COURT OF APPEALS
DECISION
DATED AND FILED

February 25, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1547 **Cir. Ct. No. 00-CV-498**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

KENNETH D. METZ AND LINDA C. METZ,

PLAINTIFFS-RESPONDENTS,

V.

TIMOTHY H. BECKER AND DEANNE BECKER,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Eau Claire County: PAUL J. LENZ, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Timothy and Deanne Becker appeal a judgment requiring them to remove a fence and awarding actual and punitive damages to Kenneth and Linda Metz. The judgment is based on the trial court's conclusion that a joint driveway agreement was ambiguous and, construing the agreement against the Beckers, the Metzes' driveway easement was more than 400 feet. The

Beckers' fence interfered with the Metzes' use of the driveway easement. Because we conclude that the recorded easement and the unambiguous joint driveway agreement limit the Metzes' easement to 400 feet from the centerline of the highway, an area not obstructed by the fence, we reverse the judgment.

¶2 Construction of documentary evidence presents a question of law that this court decides without deference to the trial court's decision. *See* ***State ex rel. Sieloff v. Gloz***, 80 Wis. 2d 225, 241, 258 N.W.2d 700 (1977). The meaning of an unambiguous contract is a question of law. ***Schlosser v. Allis-Chalmers Corp.***, 86 Wis. 2d 226, 244, 271 N.W.2d 879 (1978). A contract is ambiguous when it is susceptible to more than one reasonable interpretation. *See* ***Wilke v. First Fed. S&L***, 108 Wis. 2d 650, 654, 323 N.W.2d 179 (Ct. App. 1982). Whether an agreement is ambiguous is also a question of law which this court reviews de novo. ***Atkinson v. Mentzel***, 211 Wis. 2d 637, 638, 566 N.W.2d 158 (Ct. App. 1997).

¶3 The documentary evidence unambiguously establishes the Metzes' right to only a 400-foot easement running from the centerline of the adjacent highway. Before the 1993 joint driveway agreement, the recorded documents contained two different descriptions of the easement. A 1978 deed describing the Metzes' property describes an easement on the Beckers' property with dimensions of 15 feet by 358 feet. A 1960 recorded warranty deed involving the Becker parcel indicates that it is subject to "the use of an existing driveway by the adjoining property owners on the East side thereof, which driveway is located along the North 400 feet of the East line of the property herein conveyed." Although these documents are inconsistent, they cannot be construed to create an easement greater than 400 feet from the Beckers' north boundary, the center of C.T.H. QQ (North Shore Drive). Therefore, the 1993 joint driveway agreement is

the only document that might give the Metzes an easement greater than 400 feet or one that runs from the edge of the road.

¶4 The joint driveway agreement begins by describing the Beckers' lot, including the statement that it is "subject to easement of record and existing driveway." After describing the Metzes' property, the agreement recites:

> Whereas the driveway situated along the North 400 feet of the East line of Parcel 1 has been used and maintained jointly by the owners of Parcel 1 and Parcel 2.
>
> Whereas the owner of Parcel 1, Timothy H. Becker and owners of Parcel 2, Kenneth D. and Linda C. Metz, recognize the beneficial nature of this joint use and wish to ensure the continuation of such use; now,
>
> Therefore, the parties to this agreement, in consideration for the rights granted herein, do covenant the following:
>
> A. The driveway shall be used and maintained by both parties. Such maintenance to be paid for equitably by each party, and such use to be equitable, with due regard for each party's right of use.
>
> B. Timothy H. Becker grants an easement of use to Kenneth D. and Linda C. Metz for the driveway as described in the Warranty Deed recorded April 5, 1960 in Volume 232 of Deeds, Page 179, Document #311262, to the extent that such driveway is currently situated on Parcel 1.

¶5 This agreement is not ambiguous. The actual conveyance in part B specifically limits the driveway to the easement described in the recorded deed that creates a 400-foot easement. The deed states that the driveway is "located along the North 400 feet of the East line …." Because the north line of the Becker property is the centerline of the adjacent road, only 400 feet from that point was conveyed by the joint driveway agreement. Even in their complaint, the Metzes sought a declaration that they hold a valid easement to the north 400 feet of the east line of the Beckers' property. Only after they realized that granting them a

400-foot easement would not provide them with as much driveway as they desired did they request an easement exceeding 400 feet.

¶6 The trial court concluded that an ambiguity existed because the preamble to the conveyance in the joint driveway agreement noted that the Beckers' property was "subject to easement of record **and** existing driveway," suggesting that the easement and the driveway might not be coextensive. The first whereas clause, however, clarifies that Becker believed the driveway was situated along the north 400 feet of his property. Had he intended to grant an easement for the full length of the driveway regardless of its dimensions, he could easily have said so in the actual conveyance in part B. Nothing in the description of Beckers' land subject to an easement and existing driveway suggests that the driveway easement might be greater than 400 feet.

¶7 The Metzes also argue that an ambiguity is created by the language in the second whereas clause because it notes the parties' joint wish to ensure continuation of "such use." The use referred to, however, is identified in the first whereas clause as use of the driveway situated along the north 400-feet. Continuation of that use can be mutually beneficial without expanding the 400-foot easement to include any part of the driveway beyond the 400 foot boundary.

¶8 Finally, the Metzes' argue that the language in part B that grants the easement "to the extent that such driveway is currently situated on Parcel 1" arguably grants an easement to continue using the entire length of the driveway that is situated on the Beckers' parcel. That is not a reasonable construction of the sentence. Becker granted an easement as described in the warranty deed to the extent that the driveway was situated on his property. "To the extent" in that context is a limiting phrase, not one that expands upon the language contained in

the warranty deed. The Metzes' construction, that Becker granted the right to continue using the entire driveway regardless of the 400-foot restriction, would render reference to the warranty deed superfluous.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).