STATE OF MINNESOTA
IN COURT OF APPEALS
A10-577

DLM, LLC,
Respondent,

vs.

Jon A. Saetre,
Appellant.

Filed December 14, 2010
Affirmed
Minge, Judge

Otter Tail County District Court
File No. 56-CV-08-2456

Jason G. Lina, Fluegel, Anderson, McLaughlin & Brutlag, Chtd., Morris, Minnesota (for respondent)

Stephen F. Rufer, Pemberton, Sorlie, Rufer & Kershner, P.L.L.P., Fergus Falls, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Minge, Judge; and Ross, Judge.

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

MINGE, Judge

Appellant landowner Jon Saetre challenges the district court order enforcing the provision of a settlement agreement granting his neighbor, respondent DML, LLC, an easement for a road. Saetre argues that the description of the location of the easement in

the agreement is ambiguous and cannot be determined without a full evidentiary hearing; that if not ambiguous, the location of the easement identified in the agreement is different from the location approved by the district court; and that DML failed to comply with the easement-location and dispute-resolution provisions in the agreement. Concluding that the claimed ambiguity is not sufficient to preclude summary judgment, that the route approved by the district court complied with the agreement, and that the provisions of the settlement agreement regarding procedures for route designation and dispute resolution were not violated, we affirm.

FACTS

Respondent DLM, LLC and its predecessors in interest are part of the Moenkedick family, which has farmed in Otter Tail County since the 1880s. Their farm includes fields on both sides of a narrow isthmus that is bordered on the north by Moenkedick Lake and on the south by Ceynowa Lake. A roadway was once located on the isthmus. When public use ended, the Moenkedicks continued to use the road to move farm equipment between their fields. In 1962, members of the Moenkedick family conveyed a parcel, including the isthmus, to the father of appellant Jon Saetre. The Moenkedicks continued to use the isthmus route, however, until about 1997, when rising water prevented further use.

Prior to filing suit, David Moenkedick attempted to improve the former roadway so that it could once again be used to move farm equipment. Jon Saetre refused access to the area. DLM then filed suit, claiming an easement by implication, an easement by prescription, and common-law dedication of a public easement.

In November 2008, incident to court-ordered mediation, the parties entered into a mediated settlement agreement. The agreement provided that DLM would convey a parcel of land to Saetre in exchange for a "road and utility easement" across the isthmus and other land. In May 2009, the parties entered into a supplement to the agreement that modified the location of a portion of the easement in an area not at issue in this appeal and reiterated that the easement route included the isthmus area at issue in this appeal.

In July 2009, Saetre informed David Moenkedick that the easement route in the isthmus area that DLM intended to follow and that was approved by the county planning commission was not the route that Saetre agreed to. Specifically, Saetre claimed that the location of the easement was not to simply follow the old roadway, but was to be closer to the shoreline of Lake Ceynowa. DLM disagreed and filed a motion, asking the district court to enforce the settlement agreement. In October 2009, the district court determined an evidentiary hearing was not necessary. Based on the record and arguments of counsel, the district court granted DLM's motion, determining that as a matter of law the description of the easement road in the supplement was not ambiguous and that following the route of the old roadway was consistent with the agreement.

This appeal follows.

D E C I S I O N

We encourage the settlement of claims without litigation as a matter of public policy. *Voicestream Minneapolis, Inc. v. RPC Properties, Inc.*, 743 N.W.2d 267, 271 (Minn. 2008). An agreement entered into by the parties as a compromise and settlement of disputed claims is contractual in nature and can be enforced by an action for breach of

contract, or, as here, by motion in the original lawsuit. *See id.* at 271-72 (discussing three ways to enforce settlement agreements). If the language is clear and unambiguous, the district court may enforce the settlement agreement as a matter of law, giving the language its plain and ordinary meaning. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). But if the agreement is ambiguous and the parties dispute material facts, the district court must conduct an evidentiary hearing. *Voicestream*, 743 N.W.2d at 272. The standard of review for a district court's order enforcing a settlement agreement without an evidentiary hearing is similar to a summary-judgment standard. *See id*. at 273 (providing that "a district court shall treat a motion to enforce a settlement agreement as it would a motion for summary judgment" by explicitly granting or denying each claim). On appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

> [T]here 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); *see also Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986) (providing that the nonmoving party has the burden to "provide the court with specific facts indicating that there is a genuine issue of fact").

I.

The first issue is whether the description of the easement set forth in the supplement to the binding mediated settlement agreement is ambiguous as a matter of law.

A district court interprets the language of a contract to determine the intent of the parties. *Dykes*, 781 N.W.2d at 581-82. If the language is unambiguous, the district court gives the language its plain and ordinary meaning. *Id*. at 582. But if the language is ambiguous, the district court may consider parole evidence to determine the parties' intent. *Id.* The language of a contract is ambiguous when it is subject to two or more reasonable interpretations. *Id.* "The sense of a word depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise." *Bd. of Regents of the Univ. of Minn. v. Royal Ins. Co. of Am.*, 517 N.W.2d 888, 892 (Minn. 1994). Whether the language of a contract is ambiguous is a question of law that we review de novo. *Id.*

Here, the May 2009 supplement describes the portion of the easement route relevant to this appeal as follows: "Beginning . . . [then] running generally northerly and easterly through the narrow isthmus between Moenkedick Lake and Ceynowa Lake, following the north shore of Ceynowa Lake as closely as practical, to the easterly boundary of [Saetre]'s property." Following the parties' execution of the supplement, the county planning commission approved DLM's application for a conditional use permit, in pertinent part, to "[r]ebuild old existing road for farm use." Following the county's approval, Saetre requested that the easement road be moved closer to Lake Ceynowa.

But the Otter Tail County Department of Land and Resource Management (Department) determined that moving "the very east end [of the easement road] off of the existing road bed south into the wetland area" and closer to Ceynowa Lake would violate both the Minnesota State Wetland Conservation Act and the Otter Tail County Shoreland Ordinance. The Department further stated that the road must be built "on top of the foot print of the old road bed" to comply with state and local regulations. On appeal, the only area in dispute is the east end of the road that Saetre asserts should be in the wetland area "following the north shore of Lake Ceynowa as closely as practical."

Saetre asserts that the language in the supplement to the settlement agreement describing the portion of the easement road crossing the isthmus as "following the north shore of Ceynowa Lake as closely as practical" is ambiguous. Saetre reasons that the parties' disagreement regarding what route follows the shoreline "as closely as practical" makes the ambiguity obvious. DLM asserts that although the description of the easement route is not the equivalent of a legal description, it enables the parties to determine the location with reasonable certainty. *See Smoliak v. Myhr*, 361 N.W.2d 153, 156 (Minn. App. 1985) (providing that a description of land is sufficiently clear to satisfy the statute of frauds when "such description provides, when applied to the physical features of the surrounding terrain, a reasonably certain guide or means for identifying such land to the exclusion to all other lands") (quoting *Miracle Constr. Co. v. Miller*, 251 Minn. 320, 323, 87 N.W.2d 665, 669 (1958)).

"Practical" is defined, among other things, as "1. Of, relating to, governed by, or acquired through practice or action, rather than theory, speculation, or ideals . . . .

4. Capable of being used or put into effect; useful . . . ." *The American Heritage Dictionary* 1377 (4th ed. 2000).

The location urged by Saetre would place the road in an area determined to be a wetland adjacent to lake shore. Wetland controls are not irrelevant to practicality. Minnesota's no-net-loss policy regarding wetlands indicates limits on use. *See* Minn. Stat. § 103G.222 (2008) (providing that wetlands may not be drained or filled unless replaced with wetlands of equal or greater public value); Minn. R. 8420.0100 (2009) ("[T]he purpose of the [Wetlands Conservation Act] is to . . . achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands."). Based on the dictionary definitions, it is presumptively not reasonable to classify such a wetland route as "practical." Certainly, a route that implicates the Minnesota Wetland Conservation Act and is prohibited by the Otter Tail County Shoreland Ordinance is not "capable of being used or put into effect." *See The American Heritage Dictionary* 1377 (4th ed. 2000).

In support of his argument that government approval is not required for the route to be "practical," Saetre points to the separate provision in the settlement agreement specifically addressing government approval: "This settlement is contingent upon plaintiff acquiring all necessary governmental permits to construct the road as provided herein. In the event such permits cannot be obtained, this agreement is null and void and the lawsuit shall continue as before." We agree with Saetre that this provision limits the significance of government approval as a part of determining practicality. But as discussed below, Saetre fails to provide any evidence or allege any facts showing that a

route closer to the shoreline is otherwise practical. Without evidence to the contrary, one would expect to encounter practical problems in attempting to construct and maintain a roadway adequate for farm machinery in an area designated as a wetland, even absent the state and local regulations prohibiting such a route. Notably, the record indicates that the Moenkedick family stopped using the former route due to high water in the 1990s. On its face, the practical problem with a wetland route is more than simple government approval.

Saetre's claim that the agreement is ambiguous because it is practical to route the roadway into a wetland to be closer to Ceynowa Lake is not persuasive. Because in the context of the agreement, "practical" gives meaning to and limits the location of the roadway, because the only evidence in the record shows that use of the old roadway was discontinued due to high water levels, and because there is no evidence that it is reasonable to try to build a road in the wetland area, we conclude that the language in the settlement agreement, that the route of roadway be "as closely as practical" to the north shoreline of Lake Ceynowa, is not sufficiently ambiguous to require a hearing.

II.

The second issue raised by Saetre is whether the old roadway is consistent with the easement description set forth in the supplement.

Saetre argues that a route "following the north shore of Ceynowa Lake as closely as practical" should be closer to the shoreline than the old roadway. But he failed to submit any evidence or point to any facts supporting this contention. *See Michaelson v. Minn. Mining & Mfg. Co.*, 474 N.W.2d 174, 178 (Minn. App. 1991) ("Summary

judgment is proper when the nonmoving party fails to oppose the motion by presenting specific facts which create a genuine issue of fact."), *aff'd*, 479 N.W.2d 58 (Minn. 1991). The record is not clear as to why Saetre objects to building the easement road on the old roadway, or the reasons he prefers the road to be closer to the shoreline. As previously stated, the record indicates that the route urged by Saetre would place the road in a wetland, which is not practical.

There is no evidence in the record that contradicts the district court's finding. The district court relied on a map of the property, an aerial photo, the county planning commission's notes, a letter from the Department, and the parties' pleadings and statements. We conclude that, based on this record, the evidence supports the district court's determination that the old roadway location was consistent with the description in the settlement agreement and that Saetre fails to show that this route violates the settlement agreement.

III.

The third issue on appeal is whether the district court erred in enforcing the settlement agreement before the parties followed the dispute-resolution procedure set forth in the settlement agreement.

The binding mediated settlement agreement provides that prior to beginning construction of the easement road, DLM was to stake the centerline and allow Saetre to inspect the proposed route. If Saetre disagreed with the location and notified DLM of his disagreement within ten days, the parties were to resume mediation. Saetre argues that the district court's order enforcing the settlement agreement was premature because the

parties had not yet followed the agreement's procedure for locating the roadway, including additional mediation. But the record shows that when DLM informed Saetre that the new easement road had to be located on the old roadway, Saetre announced the agreement was off. And as discussed above, any route closer to Lake Ceynowa was not practical. Saetre's position represented an anticipatory breach. While the settlement agreement may have required DLM to put up stakes, Saetre's conduct, indeed the present litigation, shows that the parties were at an impasse over a term of their mediated settlement agreement. Staking the route and further mediation would have been pointless. Requiring mediation of the meaning of a prior mediated settlement agreement would be akin to requiring a party to negotiate with himself.

We conclude that based on this record, the district court did not err in accepting DLM's request for enforcement of the settlement agreement. However, we note that because no survey or staking of the road has yet occurred, certain detail work remains to be done. If good-faith objections arise, the dispute-resolution procedure in the settlement agreement still applies.

Affirmed.

Dated: