

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

BARRY REISS, an unmarried individual,	)	
	)	No. 66840-4-I
Respondent,	)	
	)	DIVISION ONE
WALTER GUSTAFSON and SHEILA	)	
GUSTAFSON, husband and wife,	)	UNPUBLISHED OPINION
	)	
Plaintiffs/Cross Defendants,	)	
	)	
v.	)	
	)	
ASHLEY THOMAS and WENDI SMITH,	)	
husband and wife, and their marital	)	
community composed thereof,	)	
	)	
Appellants,	)	
	)	
CHARLES M. OGDEN, an unmarried	)	
individual; and WILLIAM G. BROWN and	)	
G. LYNN BROWN, husband and wife,	)	
and their marital community composed	)	
thereof,	)	
	)	
Defendants/Cross Plaintiffs,	)	
	)	
HOMESTREET BANK, a Washington	)	
state chartered savings bank,	)	
	)	
Third-Party Defendant.	)	FILED: June 11, 2012
	)	

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Appelwick, J. — Neighbors agreed that a new property boundary would be established by moving a fence to four feet south of an existing garage. The trial court correctly determined that the agreement required the parties to move the entire fence, including the four feet of fence that extend beyond the eastern edge of the garage. We affirm.

FACTS

Ashley Thomas and Wendi Smith (the "Thomases") are Barry Reiss's next door neighbors. Reiss's property lies directly north of the Thomases' property, and his garage is located on the southeast corner of his lot. Prior to the dispute in this case, there was a four foot clearance between the east side of Reiss's garage (the rear) and his eastern property line. In contrast, the Thomases' fence ran very close to the south side of his garage. The fence began at the front of Reiss's garage, its southwest corner, and ran east to a point four feet past the southeast corner of the garage, where it intersected the eastern edge of Reiss's property.

A dispute arose concerning the property boundary between the two lots, and the parties entered into a stipulation and order regarding settlement that described the location of the new boundary:

2. Defendants Thomas/Smith will relocate the chain link fence and footings from their current location on the south side of the Reiss garage to a location four feet (4') from the exterior wall of the Reiss garage.

3. The new property boundary between the Reiss and Thomas/Smith properties will be located along the new position of the re-located fence (4 feet south of the exterior wall of the garage) and will extend in a straight line west to the public road.

It also provided that Thomas Barry would perform the survey work necessary to prepare the new legal boundary and new legal descriptions. When Barry performed the work, he determined that the new boundary would be placed four feet south of Reiss's garage, run west to the road, and run four feet east of the garage to Reiss's eastern property line.

Six months after the stipulation and order was entered, the Thomases had still not performed their obligations. It appears the delay was due primarily to an additional

dispute that is not an issue on appeal. Reiss filed a motion to enforce the agreement. He requested that Barry's survey "be accepted and paid for by the Thomases, and that they remove the trees and move the fence, all of which are required under the Settlement Agreement."

Shortly thereafter, the Thomases moved their fence. But, they only moved the portion of the fence that lay directly south of the garage. Thus, the new fence begins four feet south of the southwest corner of Reiss's garage. It runs east for the length of the garage. At the southeast corner of the garage, the fence turns straight north, and is at that point considerably less than four feet from the garage. Then, the fence turns east again and continues the final four feet to Reiss's eastern property line. The property in dispute in this case is the approximately ten square feet that the Thomases preserved to the southeast of Reiss's garage.

After the fence was moved, Reiss submitted a supplemental memorandum with a declaration from Barry that stated, in part, "I interpret the agreement line, which is 4 feet from the garage wall, to extend easterly to terminate at the east line of the original title ownership of Reiss."

After argument, the trial court granted Reiss's motion to enforce the agreement.

In pertinent part, the order provided:

2. The survey boundary line and legal descriptions completed by Thomas Barry, surveyor . . . shall be used as those documents required to adjust the boundary line pursuant to the Stipulation and Order.

3. Defendants Ashley Thomas and Wendi Smith shall readjust their fence to the lines indicated by Thomas Barry, surveyor, within thirty (30) days of entry of this Order.

The Thomases appeal.

## DISCUSSION

Settlement agreements are governed by general principles of contract law. Stottlemyre v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383 (1983). We review a disputed contract term de novo. Knipschild v. C-J Recreation, Inc., 74 Wn. App. 212, 215, 872 P.2d 1102 (1994).

The touchstone of contract interpretation is the parties' intent, as reflected in their agreement. In re Marriage of Litowitz, 146 Wn.2d 514, 528, 48 P.3d 261, 53 P.3d 516 (2002). We focus on the objective manifestations of the agreement, rather than the unexpressed subjective intent of the parties. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Indeed, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used. Id. at 503-04. When interpreting what was written, we give words their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. Id. at 504.

The Thomases argue that they only agreed to move the portion of the fence that lay directly south of the garage and would not have agreed to the interpretation adopted by the trial court.<sup>1</sup> They also argue they could not have reached a meeting of the minds on the disputed piece of property, because they did not understand it to be in dispute. But, it is unnecessary to consider the Thomases' subjective beliefs. The

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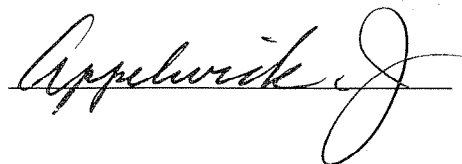
<sup>1</sup> The Thomases claim that the trial court's interpretation requires them to move multiple fences, and that they would have to move not just the east-west fence, but also the north-south fence. Aside from the Thomases' declarations stating that they had not agreed to move the north-south fence, there is no evidence or explanation of why the trial court's interpretation would require them to do so. We can only look to evidence in the record. Hines v. Data Line Sys., Inc., 114 Wn.2d 127, 148, 787 P.2d 8 (1990). Accordingly, this argument holds no weight.

agreement is clear on its face.

The parties stipulated that the Thomases would relocate the “fence and footings from their current location on the south side of the Reiss garage to a location four feet (4’) from the exterior wall of the Reiss garage.” The plain interpretation of this agreement is that they would move the entire fence. Had the parties agreed to a more peculiar boundary, that the property line would begin at the road, run straight east to the garage, continue straight east for the length of the garage, and then jut north four feet before the eastern edge of Reiss’s property, then the agreement should have said so. The Thomases’ interpretation is simply untenable.

The Thomases also place undue weight on the fact that the agreement explicitly stated that the boundary would extend west from the new fence, but did not state that it would also extend east. The agreement provided that they would move the fence south of the garage. The plain meaning of that statement is that the Thomases would move the entire fence that lay south of the garage, including the easternmost four feet of the fence that was still south of the garage. The new boundary was established by the location of the fence. Thus, it was unnecessary to duplicatively state that the boundary would also extend to the east of the garage. In contrast, there was no fence to the west of the garage. It was necessary to explicitly agree that boundary line created by the fence extended west to the road.

The Thomases offer an interpretation that cannot be reconciled with the agreement’s plain language. We affirm.

A handwritten signature in cursive script, appearing to read "Appelwick J.", written over a horizontal line.

No. 66840-4-1/6

WE CONCUR:

Speer, A.W.

Edington, J.