STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2153

James Ronnenberg, et al.,
Respondents,

vs.

Michael Betz, et al.,
Appellants.

Filed July 7, 2009
Affirmed
Stauber, Judge

Olmsted County District Court
File No. 55CV074111

Paul H. Grinde, Ryan & Grinde, Ltd., 407 14th Street Northwest, Box 6667, Rochester, MN 55903-6667 (for respondents)

William L. French, Suite 103, 400 South Broadway Street, Rochester, MN 55904 (for appellants)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal in this easement dispute in which appellants alleged respondents interfered with appellants' easement rights, appellants argue that the district court erred in granting partial summary judgment because there are genuine issues of material fact

regarding their claims for (1) declaratory relief; (2) breach of the easement agreement; (3) trespass; and (4) injunctive relief. Appellants also argue that fundamental errors in the special verdict form deprived them of their rightful damages. We affirm.

FACTS

Appellants Michael and Jennifer Betz own a parcel of land described in the complaint as parcel A. This parcel consists of approximately 38 acres, on which appellants live and raise horses. Respondents James, Al, and Paul Ronnenberg, Sandra Erickson, and Lois Rhodes, are the owners of an adjacent parcel of land described in the complaint as parcel B. This parcel consists of approximately 40 acres, which respondents use for recreational purposes such as hunting, camping, and target practice.

In 1992, a driveway easement agreement was recorded that enabled parcel B to be accessed by way of a 33-foot-wide driveway easement through parcel A. Appellants purchased parcel A in 2002, and subsequently installed wire gates over the easement to enable them to rotate pastures for their horses. Appellants also allowed their horses to occasionally graze in the easement to help keep the grass down.

In March 2007, respondents brought suit against appellants seeking damages and declaratory relief for appellants' alleged interference with respondents' use of the easement. Respondents claimed that appellants interfered with their use of the easement by placing wooden posts, gates, and nails within the easement area, and by allowing their horses to graze unattended in the easement area. Appellants counterclaimed, seeking declaratory and injunctive relief, and alleging that respondents (1) breached the easement agreement; (2) trespassed on their property; and (3) created a nuisance. Appellants

claimed that respondents placed deep ruts in various places of the easement, and allowed large numbers of people to use the easement at all hours of the day and night. Appellants also alleged that respondents left empty beer cans and trash on their property, left gates open, and cut and pruned trees within the easement without appellants' consent.

In December 2007, respondents moved for summary judgment on all issues. The district court subsequently granted respondents' motion for declaratory relief by clarifying the rights and duties of the parties to the easement. The court also dismissed all of appellants' claims except the nuisance claim. Following a trial on appellants' nuisance claim, a jury returned a special verdict concluding that respondents negligently interfered with the comfortable enjoyment of life or property of appellants, but that such interference was not the direct cause of any damages appellants alleged. The district court then issued its order concluding that respondents were not negligent because there was no direct causal link between appellants' alleged damages and respondents' negligence. This appeal followed.

D E C I S I O N

I.

On appeal from summary judgment, we review the record to determine if there are genuine issues of material fact and whether the district court erred in its application of the law. *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). In doing so, we view the evidence in the light most favorable to the nonmoving party. *Id.* "[S]ummary judgment is proper when the nonmoving party fails to provide the court with specific indications that there is a genuine issue of fact." *Thiele v. Stich*, 425 N.W.2d

580, 583 (Minn. 1988). No genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Appellants argue that the district court erred in granting partial summary judgment because there are genuine issues of material fact regarding their claims for (1) declaratory relief; (2) breach of the easement agreement; (3) trespass; and (4) injunctive relief.

A. Declaratory relief

The Uniform Declaratory Judgment Act (UDJA) gives courts "within their respective jurisdictions" the power to "declare rights, status, and other legal relations." Minn. Stat. § 555.01 (2008). But the UDJA "cannot create a cause of action that does not otherwise exist." *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. App. 2003). Issues of fact in a declaratory-judgment action are to be tried as they would be in a typical civil action. Minn. Stat. § 555.09 (2008). Thus, a disputed fact in a declaratory-judgment action is established upon proof by a preponderance of the evidence. *See Wick v. Widdell*, 276 Minn. 51, 53–54, 149 N.W.2d 20, 22 (1967) ("In an ordinary civil action the plaintiff has the burden of proving every essential element of his case . . . by a fair preponderance of the evidence.").

Here, both parties sought a declaratory judgment construing the rights and duties of the parties under the Driveway Easement Agreement. The district court found that the grant of the easement "is clear and unambiguous that [respondents] have the benefit of 'a

nonexclusive perpetual easement and right-of-way over and across' a 33-foot-wide roadway." The court went on to conclude that the "establishment of fence gates at both ends of the easement does abridge [respondents'] right to utilize the easement for roadway purposes . . . and therefore, they must be removed." The court, however, declined to "declare that [appellants'] horses are an obstruction such that [appellants] may not use the 33-foot strip of land for grazing purposes." The court further concluded that the easement agreement allows respondents' guests to use the easement, and that "to the extent that there are ruts in the roadway that filling them with dirt or gravel is appropriate and to the extent that there are trees that impede travel, [respondents have] the right to cut down or prune them."

Appellants argue that the district court erred in dismissing their claim for declaratory relief, and granting respondents' claim for declaratory relief, because there was insufficient evidence at the time of the summary judgment motion to fairly interpret the easement at that stage in the proceedings. This court "has the equitable power to determine the fair extent of an easement when the parties are unable to agree." *Larson v. Amundson*, 414 N.W.2d 413, 417 (Minn. App. 1987). Where, as here, the easement was created by express grant, its original scope is dependent "entirely upon the construction of the terms of the [easement agreement]." *Id.* The express grant that created the easement is a contract, and that contractual easement must be defined. *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). The interpretation of an ambiguous contract is a question of fact, and extrinsic evidence may be considered if the contract is ambiguous. *City of Virginia v. Northland*

Office Props. Ltd. P'ship, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). The initial determination as to whether a contract is ambiguous is a question of law. *Blackburn, Nickels & Smith, Inc. v. Erickson*, 366 N.W.2d 640, 643 (Minn. App. 1985), *review denied* (Minn. June 24, 1985). A contract is ambiguous if it is reasonably susceptible of more than one meaning. *Id.* at 644.

The easement agreement here provides that appellants' predecessor in interest "does hereby grant, bargain, and convey unto [respondents' predecessor in interest], her successors, transferees, heirs, and assigns, a non-exclusive perpetual easement and right of way over and across the existing roadway . . . ." The agreement further provides that "[t]his Agreement shall run with the land and the rights and obligations arising herefrom shall be appurtenant to the parcels of real property described" in the attached exhibits.

Appellants argue that the district court could not have adequately construed the easement on the record before it because there was no evidence regarding the intent of the creators of the easement and no evidence concerning the roadway as it existed in 1992, when the easement was created. But appellants cite no authority for their position that this evidence was necessary for the district court to make its decision. It is undisputed that the easement exists, and the district court detrmined that the easement is clear and unambiguous. A review of the driveway easement agreement supports the finding that the agreement is unambiguous. Consequently, the admission of extrinsic evidence was unnecessary in this case.

The Minnesota Supreme Court has stated:

> It is elementary that an easement once granted is an estate which cannot be abridged or taken away, either by the grantor or his subsequent grantees. On the other hand, the grantor of the easement of a right of way may use the way in any manner he sees fit, provided he does not unreasonably interfere with the grantee's reasonable use in passing to and fro.

Minneapolis Athletic Club v. Cohler, 287 Minn. 254, 259, 177 N.W.2d 786, 790 (1970) (quotation omitted).

Here, based on the plain language of the easement, the district court clarified respondents' rights to use and maintain the easement. The court determined that the gates installed by appellants interfered with respondents' right to use the easement, and ordered them removed. The court's decision is consistent with caselaw construing easements. *See id.* Moreover, there was nothing alleged by appellants that demonstrated that respondents acted outside the scope of the easement agreement. The easement agreement specifically permits the use of the easement by respondents' "assigns," and because "assigns" include respondents' guests, appellant cannot restrict respondents' assigns' use of the easement. And, to the extent that there are impediments to travel over the easement, respondents should have the right to reasonably correct such impediments. *See St. Anthony Falls Water-Power Co. v. City of Minneapolis*, 41 Minn. 270, 274, 43 N.W. 56, 57 (1889) (stating that "where a grant is made it must have been the intention of the parties that the grantee should have the means of using the thing granted"). Finally, we note that the easement was created over 15 years ago. The parties' rights under the easement are the same now as when the easement was created even though appellants

presently use the land in a different manner than their predecessors, who owned the land when the easement was created. Therefore, the district court's grant of summary judgment pertaining to the parties' requests for declaratory relief was not erroneous.

B. Breach of easement agreement

Appellants argue that summary judgment was inappropriate because there are genuine issues of material fact concerning whether respondents breached the easement agreement. An easement is defined as: "an interest in land in the possession of another which entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists." *Cohler*, 287 Minn. at 258, 177 N.W.2d at 789. The description of the easement must identify the land that is subject to the easement and express the intention of the parties. *Miller v. Snedeker*, 257 Minn. 204, 215, 101 N.W.2d 213, 222 (1960).

Here, appellants allege that respondents breached the easement agreement by (1) "placing deep ruts in various places along its route and by allowing large numbers of persons to use the right of way at all hours of the day and night;" (2) creating "noisy disturbances on the way in and out of [respondents'] property and . . . throw[ing] empty beer cans and other trash on [appellants'] property; and (3) interfering with appellants' use of their property, leaving gates open, and cutting and pruning trees along the course of the right of way without appellants' permission or consent. But even assuming these allegations are true, they do not constitute a breach of the easement agreement. As we noted above, the easement agreement unambiguously allows respondents and their assigns to use the roadway established on the easement. Consequently, it is not a breach

of the agreement for respondents or their friends to use the easement during the day or night. Moreover, creating noise and throwing trash on appellants' property may constitute a nuisance, but it does not constitute a beach of the easement agreement. Also, the deep ruts placed in various places along the route are a natural consequence of the easement's usage, and, therefore, they do not constitute a breach of the agreement. Finally, as noted above, because respondents are permitted to remedy issues impeding full use of the easement, their pruning of trees along the course of the right of way is not a breach of the agreement to the extent that the pruning was required for reasonable use of the easement. *See St. Anthony Falls Water-Power Co.*, 41 Minn. at 274, 43 N.W. at 57. Accordingly, the district court did not err in granting summary judgment on appellants' breach of the easement agreement claim.

C. Trespass

Appellants argue that the district court erred in dismissing their trespass claim because there are genuine issues of material fact concerning whether respondents trespassed on appellants' property. The tort of trespass "encompasses any unlawful interference with one's person, property, or rights, and requires only two essential elements: a rightful possession in the plaintiff and unlawful entry upon such possession by the defendant." *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Aug. 5, 2003).

Here, as we have already addressed, the easement agreement unambiguously provided respondents with the right to use and maintain the easement roadway. Respondents' right to maintain the right-of-way was within the purview of the easement.

See St. Anthony Falls Water-Power Co., 41 Minn. at 274, 43 N.W. at 57. Consequently, on this record, there can be no trespass, and the district court did not err in granting summary judgment on appellants' trespass claim.

D. Injunctive relief

A party seeking an injunction must demonstrate that there is an inadequate legal remedy and that the injunction is necessary to prevent great and irreparable injury. *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). The district court has broad discretion to grant or deny a temporary injunction, and this court will reverse only for an abuse of that discretion. *U.S. Bank. Nat. Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

Appellants argue that the district court abused its discretion in denying their request for injunctive relief. We disagree. In construing the parties' rights under the easement agreement, the district court concluded that respondents' conduct, as alleged by appellants in the complaint, did not violate the easement agreement. Because this conduct was within the parameters of the agreement, there was no need to grant an injunction. As noted above, the district court's decision with respect to the easement is not erroneous. Therefore, the district court did not err in denying appellants' request for injunctive relief.

II.

Appellants argue that the special verdict form in the nuisance action that proceeded to trial was fundamentally flawed because it required the jury to find direct cause in order for appellants to recover money damages. But appellants failed to object

to the special verdict form at trial. According to the Minnesota Supreme Court, jury instructions are subject to appellate review "only if there has been a motion for a new trial in which such matters have been assigned as error." *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). Also, a party's failure to object to the form of a special verdict question prior to the time the question is submitted to the jury constitutes a waiver of any objection that party may have. *Thielbar v. Juenke*, 291 Minn. 129, 137, 189 N.W.2d 493, 498 (1971). However, an appellate court may review jury instructions or the composition of special verdict questions to determine whether there is an error of fundamental law or controlling principle in either. *See Fallin v. Maplewood-North St. Paul School Dist. No. 622*, 362 N.W.2d 318, 320 (Minn. 1985).

Here, the special verdict form asked the jury if respondents created a nuisance that affected appellants' property. After the jury answered in the affirmative, the jury was asked if respondents "negligently interfere[d] with the comfortable enjoyment of life or property by [appellants]." The jury again answered in the affirmative, requiring them to determine if this interference was "a direct cause of [appellants'] damages." At that point, the jury answered "no."

Appellants argue that this special verdict form was fundamentally flawed because the jury did not need to consider direct cause in the context of a nuisance claim. Appellants contend that because there was a finding of a nuisance, and because there was a finding that the nuisance interfered with appellants' comfortable enjoyment of their property, the jury should have been allowed to consider an award of damages without consideration of direct cause.

We disagree. Errors in jury instructions are "fundamental or controlling if they destroy the substantial correctness of the charge as a whole, cause a miscarriage of justice, or result in substantial prejudice." *Rowe v. Goldberg*, 435 N.W.2d 605, 608 (Minn. App. 1989), *review denied* (Minn. Apr. 24, 1989). Here, the special verdict form used by the district court mirrors the special verdict form recommended in the CIVSVF. *See* 4A *Minnesota Practice*, CIVSVF 60.95 (2006). This form accurately states the law. Therefore, appellants cannot establish that the special verdict form was fundamentally flawed.

Affirmed.