

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 19, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 95-1629

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**EDWARD HUMPEL, MARGARET
HUMPEL, GARY SHILTS
and NANCY SHILTS,**

Plaintiffs-Respondents,

v.

**DONALD R. MEIDER and
CAROLYN F. MEIDER,**

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

LaROCQUE, J. Donald Meider and Carolyn Meider appeal a judgment granting the holders of an easement on their lot an injunction preventing the Meiders from placing a modular home on the lot. The easement states that the lot is to be used only for the purpose of access to a lake abutting the south side of the lot. The Meiders argue that the easement is ambiguous and that we should construe it to allow them to place a home on the lot.

Because we conclude that the easement unambiguously precludes placement of the home on the lot, we affirm the judgment.

The Meiders purchased a lot on Lake Wissota in 1993. The lot is ninety-four feet along the lake shore, 111 feet on the east edge, 157 feet on the west edge, and 100 feet along the north edge, which runs approximately parallel to the lake. The proposed modular home would be forty feet wide adjacent to the north edge and ten feet from the west edge of the lot.

A recorded easement provides that the lot is to be used for the sole purpose of lake access by the owners of forty-one other lots. The Meiders obtained a building permit to place a modular home on the lot. Some of the easement owners filed an action seeking an injunction to prevent the Meiders from placing the home on the lot. The circuit court issued a memorandum decision and judgment concluding that the easement extends to the entire lot and enjoined the Meiders from placing the home on the lot or any other activity that interferes with the exercise of the easement by the easement holders.

An easement is a liberty, privilege or advantage in land that exists distinct from the ownership of land. *Stoesser v. Shore Drive Partnership*, 172 Wis.2d 660, 667, 494 N.W.2d 204, 207 (1993). In this case, a deed grants the easement. We construe deeds to ascertain the intent of the parties. *Rikkers v. Ryan*, 76 Wis.2d 185, 188, 251 N.W.2d 25, 27 (1977).

In interpreting an easement, we first examine its language to determine whether an ambiguity exists. *Id.* If the agreement is susceptible to more than one reasonable interpretation, it is ambiguous. *Stauffacher v. Portside Props., Inc.*, 150 Wis.2d 242, 246, 441 N.W.2d 328, 330 (Ct. App. 1989). Whether an ambiguity exists is a question of law that we review de novo. *See id.* at 245, 441 N.W.2d at 330.

The easement in this case provides in part:

1. That said premises are hereby impressed with an easement for the purpose of providing ingress and egress and

access to Lake Wissota for bathing, swimming and boating, in favor of the owners of lots in Lake Edge Park plat, and any additions thereto, and for the members of the family and guests of said owners. That said premises shall be used for such purposes only.

2. That all taxes and assessment[s] levied on or against said premises by the town or any lawful taxing authority, shall be paid by said lot owners, and future lot owners, in proportion to the number of lots held by each.
3. That said premises shall be kept clean, and orderly and in full compliance with the sanitary code and orders of the State Board of Health and other state and town departments and officers, by said lot owners.
4. That said premises are for the use and mutual enjoyment of all lot owners including future lot owners in any and all plats and additions of said Lake Edge Park, Inc., their families and guests, and no one shall exclude, molest, hinder or restrict such use or enjoyment by any means whatsoever.

The easement later defines "said premises" with the legal description for the entire lot that was purchased by the Meiders.

The Meiders argue one could reasonably interpret this easement to allow them to place a house on the lot. We disagree and conclude that the easement is unambiguous. The easement defines "said premises" as the entire lot, and paragraph one states that "said premises" shall be used for the purpose of egress and ingress *only*. We conclude that the easement unambiguously precludes the Meiders from placing a modular home on the lot.

Other parts of the easement support this conclusion. Paragraphs two and three place an unusual amount of responsibility for the upkeep of the lot on the easement holders. Also, paragraph four contains language indicating the entire premises is for the use of the easement holders.

Our supreme court held that the use of an easement must be confined to the terms and purposes of the grant of easement. *Stoesser*, 172 Wis.2d at 668, 494 N.W.2d at 208. The Meiders argue that the purpose of the easement in this case was to allow lake access, so we should determine whether their modular home will interfere with the easement holders' right to lake access. If it does not, the Meiders argue that their home does not violate the easement holders' rights.

We reject the Meiders' argument because it ignores the phrase in the easement that "said premises will be used for such purposes only."¹ This phrase indicates that the drafters of the easement concluded that any other use of the property would inhibit the easement holders' right of lake access. The proposed placement of the home violates the unambiguous terms of the easement.²

By the Court. – Judgment affirmed.

Not recommended for publication in the official reports.

¹ The Meiders argue that the logical extension of focusing on this phrase would lead to a preposterous result. Specifically, the Meiders argue "they cannot plant a tree on the lot and they cannot stand on the lot because, by doing so, they would interfere with the subdivision lot owners' right to use the entire lot" We need not consider cases involving hypothetical or future rights. *Pension Mgmt., Inc. v. DuRose*, 58 Wis.2d 122, 128, 205 N.W.2d 553, 555-56 (1973). If the Meiders are suggesting that their hypothetical proposition is an invalid restriction, we note only that courts may question the validity of an easement on the grounds of public policy, but this measure is extreme and should only be exercised in cases free from doubt. See *Whirlpool Corp. v. Ziebert*, No. 93-3307, slip op. at 3 (Wis. Nov. 16, 1995).

² In their reply brief, the Meiders claim that the easement creates a perpetuity for the easement holders on the land. The Meiders cite *Gray v. Stadler*, 228 Wis. 596, 600, 280 N.W. 675, 677 (1938), for the proposition that perpetuities are not favored in the law, and an instrument will not be construed as creating a perpetuity unless the intention to do so is clear and plainly manifest. First, we need not address this issue because it was raised for the first time in the reply brief on appeal. *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). Second, it appears that the easement drafters in this case clearly and plainly intended to create a perpetual easement.