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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-0071**

Richard A. Keeney, et al.,  
Respondents,

vs.

Roland H. Thieling, et al.,  
Appellants.

**Filed September 8, 2009  
Reversed and remanded; motions denied  
Worke, Judge**

Scott County District Court  
File No. 70-CV-07-30147

Maria D. Keeney, Richard A. Keeney, 16102 Lakeside Avenue SE, Prior Lake, MN 55372 (pro se respondents)

Justin L. Templin, Hoff, Barry & Kozar, P.A., 775 Prairie Center Drive, Suite 160, Eden Prairie, MN 55344 (for appellants)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

On appeal from an order enforcing a mediated settlement agreement, appellants argue that the district court erred in granting inconsistent motions to enforce the agreement because (1) the purported agreement conflicts with the parties' intentions, and

(2) the ruling deprives appellant Darwin Porter of his riparian rights. We reverse and remand.

## **FACTS**

In 2001, respondents Richard A. and Maria D. Keeney purchased lakefront property from Robert and Judith Chandler. The Chandlers purchased the property from appellants Roland H. and Harriet N. Thieling and Eugene M. and Catherine A. Simpkins. In 2007, appellant Darwin Porter purchased the property to the south of the Keeneys' property from Bret and Shari Borth. The properties share the boundary line of lot 44 and each has riparian rights and access to Prior Lake.

While the Borths owned the property, they had a dispute with the Keeneys over the ownership rights to a "triangular remnant" of property. Due to changes in the shoreline and water level, among other factors, the original riparian rights property lines ran at different angles than the land property lines. In March 2007, the Keeneys moved to enjoin the Borths from placing their seasonal lake equipment on the disputed property. In April 2007, the Keeneys and Borths agreed that the "Fair Seasonal Lake Equipment Placement Boundary Line is a line offset ten feet southerly of the Extension of Southerly Line of Lot 44." The Borths agreed to keep their equipment at a reasonable distance south of the boundary line and the Keeneys agreed to place their equipment at a reasonable distance north of the extension of the southerly line of lot 44. The agreement did not run with the property.

One month later, Porter purchased the property from the Borths, and the Thielings and Simpkins conveyed all remaining interest in the properties, including the triangular

remnant, to Porter via quit-claim deed. In turn, the Keeneys filed a complaint against Porter, the Thielings and Simpkins, alleging ownership of the triangular remnant. The parties participated in mediation and reached an agreement on March 26, 2008, in which Porter agreed to execute a deed to the Keeneys concerning his interest in the triangular remnant in exchange for \$5,000. The Keeneys agreed to convey to Porter a non-exclusive permanent recreational-use easement over the triangular remnant. According to the agreement, the easement “shall provide that [Porter] will maintain his lake equipment in the water with a set-back from the extension of the southerly line of Lot 44 in accordance with applicable governmental guidelines or ordinances, or, in the absence of any applicable governmental guidelines or ordinances, ten feet.” The parties agreed that the “Policy Guiding Personal Docks in the City of Prior Lake as adopted is an applicable governmental guideline or ordinance.” The easement language was to be drafted and agreed upon by counsel, if necessary, with the assistance of the mediator.

The parties arranged a “closing” to execute the agreement, but it never occurred because they were unable to agree on easement language. In July 2008, the parties separately moved the district court to enforce the settlement agreement. Following a hearing, the district court granted both motions, and ordered that “[t]he parties shall comply with all the terms and conditions of the mediated settlement agreement.” The district court ordered the parties to incorporate into the agreement, “the easement document as drafted most recently by [the mediator], and as revised by the parties on or about August 13, 2008.” In the alternative, the district court ordered the parties to incorporate any other mutually agreeable easement document. This appeal follows.

## DECISION

Appellants argue that the district court erred in granting inconsistent motions to enforce the settlement agreement because the district court imposed an easement that did not comport with the agreement and enforcement results in depriving Porter of his riparian rights. A settlement is contractual in nature and is enforceable if there is a definite offer and acceptance with a meeting of the minds on the essential terms of the agreement. *Jallen v. Agre*, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963). “The interpretation of a contract is a question of law if no ambiguity exists, but if ambiguous, it is a question of fact and extrinsic evidence may be considered.” *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). “[T]he primary goal of contract interpretation is to determine and enforce the intent of the parties.” *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). When interpreting a written instrument, “the intent of the parties is determined from the plain language of the instrument itself.” *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). We will not rewrite, modify, or limit the effect of a contract provision by a strained construction when the contractual provision is clear and unambiguous. *Id.*

The district court determined that the agreement is binding and should be enforced. The district court treated the agreement as unambiguous and incorporated into the agreement easement language drafted on or about August 13, 2008. The settlement agreement provides that:

[The Keeneys] shall convey to [Porter] a non-exclusive permanent recreational use easement over the Triangular Remnant, with no permanent structure or storage allowed, which shall be drafted and agreed upon by counsel, with, if necessary, the assistance of the mediator. Said easement shall provide that Grantee [Porter] will maintain his lake equipment in the water with a set-back from the *extension of the southerly line of Lot 44* in accordance with applicable governmental guidelines or ordinances, or, in the absence of any applicable governmental guidelines or ordinances, ten feet (10'). . . . The [Keeneys] will abide by any applicable governmental guidelines or ordinances calculated from the extension of the southerly line of Lot 44 with respect to the placement of their lake equipment. The parties also agree the Policy Guiding Personal Docks in the City of Prior Lake as adopted is an applicable governmental guideline or ordinance.

(Emphasis added.)

The parties disagree on the meaning of the phrase “extension of the southerly line of Lot 44.” Correspondence between counsel shows that the parties disputed the phrasing issue prior to the district court hearing. Appellants argue that the extension of the southerly line of lot 44 refers to a straight line. On August 14, 2008, appellants’ attorney indicated that there would be no agreement if there was not a stipulation stating that

the setback to which [the Keeneys] agreed to abide in the Settlement Agreement is from a **straight-line** extension of the Southerly Line of Lot 44 and that the setback line, the distance of which will be determined by the figures in the March 7, 2008 Policy or future ordinances or regulations, will run **parallel** to the straight-line extension of the Southerly Line of Lot 44.

Appellants assert that the agreement between the Keeneys and the Borths is evidence that the Keeneys were always aware that the extension of the southerly line of lot 44 is a straight line.

The Keeneys argue that the meaning of the phrase is found in the Policy Guiding Personal Docks in the City of Prior Lake. The district court agreed, concluding that the parties did not agree to a straight-line extension; rather, they agreed to an extension in accordance with the applicable governmental guidelines or ordinances, which is the Prior Lake docks policy. The policy includes language regarding setbacks, stating that docks should be located at least five feet from any side of a property line and that track systems must be setback at least ten feet from a side lot line. The policy also includes language regarding a rule of straight-line extensions of property lines into the water. The policy further provides that in situations when shorelines have an unusual shape due to the nature or shape of the lake, it may be better for property lines to be extended perpendicular to the shore or to the center of the lake. While the Keeneys assert that the policy was intended to be used as a guide for determining the extension of property lines into the water, appellants argue that the policy was to be used to designate setbacks.

Whether a contract term is ambiguous presents a legal question. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982). If a court concludes that a term is ambiguous, that is, susceptible to more than one reasonable interpretation, it may examine extrinsic evidence to construe the contract. *Id.* We conclude that the phrase “extension of the southerly line of Lot 44” is ambiguous. The way the agreement reads, it could be said that the parties intended to use the governmental policy only as it related to setbacks. The agreement states: “[Porter] will maintain his lake equipment in the water *with a set-back* from the extension of the southerly line of Lot 44 *in accordance with the [policy] or . . . ten feet.*” (Emphasis added.) The extension of the southerly line

of lot 44 angles toward the Keeneys' property into Prior Lake, forming one side of the triangular remnant. Thus, it is not clear whether the parties intended to use the policy as it related to setbacks or in determining the extension of property lines.

Regardless of any ambiguity, the agreement provides that the parties are to agree upon the easement language. On August 14, 2008, appellants' attorney indicated that appellants could not agree unless there was a stipulation that the extension of the southerly line of lot 44 was a straight line. Despite this, the district court ordered that "[t]he parties shall incorporate into the [] settlement agreement [], the easement document . . . as revised by the parties on or about August 13, 2008. In the alternative, the parties may incorporate into the [] settlement agreement [], any other mutually agreeable easement document." Appellants did not agree to the easement language. And by expressly stating that the parties "in the alternative" "may incorporate" "any other mutually agreeable easement document," it appears that the court recognized that the parties did not agree to the August 13 easement document. Pursuant to the mediated settlement agreement, the parties are to agree on easement language, which they have not. Therefore, we reverse the district court's order requiring the incorporation of the August 13 easement agreement into the mediated settlement agreement. Because the agreement is ambiguous as to the meaning of the "extension of the southerly line of Lot 44," we

reverse and remand to the district court for further proceedings.<sup>1</sup> The district court, in its discretion, may refer the parties back to mediation to clarify this issue.

**Reversed and remanded; motions denied.**

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<sup>1</sup> The Keeneys move this court to dismiss the appeal for lack of a transcript and to strike portions of appellants' brief. Because we are reversing and remanding, these motions are denied.