the main amenity,” the Beddors decided that the four non-lakeshore properties would be provided access to Christmas Lake through an access easement located on Lot 3.

In 1980, a Declaration of Covenants, Conditions and Restrictions (the declaration) was filed in the office of the Carver County Recorder Registrar of Titles. The declaration provided the non-lakeshore properties with a 15-foot-wide access easement to Christmas Lake along the westerly boundary of Lot 3. The declaration, which refers to the easement as the “common area,” also provided that “[n]o part of the Common Area shall be used as a swimming beach.” The declaration further required the easement holders to maintain the common area and be responsible for improvements to the common area.

Before the Beddors conveyed any of the lots, the declaration was amended in 1985 to further define the easement. The amended declaration included a definition of the “Common Area,” which stated that any dock constructed from easement shoreline would be considered part of the common area. The amended declaration also provided limitations on the size of the dock that could be constructed from the common area and included instructions pertaining to the maintenance of the common area. At some point thereafter, a dock was actually constructed on the shoreline of the common area.

After houses were constructed on Lots 2 and 3, improvements were made to the common area. Treated wood-timber steps and a granite rock-chips path were constructed to provide a walkway down the hillside to the lake. But while the improvements were being made, the Fosters, who originally purchased Lot 3, felt the improvements were

“unnecessary and simply allowed other property owners to use their driveway leading to the lake front common dock.” As a result, the owners of the non-lakeshore properties accessed the lake using the Fosters’ paved driveway.

Over time, the easement access to the lake became overgrown with vegetation due to lack of use. Also, the City of Shorewood created a holding pond with a drainage ditch that runs along the easement to the lake to address runoff from increased development and resulting erosion. In June 2004, appellants purchased Lot 3. Shortly thereafter, a dispute arose between appellants and the owners of the non-lakeshore lots regarding the scope of the easement on Lot 3. The dispute concerned the easement holders’ rights under the easement to (1) swim from the dock; (2) keep boats in excess of 20 feet at the common dock; and (3) use boatlifts to moor their boats. In May 2006, Haissig informed Barbara Odom that the use of appellants’ “blacktop driveway was not permissible under the Easement.”

Because respondents were no longer permitted to use the blacktop driveway located on appellants’ lot to access the lake, respondents began discussing plans to make the lake more accessible through the easement. In May 2007, appellants met with respondents and their architect concerning respondents’ plan to improve the easement. The plan required the removal of several mature trees, construction of a three-and-one-half-to-four-foot wide path comprised of boardwalk and rock, and construction of bridges over the drainage ditch. Appellants objected to the plans to improve the easement, and when respondents notified appellants of their intent to proceed with improvements, appellants initiated this action against respondents seeking a declaration of the parties’

rights pursuant to the Declaration of Covenants, Conditions, and Restrictions, as amended in 1985. Appellants also moved for injunctive relief seeking (1) to limit respondents' use of the easement to the strict language of the easement and (2) to prevent respondents from making any improvements to the easement pending trial.

The district court denied appellants' motion for injunctive relief. Thereafter, appellants moved in limine to preclude testimony or evidence beyond the four corners of the easement document. Appellants claimed that extrinsic evidence was unnecessary because the easement language clearly defines the parties' rights and limitations. Respondents opposed the motion, arguing that the easement contained both patent and latent ambiguities which required the district court to consider extrinsic evidence of: (1) the easement drafters' intent; (2) the parties' historical use of the easement; (3) local custom and usage; and (4) the nature of the easement property.

The district court ruled on appellants' motion in limine before trial began on August 24, 2009. By this time, respondents had abandoned their original plans to improve the easement. Instead, respondents proposed a five-and-one-half foot wide asphalt pathway that would allow access to the lake by foot or on lawn tractors, four-wheelers, or golf carts. Respondents claimed that a wider and paved pathway was necessary to (1) allow some form of motorized vehicle access to provide access for adults accompanied by small children, persons that were infirm or injured, or by the elderly; (2) allow some form of motor vehicle access to allow the delivery or retrieval of boating equipment, gas, personal belongings, food, and drink; (3) permit quick response to an

emergency; (4) provide increased safety; (5) allow ease of maintenance; and (6) prevent significant erosion.

The district court held that the language of the easement and amendment contains either patent or latent ambiguities concerning (1) “[w]hether swimming is allowed from the dock”; (2) “[w]hether the easement owners may utilize boatlifts for their boats”; and (3) “[w]hether the easement holders may access the lake and perform maintenance on the easement corridor using small motorized vehicles and may pave a path approximately [five] feet wide in order to support that traffic.” The court concluded that it was required to go beyond the four corners of the document to take testimony and receive evidence of all of the circumstances surrounding the easement.

At trial, Marilyn Beddor testified that when she and her husband drafted the declaration, they intended to prohibit swimming from the beach area, but allow the easement holders to swim off the dock. In addition, Frank Beddor Jr., who died prior to trial, testified by affidavit that the “intent has always been that the dock be used as any other lake dock would be used,” and that “[w]hile it was felt users could enter the water from the dock, the use of the shoreland for swimming was restricted.” Frank Beddor further testified that “[t]he Calhoons used the dock since 1986, and the Greens since July 1995, for swimming and sunning from the dock. David Beddor has had use of the dock since 1989, and the owners before the Odoms also used the dock.” Finally, Frank Beddor testified that the dock and boatlifts have been stored on the easement shore since 1995.

James Green testified that in 1995, he and his wife began using a boatlift to moor their boat next to the dock. According to James Green, he used the boatlift and stored it

and the dock on the easement property from 1995 through the summer of 2007 without objection. James Green also testified that during this time period, it was common for people to use the dock for swimming.

On October 8, 2009, the district court issued its order concluding that (1) swimming is allowed from the dock, but not from the beach; (2) the easement holders may keep their boats on boatlifts; (3) the easement holders' boats were not limited in size by the terms of the easement; and (4) the easement holders may pave a five-foot-wide path along the 730-foot easement to travel to the lake and to maintain the corridor using golf-cart like vehicles. Appellants moved for a new trial, requesting that the district court revisit its ruling on the ambiguity of the declarations and determine that the grant was not ambiguous as a matter of law. The district court denied the motion. This appeal followed.

D E C I S I O N

Ordinarily, an appellate court reviewing a district court's denial of a motion for a new trial asks only whether the district court abused its discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). "Where the [district] court's factual findings are reasonably supported by the evidence, they are not clearly erroneous and must be affirmed." *Tourville v. Kowarsch*, 365 N.W.2d 298, 299 (Minn. App. 1985). But a district court may grant a new trial on the ground that the court made an error of law at trial. *See* Minn. R. Civ. P. 59.01(f). On issues of law, the district court's conclusions do not bind an appellate court, and the appellate court need not give

deference to the district court's decision. *A.J. Chromy Constr. Co. v. Commercial Mech. Servs., Inc.*, 260 N.W.2d 579, 582 (Minn. 1977).

I.

Riparian rights are the rights to reasonably use the surface of waters abutting a parcel of real property. *Johnson v. Seifert*, 257 Minn. 159, 168–69, 100 N.W.2d 689, 696-97 (1960). A riparian right-holder does not own the water; rather, a person who owns a lakeshore or lake bed has the riparian right to use and enjoy the water. *Pratt v. State Dep't of Natural Res.*, 309 N.W.2d 767, 772 (Minn. 1981). Riparian rights include the right to build and maintain docks and landings that extend into the water from the property owner's land. *State by Head v. Slotness*, 289 Minn. 485, 487, 185 N.W.2d 530, 532–33 (1971); *Farnes v. Lane*, 281 Minn. 222, 224, 161 N.W.2d 297, 299 (1968).

The parties dispute the extent, if any, to which the easement conveyed the riparian rights at issue to respondents. But the supreme court has established that “[a] private easement appurtenant affording access to a lake over land adjacent to the water does not make the grantee of the easement a riparian owner entitled to exercise riparian rights.” *Farnes*, 281 Minn. at 224, 161 N.W.2d at 299. Here, therefore, the riparian rights remained vested with appellants unless the easement-creating deeds conveyed those rights. Consequently, we must review the specific language of the declaration and amendment to determine the scope of the easement.

II.

When an easement is created by an express grant, its terms 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). When intent is expressed in unambiguous terms, courts give effect to the plain and ordinary meaning of the terms. *Id.* If, however, an agreement is susceptible to more than one reasonable interpretation, it is ambiguous and extrinsic evidence may be considered to interpret its meaning. *City of Virginia v. Northland Office Props. Ltd. P’ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). Whether an ambiguity exists is a question of law, reviewed de novo. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982); *see also Scherger v. N. Natural Gas Co.*, 575 N.W.2d 578, 580-81 (Minn. 1998) (reviewing de novo whether easement agreement is ambiguous).

Appellants argue that the district court erred in concluding that the declaration and subsequent amendment are ambiguous with respect to whether (1) swimming is allowed from the dock; (2) the easement holders may use boatlifts; and (3) the easement holders can keep boats longer than 20 feet at the dock. Thus, appellants argue that the district court erred by considering extrinsic evidence when it interpreted the scope of the easement.

A. Swimming

The declaration provides that “[n]o part of the Common Area shall be used as a swimming beach.” The amended declaration then defines the “Common Area” as

[A] 15-foot wide lake access easement over Lot 3, along and adjacent to the southwesterly and northwesterly lines of said Lot 3, and any dock which is constructed therefrom, which is for the common use and enjoyment of the Owners of Lots 1, 2, 6 and 7, Block 1, of said Christmas Acres.

Appellants argue that based upon the plain language of the declaration and amendment, swimming is prohibited from both the dock and the beach area. We disagree. As respondents point out, the declaration does not specifically prohibit “swimming” from the common area; rather the declaration prohibits the common area from being used as a “swimming beach.” The term “swimming beach” is not defined, which begs the question: If the common area cannot be used as a “swimming beach,” what exactly constitutes a “swimming beach?” The term indicates that swimming is prohibited only from the beach area, and not from the dock. Or perhaps “swimming” is prohibited from the common area, but wading in the water is not. Because reasonable minds can reach a different conclusion as to the definition of “swimming beach,” the term is ambiguous. Moreover, if the Beddors wanted to completely prohibit swimming from the entire easement area, including the dock, the document could have been drafted to state that “no part of the common area shall be used for swimming.” Therefore, because the declaration and amendment are ambiguous with respect to swimming, the district court did not err in considering extrinsic evidence on this issue.

B. Use of boatlifts

Appellants argue that based on section 4(e) of the amended declaration, the easement documents are not ambiguous as to the use of boatlifts. This section states that “[o]ne common dock, adequate in size for the docking of four 20-foot long boats, may be

constructed from said Common Area into Christmas Lake; and the owners of Lots 1, 2, 6 and 7 of Block 1, shall utilize said common dock.” Appellants argue that because section 4(e) specifically references the construction of one dock and the docking of boats at that dock, and because no part of the declaration or amendment mentions boatlifts as a means of docking boats, that the easement documents unambiguously do not allow the use of boatlifts on the common area.

To support their claim, appellants cite *Miner*, an unpublished opinion from this court. In that case, the issue was whether the easement holders had a right under the easement to use boatlifts. *Miner v. Hastings*, No. A04-1464, 2005 WL 1154183, at *1 (Minn. App. May 17, 2005). In holding that the district court erred by finding the easement ambiguous with respect to the use of boatlifts, this court stated:

Because the easement expressly enumerates constructing and maintaining one dock as the means for mooring boats, it impliedly excludes all other means for mooring boats. Therefore, it is immaterial whether boatlifts are a means for mooring boats because respondents only have the right to construct one dock for mooring boats, and a boatlift is not a dock.

Id. at 3.

Miner is not controlling here. First, it is an unpublished opinion with no precedential value. *See* Minn. Stat. § 480A.08, subd. 3(c) (2008) (stating that “[u]npublished opinions of the Court of Appeals are not precedential”). Second, *Miner* is distinguishable because in that case, the easement was very specific that one dock should be constructed for the purpose of mooring boats, and the easement did not indicate that any other means for mooring boats was permissible. In contrast, section 4(c) of the

declaration provides that respondents “shall be allowed to keep no more than one licensed watercraft at the shoreline of, or at a dock constructed into Christmas Lake from, said Common Area.” A review of the easement documents reveals that the words “keep” and “shoreline” are not defined. The easement documents’ lack of a clear definition of these terms creates an ambiguity because “keeping” a boat at the “shoreline” could indicate any number of ways a boat could be kept at the common area; it could be tied to a dock, it could be pulled up on shore, it could be anchored a short distance from the low water mark if it was a sailboat, or it could be kept on a boatlift.

Moreover, despite appellants’ arguments to the contrary, the declaration does not specify that boats kept in the common area must be kept at the dock. Rather, the declaration provides that watercraft may be kept “at the shoreline of, *or* at a dock.” (Emphasis added.) Although appellants quote section 4(e) of the amendment to support their claim that respondents “shall utilize said common dock” to dock the boats, appellants ignore the context of section 4(e). *See Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997) (stating that the determination of whether a contract is ambiguous “depends, not upon words or phrases read in isolation, but rather upon the meaning assigned to the words or phrases in accordance with the apparent purpose of the contract as a whole”). A review of the easement documents reveals that section 4(c) of the declaration grants respondents the right to keep their watercraft in the common area, and section 4(e) of the declaration and the subsequent amendment simply provides a limitation on the size of the dock that may be constructed from this area. The part of the section stating that respondents “shall utilize said common

dock” does not prohibit the keeping of boats in another fashion in the common area because those directions are governed by section 4(c). Therefore, because section 4(e) of the declaration is ambiguous with respect to the use of boatlifts, the district court did not err by considering extrinsic evidence on the issue.

C. Limitations on the length of boats

Appellants argue that the easement documents are not ambiguous with respect to the length of boats because section 4(e) of the amended declaration specifically limits the size of the boats that can be moored at the common dock to 20 feet in length. But appellants’ argument ignores the plain language of section 4(e) of the amended declaration. This section states that “[o]ne common dock, adequate in size for the docking of four 20-foot long boats, may be constructed from said Common Area.” Nowhere in the plain language of section 4(e) does it limit the size of the boat that can be moored at the common dock. Instead, the section provides instructions as to the size of the dock that can be constructed from the common area; “a dock adequate in size for the docking of four 20-foot long boats.” Thus, the easement documents are unambiguous to the extent that they do not limit the length of the boats that can be moored at the common dock. At the very most, the documents are ambiguous on the issue, and the consideration of extrinsic evidence was appropriate.

III.

Appellants concede that if the easement documents are ambiguous, extrinsic evidence may be considered to interpret the scope of the easement. But appellants argue that because the extrinsic evidence on the issues was limited to “evidence regarding the

circumstances surrounding the grant” of the easement, the district court erred when it considered the past use of the easement. Appellants further argue that the district court’s interpretation of the scope of the easement is clearly erroneous because the court’s interpretations were based on improper extrinsic evidence and not supported by the record.

A. Scope of extrinsic evidence

It is well settled that when an agreement is ambiguous, extrinsic evidence may be considered to interpret its meaning. *City of Virginia*, 465 N.W.2d at 427. In such cases, the construction of a contract becomes a question of fact unless the evidence is conclusive. *Donnay v. Boulware*, 275 Minn. 37, 44, 144 N.W.2d 711, 716 (1966).

Appellants argue that the extrinsic evidence the district court was allowed to consider was limited to the evidence regarding the circumstances surrounding the grant of the easement. Thus, appellants argue that the district court erred by considering the parties’ conduct after the easement was granted. We disagree. In *Cut Price Super Markets v. Kingpin Foods, Inc.*, the supreme court stated that “where parties to a contract have given it a practical construction by their conduct, as by acts in performance thereof, such construction may be considered by the court in determining its meaning and in ascertaining the mutual intent of the parties.” 256 Minn. 339, 354, 98 N.W.2d 257, 268 (1959). Therefore, the district court did not err in considering past conduct when interpreting the scope of the easement.

B. Scope of the easement

Appellants also challenge the district court's interpretations of the scope of the easement with respect to (1) swimming from the dock; (2) boatlifts; (3) the length of the boats that may be kept in the common area; and (4) the extent to which improvements may be made to the common area.

1. Swimming

Appellants argue that the record does not support the district court's determination that the easement permits swimming from the dock. We disagree. Marilyn Beddor testified that when she and her husband drafted the easement, they intended to allow the easement holders to swim from the dock. Moreover, Frank Beddor's affidavit testimony stated that the "intent has always been that the dock be used as any other lake dock would be used" and that "users could enter the water from the dock." Frank Beddor further testified that "[t]he Calhoons used the dock since 1986, and the Greens since 1995, for swimming and sunning from the dock." Finally, James Green testified that since he purchased Lot 2, it was common for people to use the dock to go swimming. Therefore, the district court's interpretation of the easement with respect to swimming from the dock is supported by the record.

2. Boatlifts

Appellants also contend that the record does not support the district court's determination that the easement permits the use of boatlifts in the common area. But both Marilyn and Frank Beddor testified that it was their intent that the easement holders enjoy all of the benefits and "amenities" enjoyed by lakeshore owners. The record

reflects that these “amenities” now include boatlifts, which are the rule, rather than the exception, on Christmas Lake. Moreover, the record reflects that the Greens have used a boatlift since 1995. In fact, the Greens continued to use the boatlift for about three years after appellants purchased Lot 3. It was only after appellants objected to the use of the boatlift in 2007 that the Greens stopped using it. Thus, the record supports the district court’s determination that boatlifts are permissible under the easement documents.

3. Length of boats

Appellants further argue that the record does not support the district court’s determination that the easement documents do not limit the length of the boats that may be kept at the common dock to 20 feet. But as addressed above, the plain language of the declaration and subsequent amendment does not limit the length of the boats to 20 feet. Thus, extrinsic evidence on the issue is not necessary to support the district court’s interpretation of the easement. Moreover, even if extrinsic evidence is necessary to decide the issue, Frank and Marilyn Beddor’s testimony that it was their intent that the easement holders enjoy all of the benefits enjoyed by other lakeshore owners supports the district court’s determination with respect to the length of the boats that can be kept at the common dock.

4. Extent of improvements to common area

The original declaration provides that the “Owners entitled to use said Common Area shall maintain the same and any improvements thereon at their sole cost and expense.” The amended declaration added that:

The Common Area Easement for the use and benefit of Lots 1, 2, 6 and 7, Block 1, shall be a non-exclusive easement, for use by the Owners of said Lots for access to Christmas Lake, in accordance with the provisions of this Section.

....

The Owner of Lot 6, Block 1, shall be in charge of and oversee the annual installation and removal of the dock hereinbefore referred to and the maintenance of the Common Area, and, in the event the Owners entitled to use the same shall fail to install, remove and maintain the dock or Common Area in a reasonable manner, the Owner of Lot 3, or any individual Owner entitled to use the same, may expend such sums as may be reasonably necessary to provide the minimum maintenance of said Common Area and dock.

Based on the language of the amended declaration, the non-lakeshore owners were entitled to maintain and improve the easement, as well as benefit from the use of the easement. Appellants concede that the easement is ambiguous with respect to the extent to which improvements may be made to the common area, and that extrinsic evidence is necessary to interpret the easements documents on this issue. But appellants argue that, upon consideration of extrinsic evidence, the “district court erred in determining that the original and Amended Declarations provide respondents with the right to pave a five-foot-wide path along the length of the Easement for use by motorized vehicles that would be parked at the base of the Easement along the Lake’s edge.”

We disagree. As stated above, both Frank and Marilyn Beddor testified that they intended that the easement holders enjoy all of the benefits and amenities enjoyed by other lakeshore owners. The record reflects that these benefits and amenities pertaining to other Christmas Lake lakeshore owners included paved pathways down the steep

slopes to the lake. The record also reflects that the benefits include the ability to provide adequate access to the lake for emergency situations, as well as provide adequate access to the lake for those who are carrying significant boat equipment, boat fuel, personal belongings, food, and drink. The record further reflects that the benefits and amenities would include the ability to provide regular access to the lake, including adequate lake access for small children, the elderly, the injured, or the infirm. The proposed improvements would provide such benefits to the easement holders, without expanding the scope of the easement. Therefore, the record supports the district court's determinations with respect to the proposed improvements to the common area.

Affirmed.