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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1152**

John Herman Hopen, et al.,
Respondents,

vs.

Joseph Weaver, et al.,
Defendants,

Carvin F. Buzzell, et al.,
Appellants.

**Filed June 30, 2009
Affirmed
Lansing, Judge**

Cass County District Court
File No. 11-CV-06-1179

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Considered and decided by Lansing, Presiding Judge; Toussaint, Chief Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

LANSING, Judge

Carvin and Deborah Buzzell appeal the district court's clarification of its previous judgment quieting title to a Leech Lake property on which John and Kathleen Hopen have a home. The Buzzells claim that the district court exceeded its authority by clarifying the judgment and should, instead, grant a new trial. Because the record supports the district court's finding that the initial default judgment was part of a negotiated agreement between the Hopens and the Buzzells that is accurately reflected in the clarified judgment's modified property description, we affirm.

FACTS

This appeal centers on a property description used in a 2006 default judgment in a quiet-title action. John and Kathleen Hopen initiated the action to determine any adverse claims to the land on which their home is located. The Hopen property is bordered on the eastern side by a former railroad right-of-way that is now owned by Carvin and Deborah Buzzell.

The Hopens' lawyer drafted the quiet-title complaint in October 2005. The complaint described the property in metes and bounds based on a 1997 survey. In describing the eastern edge of the Hopens' property that borders the Buzzells' property, it referred to the "relocated" railroad right-of-way by stating that the metes and bounds followed the edge of the right-of-way. The "relocated" right-of-way is a term used to identify a 1904 modification removing a crescent-shaped portion of the original 1897 right-of-way. The map accompanying the survey shows a hyphenated line indicating the

western edge of the “old” railroad right-of-way. The survey map also shows the complete outline formed by the metes-and-bounds description and the outline of the Hopens’ house. The western edge of the old right-of-way, as drawn on the map, runs north and south about half-way between the western and eastern borders of the Hopens’ property and is west of the Hopens’ house.

Communicating through their attorneys, the Hopens and the Buzzells explored a possible resolution of the litigation. In January 2006, the Buzzells’ attorney wrote a letter to the Hopens’ attorney stating that the Buzzells did not dispute that the Hopens “own the land within their four corners.” The letter stated that the attorney did not know the exact edge of the right-of-way and suggested revising the right-of-way reference to match designated language in the Buzzells’ deed rather than referring to the “relocated” right-of-way. The Buzzells’ deed refers to the 1904 relocated right-of-way but describes the property primarily by referring to a 1897 United States Land Office map. Although the Buzzells’ attorney objected to the reference to the “relocated” right-of-way, neither the Buzzells nor their attorney objected to the metes-and-bounds description contained in the complaint and in the 1997 survey.

The Hopens’ attorney revised the property description in the complaint to match the designated language in the Buzzells’ deed. The Buzzells’ attorney then admitted service of the summons and the revised complaint and the Buzzells agreed not to interpose an answer. The district court, on June 26, 2006, entered a default judgment determining that the Hopens, as joint tenants, owned the described property in fee simple

and that the defendants, Carvin and Deborah Buzzell, had no right, title, or interest in the property.

After the entry of judgment, a disagreement developed between the Buzzells and the Hopens over the location of the boundary. The Buzzells consulted a new surveyor who depicted the Hopen tract differently than the Hopens' 1997 survey. The Buzzells' surveyor—relying on the Buzzells' deed, a 1970 survey, and a 1917 railroad map—concluded that the western edge of the old railroad right-of-way shown in the Hopens' survey to the west of the Hopens' house, represented the edge of the Buzzells' property. In November 2007, the Hopens served a motion on the Buzzells requesting a clarification of the 2006 judgment to state that the boundary had been determined in the metes-and-bounds description without reference to either the “old” or the “relocated” right-of-way. The Buzzells filed a responsive motion in December 2007, seeking a declaration that the 2006 default judgment had not established the boundary or, in the alternative, an order vacating the judgment.

After a hearing on the cross motions, the district court found that, prior to entry of the 2006 default judgment, the Buzzells and the Hopens had agreed to resolve the quiet-title litigation and the Buzzells had agreed not to contest the Hopens' ownership of the property shown in the Hopens' survey and described in the amended complaint. The district court also found that the negotiated description in the judgment caused confusion because it referred to a discontinued right-of-way, which did not correspond with the metes-and-bounds description. The court ordered the Hopens to “provide a modified description without reference to the railroad right-of-way.” The district court then issued

an amended judgment describing the tract only in metes and bounds without reference to the right-of-way.

The Buzzells filed a new-trial motion under Minn. R. Civ. P. 59.01, arguing various grounds, including newly discovered evidence of maps and surveys. The Hopens disputed the allegations and argued that the Buzzells had agreed to the “four corners” of the Hopen property. The district court restated its reliance on the negotiated settlement agreement, rejected the assertions of newly discovered evidence, and denied the new-trial motion. The Buzzells appeal.

D E C I S I O N

The issue raised in this appeal is whether the district court acted within its discretion when it clarified the default judgment by revising the property description to exclude the references to the discontinued railroad right-of-way. The district court construed the Hopens’ motion to clarify as a motion under Minn. R. Civ. P. 60.02(f), which is a residual clause that provides relief from the operation of judgment in situations not covered by clauses (a) through (e) of rule 60.02. *Anderson v. Anderson*, 288 Minn. 514, 518, 179 N.W.2d 718, 721-22 (1970) (reviewing earlier version of rule in which clauses are listed numerically, (1) through (6)). Clause f “reflects the general powers of a court to grant relief from a judgment in unusual situations where fairness dictates the judgment should not stand.” 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 60.25 (4th ed. 2005).

Relying on the Hopens and Buzzells’ negotiation before entry of the default judgment and the specific change to the property description in the amended complaint,

the district court determined that the Hopens were the owners of the property described in the 1997 survey map. We examine the district court's conclusion for abuse of discretion. *See Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004) (reviewing rule 60.02 decision for abuse of discretion).

An agreement in settlement of a lawsuit "is contractual in nature and . . . requires offer and acceptance so as to constitute a meeting of minds on the essential terms." *Ryan v. Ryan*, 292 Minn. 52, 55, 193 N.W.2d 295, 297 (1971). The existence of an agreement is a question of fact for the district court. *Carlson v. Carlson*, 211 Minn. 297, 303, 300 N.W. 900, 902 (1941). An existing settlement agreement is enforceable "absent fraud or collusion, mistake, or such an improvident agreement that it ought not to stand in equity and good conscience." *Jallen v. Agre*, 264 Minn. 369, 373, 119 N.W.2d 739, 742-43 (1963). Enforceability is a question of law. *Share Health Plan, Inc. v. Marcotte*, 495 N.W.2d 1, 3 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993).

The Buzzells, through their attorney's affidavit, disputed the existence of an agreement. The Hopens' attorney also submitted an affidavit and, at the hearing, averred that the Buzzells' attorney had seen the 1997 survey map when negotiating the description. The Hopens' attorney showed the district court the survey map with the outline of the Hopens' land highlighted in yellow, and he pointed to the language in the letter of the Buzzells' attorney that said the Buzzells did not dispute the Hopens' ownership "within their four corners."

The district court found that the Buzzells "entered into negotiations" after receiving the complaint and that a "resolution was reached." The district court also found

that the terms were outlined in the letter from the Buzzells' attorney, which "established that [the Hopens] were the owners of the property described in the [Hopens' survey]." These findings are supported by the record. The district court apparently credited the assertions that the Buzzells' attorney had seen the survey showing the Hopens' house and a complete outline of the tract. The letter from the Buzzells' attorney revised the right-of-way description, but did not alter the metes and bounds or claim any right to land within the "four corners." Because the Buzzells agreed to the tract as shown and agreed not to contest the quiet-title action, they conceded the Hopens owned the designated property.

The agreement is presumptively enforceable, because the Buzzells have not shown fraud, collusion, mistake, or any other reason why the agreement should not stand in good conscience. *Jallen*, 264 Minn. at 373, 119 N.W.2d at 742-43. The Buzzells' suggestion that the Hopens' attorney may have misrepresented the absence of monument marks is not supported by evidence or established as relevant. In any event, the district court apparently credited the attorney's denial of any misrepresentation. The Buzzells also asserted that any negotiated agreement was based on mutual mistake about the correct location of the railroad right-of-way. But the survey's metes and bounds plainly indicate the land that the Hopens claimed as their own, and the Buzzells' failure to further investigate the metes-and-bounds description before deciding not to contest the action can only establish unilateral, not mutual, mistake. A unilateral mistake does not warrant relief from an agreement, absent "fraud or inequitable conduct by the other party."

Nichols v. Shelard Nat'l Bank, 294 N.W.2d 730, 734 (Minn. 1980). No fraud or inequitable conduct has been established.

The district court's findings and conclusions are supported by the record, and we perceive no abuse of discretion in providing relief by clarifying the judgment. We, therefore, turn to the question of whether the record establishes that the relief was just as required by Minn. R. Civ. P. 60.02(f). We look to the terms of the clarification to determine if it fairly construed the original judgment.

A district court's construction of its own ruling is entitled to deference. *Johnson v. Johnson*, 627 N.W.2d 359, 363 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). The district court, in considering the Hopens' motion, concluded that the original judgment was confusing because, in addition to the metes-and-bounds description, it also referred to a railroad right-of-way. The Hopens and the Buzzells had agreed to right-of-way language from the Buzzells' deed, and the court had incorporated that into its judgment. At the motion hearing, it became clear that the right-of-way language did not coincide with the agreed-to metes and bounds or with the agreed-to outline of the tract in the survey. The district court determined that a new description based exclusively on metes and bounds would more accurately reflect the agreement. Again, the record supports the district court's determination. *Cf. Berg v. Carlstrom*, 347 N.W.2d 809, 812 (Minn. 1984) (noting court's authority to reform writing if writing mistakenly failed to reflect parties' agreement).

The Buzzells contend that the district court did not have authority to address the boundary because it was not pleaded as a specific issue in the Hopens' quiet-title action.

The applicable caselaw and the complaint provide otherwise. The complaint alleges that the Buzzells “claim or appear of record to claim” an interest in the described property and that the Hopens ask for judgment determining that they are the owners and that the Buzzells have no interest in the property. Both complaints—the original and the one with the negotiated language—precisely locate by metes and bounds all boundaries to the tract, including the disputed boundary. The negotiations specifically addressed the disputed boundary and incorporated the Buzzells’ proposed language. The Buzzells acquiesced in the Hopens’ ownership of the four corners described in the pleadings. The pleadings and the procedure sufficiently raised the issue for the default judgment to have determined it. *See Neill v. Hake*, 254 Minn. 110, 117, 93 N.W.2d 821, 827 (1958) (stating that “any interest in the land which is claimed adversely to the plaintiff” including “issues relative to boundary lines,” may be determined in quiet-title action if raised by “pleadings and procedure”).

Finally, the Buzzells challenge the denial of their request for a new trial based on allegations of newly discovered evidence. Even if the Buzzells could establish standing to request a new trial despite their failure to submit an answer in the original proceedings, the district court properly denied the motion. A district court may re-open a fact issue after judgment based on “[m]aterial evidence newly discovered, which with reasonable diligence could not have been found.” Minn. R. Civ. P. 59.01(d). The survey and map the Buzzells produced after default do not qualify as evidence that could not have been found “with reasonable diligence.” And the Buzzells concede that an 1897 railroad map—which they claim establishes the location of the right-of-way—still has not been

found. To be “newly discovered,” the evidence must at least have been found. The Buzzells did not show grounds for a trial on newly discovered evidence.

We emphasize that this decision addresses only what property the Hopens own. The district court, in the order granting the motion for a clarified judgment, specifically stated that “[t]he issue of access was not determined by the quiet title action.” That is equally true of the boundaries that the Buzzells share with other property owners and of the actual location of the discontinued railroad right-of-way. In this decision we review the district court’s clarification of the 2006 judgment in the Hopens’ quiet-title action and affirm that clarification based on the district court’s findings on the agreement between the Hopens and the Buzzells that concluded the litigation and resulted in the entry of the default judgment.

Affirmed.