

DA 18-0592

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 193N

DAVID STANLEY and JEAN B. KEFFELER,

Plaintiffs and Appellees,

v.

WILLIAM CHARLES HOTES, ARDIS J. HOTES and all other persons unknown, claiming or who might claim any right, title estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to Plaintiffs' Ownership or any cloud upon Plaintiffs' title thereto, whether such claim or possible claim be resented to contingent,

Defendants and Appellants.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DV 13-161
Honorable Yvonne Laird, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Stephen E. Woodruff, Huppert, Swindlehurst & Woodruff, P.C.,
Livingston, Montana

For Appellees:

Karl Knuchel, Eric T. Oden, Attorneys at Law, Livingston, Montana

Submitted on Briefs: April 10, 2019

Decided: August 13, 2019

Filed:


Clerk

Justice Dirk M. Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 William Charles "Chuck" Hotes and Ardis J. Hotes (collectively Hotes) appeal judgments of the Montana Sixth Judicial District Court, Park County, ordering Hotes to cease "cabling" of their cattle guards on the Mission Meadows Road and awarding David Stanley and Jean B. Keffeler (Plaintiffs) attorney fees. We affirm.

¶3 This action arises out of a multi-faceted property rights dispute between Plaintiffs and Hotes in the Mission Meadows subdivision in Park County, Montana. Mission Meadows is rural residential subdivision created of record by county-approved certificate of survey (COS) in 1974. Plaintiffs own tracts 2-4, and 8 as originally platted in COS 11, and tract 3A as subsequently platted in COS 1424. Ardis Hotes is the record owner of a tract of land subsequently platted in Park County COS 101A and comprised from original Mission Meadows 17-18 and 21-22 (COS 11). Chuck is Ardis's adult son and the managing occupant of her property.

¶4 Swingley Road is a roadway meandering southeast from Interstate 90 through the Mission Meadows subdivision in Park County. Mission Meadows Road is a platted private roadway meandering northwest from the southwest extension of Swingley Road, bisecting

Hotes's property, and then continuing along the interior boundaries of various subdivision tracts to its ultimate terminus in the interior of Plaintiffs' aggregate property. Mission Meadows Road is the record access between Plaintiffs' aggregate property and Swingley Road.

¶5 In November 2013, as amended October 2015, Plaintiffs filed various claims against Hotes in the Montana Sixth Judicial District Court for quiet title, damages in trespass, and declaratory and injunctive relief regarding various ownership and access rights. Hotes responded with general denials and various counterclaims. On April 28, 2017, the District Court vacated an imminent bench trial and underlying pretrial order based on the parties' purported settlement of all outstanding issues. A few months later, based on the parties' failure to either timely file proof of settlement, or show cause for failure to do so, the District Court issued a sanctions order pursuant to M. R. Civ. P. 16(f) entering judgment in favor of Plaintiffs on all outstanding issues. In pertinent part, the Court ordered, adjudged, and decreed that:

Having violated protective covenants pertaining to said property, [Hotes] shall *either* replace existing cattle guards installed by either of them with cattle guards that do not interfere with reasonable vehicle access to [Plaintiffs'] property *or* remove [them] entirely.

(Emphasis added.)¹

¹ Rule 16(f) Order Imposing Judgment as Sanction, filed June 28, 2017. See also Amended Complaint, Count IV, ¶¶ 37-39, alleging that the Hotes's "cattle guards" and "free ranging horses" respectively "interfere with vehicle access" and "equine and pedestrian access along Mission Meadows Road" in violation of protective covenants prohibiting "property owners from allowing, ' . . . anything to be done [on subdivision property] which may be or become an annoyance or nuisance to the neighborhood.'"

¶6 In November 2017, after further negotiation between the parties and upon subsequent uncontested motion, the District Court approved a final written settlement agreement executed by the parties (Plaintiffs and Hotes) on October 3, 2017. In pertinent part, the 2017 agreement provided:

In order to better address the *Covenant violation issues* adjudicated by the [c]ourt . . . Hotes'[s] *existing cattle guards* may remain in place, *provided that* in lieu of replacing the cattle guards Hotes shall undertake the following actions . . . :

[Hotes] will use their best efforts to keep livestock from crowding or interfering with the use of the Mission Meadows Road easement. Both parties recognize that the [climatic] conditions relative to their properties is an ever-changing aspect of living in Mission Meadows and, as such, [climatic] conditions may necessitate emergency measures to protect livestock and people using the easements. During the months of May through October, livestock on the Hotes and [Plaintiffs'] properties will be contained or restrained unless [climatic] conditions (i.e.,] drought) necessitate open range conditions. If [climatic] conditions necessitate open range conditions, the initiating party shall give written notice to the other party (through legal counsel) of the open range conditions within five (5) days after suspending livestock containment. Livestock containment shall resume as soon as [climatic] conditions allow (i.e.,] adequate forage/water for livestock becomes available).

Where cattle guards are installed, gates will be maintained adjacent to such cattle guards to permit pedestrian, equine and vehicular access. . . . The parties agree that all property owners . . . have a right to a safe and convenient access on Mission Meadows Road.

[] The obligation to facilitate unimpeded access on Mission Meadow[s] Road shall be perpetual.

Except as expressly modified [by the terms of this settlement agreement], the parties agree that they are fully bound by the terms of the [June 28, 2017] Judgment.

In the event future litigation is commenced to enforce compliance with this Agreement, the prevailing party . . . shall be entitled to recover its reasonable attorney[] fees from the non-prevailing party. . . . This Settlement Agreement is the complete agreement of the parties as to their disputes regarding the disputed issues asserted in the pending litigation.

(Emphasis added.)

¶7 No sooner had the District Court approved the parties’ settlement agreement, another dispute arose following a heavy snowstorm in November 2017 when Chuck Hotes installed metal cables across cattleguards on the Mission Meadows Road over the Hotes’s property.² Chuck later asserted that the cables were necessary as an emergency measure to prevent his horses from leaving the Hotes’s property when snow and ice clog the cattle guard grates, thereby rendering them ineffective to deter livestock crossings.

¶8 On January 18, 2018, Plaintiffs filed a motion to enforce the parties’ 2017 settlement agreement and enjoin Hotes from “cabling” the Mission Meadows Road. Plaintiffs filed a supporting affidavit from their ranch manager stating:

These cables impede access on Mission Meadows road. To travel on the road, I must get in and out of my vehicle to unhook the cables every time I use the road. Due to the design of the Hotes cattleguards, this involves walking across the metal bars, which are often snow-covered or icy.

² Though not clear on the limited factual record presented, at least two cattle guards exist across the Mission Meadows Road on the Hotes’s property. The easternmost guard apparently predated Chuck Hotes’s residency on the property. The other cattle guard(s) appeared at some point later.

[T]here have been many times since the early November, 2017, snowstorm when there was little or no snow in the cattleguards, [but] Mr. Hotes left the cables up regardless.

[] Mr. Hotes is the only property occupant along the Mission Meadows Road who puts cables or other encroachments on the [r]oad. All other residents treat [the road] as an open-access road, intended for rural residential use.

Mr. Hotes has erected a sign . . . that reads along the lines of “Caution, Working Ranch.” . . . However, in my observation Mr. Hotes only has 3 horses and 1 mule, so the property does not appear to be a “working ranch” as that phrase is commonly understood. . . .

All other property owners in the Mission Meadows development fence in their livestock, so they do not have problems with horses travelling on Mission Meadows Road. Mr. Hotes could choose to fence in his livestock, which would prevent the issue of horses crossing cattleguards which become filled with snow.

On February 2, 2018, without supporting affidavit or reference to other record facts, Hotes filed a cross-motion for enforcement of the 2017 agreement asserting, *inter alia*, that Plaintiffs were violating the agreement by traversing Hotes’s property over the Mission Meadows Road several times a day without justification.

¶19 On August 21, 2018, with the parties’ cross-motions fully submitted on the briefs without request for hearing, the District Court denied Hotes’s cross-motion and granted Plaintiffs’ motion to enforce the 2017 agreement. The written judgment ordered Hotes to “immediately cease ‘cabling’ or blocking the Mission Meadows Road in any fashion.” The court further concluded that Plaintiffs were entitled to contract attorney fees under the prevailing-party attorney fees provision in the 2017 agreement. The court subsequently

determined upon affidavit that Plaintiffs reasonably incurred \$3,674 in attorney fees to enforce the settlement agreement and defeat Hotes's cross-motion. Hotes timely appealed.

¶10 In essence, Hotes assert that the District Court erroneously: (1) overlooked that the parties' agreement authorized them to "cable" the cattle guards as an "emergency measure to protect livestock" when warranted by "[climatic] conditions"; (2) failed to "analyze whether the snow fall of Fall 2017 would count" as a qualifying "[climatic] condition" under the agreement; (3) applied inapplicable cattle guard gate specifications; and (4) concluded that the Hotes's "cabling" violated Plaintiffs' contract right to safe, convenient, and unimpeded access over the Mission Meadows Road. Hotes thus further assert that the Court erroneously awarded Plaintiffs contract attorney fees.

¶11 Written settlement agreements are contracts governed by generally applicable contract law. *Dambrowski v. Champion Int'l Corp.*, 2003 MT 233, ¶ 9, 317 Mont. 218, 76 P.3d 1080. The construction or interpretation of contract language is a matter of law reviewed de novo for correctness. *Johnston v. Centennial Log Homes & Furnishings, Inc.*, 2013 MT 179, ¶ 25, 370 Mont. 529, 305 P.3d 781). To the extent lawful and reasonably ascertainable, courts must construe contract language to effect the mutual intent of the parties at the time of contracting. Sections 1-4-103, 28-3-301, MCA. We must generally construe clear and unambiguous contract language in accordance with its plain meaning in ordinary usage without resort to extrinsic aids. Sections 1-4-107, 28-3-303, -401, -501, MCA. We must construe particular contract provisions in context of the larger agreement

as a whole to give consistent, reasonable meaning and effect to all to the extent possible. Sections 1-4-101, 28-3-201, -202, MCA.

¶12 Read as a whole in context of the terms of the underlying judgment from which the parties expressly intended it to deviate, the manifest purpose of the clear and unambiguous language of the cattle guards section of the 2017 settlement agreement (i.e., subsection 2(c)) was to guarantee that Plaintiffs' had "safe and convenient" vehicular, equine, and pedestrian "access" to and from their property over the Mission Meadows Road, "unimpeded" except by "existing cattle guards" without "crowding or interfer[ence]" from Hotes's congregating "livestock." To that end, and as an alternative to removing or replacing them "with cattle guards that do not interfere with reasonable vehicle access" as required by the underlying 2017 judgment, the agreement specifies various "actions" that "Hotes shall undertake" as express conditions of maintaining their existing cattle guards. Chiefly among them, the agreement expressly requires Hotes to "contain[] or restrain[]" their livestock from the roadway from "May through October" except when "[climatic] conditions (i.e.,] *drought*) necessitate open range conditions." (Emphasis added.) As a narrow exception to the general rule requiring them to keep their livestock *off of* Mission Meadows Road from May through October, the "[climatic] conditions" exception is not an exception to Hotes's contract duty to maintain unimpeded, safe, and convenient access over the Mission Meadows Road. We hold that the District Court did not erroneously interpret or fail to consider the "[climatic] conditions" exception in the parties' 2017 agreement.

¶13 As an express condition of allowing them to maintain their existing cattle guards in place, the agreement required Hotes to otherwise maintain “unimpeded access” across their property on the Mission Meadows Road and, within that framework, further guaranteed Plaintiffs the right to “safe and convenient access” over the road. In that regard, the District Court explicitly found that:

The Hoteses’ “cabling” of the cattle guards impedes access to the Mission Meadows Road. . . . [Their] “cabling” of the cattle guards is neither safe nor convenient. Requiring persons using the [road] to stop for a “cabled” cattle guard[], exit their vehicle, un-cable the cattle guard, return to their vehicle, cross . . . , stop . . . , exit their vehicle, re-cable the cattle guard and return to their vehicle . . . in inclement weather, is not only inconvenient but unsafe.

The Court’s finding is supported by the unrebutted affidavit of Plaintiffs’ ranch manager. Hotes made no contrary affidavit or other evidentiary showing and did not object to the submission of the parties’ cross-motions on the briefs and Plaintiffs’ initial supporting affidavit. We hold that the District Court did not erroneously conclude that Hotes’s “cabling” of the cattle guards violated Plaintiffs’ contract right to safe, convenient, and unimpeded access over the Mission Meadows Road.

¶14 While we agree with Hotes that the parties’ agreement did not impose express cattle guard construction specifications precluding their disputed “cabling,” it is equally clear that the reference in the District Court’s judgment to the “wire stretch-gates” specification in the agreement was no more than a correct contextual reference to other related terms of the agreement and upon which the ultimate judgment and supporting rationale did not

depend.³ We hold that the court did not erroneously read inapplicable cattle guard specifications into the agreement.

¶15 Plaintiffs were the prevailing parties under the express prevailing-parties attorney fees provision in the 2017 agreement. Hotes did not appeal the reasonableness of the District Court’s attorney fees award—only whether Plaintiffs were the prevailing parties. We hold that the Court did not erroneously conclude that Plaintiffs were entitled to contract attorney fees as the prevailing parties in this matter. We further hold that Plaintiffs are similarly entitled to contract attorney fees as the prevailing parties on appeal.

¶16 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed and remanded for a determination and award of reasonable attorney fees incurred by Plaintiffs on appeal.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON

³ Rather than pertaining to gates *across* existing cattle guards, the “wire stretch-gates” specification pertains to gates to “be maintained *adjacent to* such cattle guards to permit pedestrian, equine and vehicular access.” (Emphasis added.) Compliance with the adjacent gate specification is not at issue on appeal.