STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1046

Robert Thueringer, et al.,
Appellants,

vs.

Michael L. Kittridge, et al.,
Respondents.

Filed February 2, 2010
Affirmed
Stoneburner, Judge

Morrison County District Court
File No. 49CV081765

Tim Sime, Rinke-Noonan, St. Cloud, Minnesota (for appellants)

Joseph S. Mayers, Kelm & Reuter, P.A., Sauk Rapids, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

STONEBURNER, Judge

Appellants and respondents disputed fee title to property underlying a dedicated road that divides their properties. After a court trial, the district court held that each party has fee title to the center of the road. Appellants challenge the decision, arguing that the district court erred by ignoring the conveying deeds and by determining ownership of fee title by application of a general legal rule rather than by construing the deeds in a manner that resulted in appellants' fee ownership of all of the real property underlying the road. We affirm.

FACTS

The facts in this case are not disputed. In the 1950s, William and Ellen Stowring (Stowrings) platted a subdivision out of a larger tract of land that they owned, creating Birchdale Knolls, a subdivision consisting of 11 lots along the southern shore of Lake Alexander in Scandia Valley Township in Morrison County. The plat contains three dedicated roadways. The roadway at issue in this case (the road) is a 66-foot-wide road dedicated to the public running east-west along the non-lakeside of Lots 5-11. Stowrings retained fee title to the property adjacent to the south side of the road (unplatted property). Dedication of the road has not been accepted by the township, but the parties stipulated that any fee interest in the dedicated road remains subject to (1) the township's right to accept dedication of the road and (2) easements granted for right-of-way passage and for utility service. Only a two-lane trail, 12-15 feet wide, in the approximate center of the road, is used for access to the adjacent lots.

Respondents Michael and Mary Kittridge (Kittridges) purchased Lot 9 of Birchdale Knolls in 1991, and appellants Robert and JoAnn Thueringer (Thueringers) purchased Lot 8 of Birchdale Knolls in 1993. The deeds for Lots 8 and 9 do not reference the road, and each describes the property conveyed as "according to the plat and survey thereof on file and of record in the office of the County Recorder in and for Morrison County, Minnesota." Each deed states that the grantor conveys the lot "together with all . . . appurtenances belonging thereto."

In 1992, Kittridges purchased the unplatted property from the heirs of Bernard Bachman, who had purchased the unplatted property from Stowrings in 1954. Neither deed conveying the unplatted property contains a reference to the road, and each deed describes the property conveyed as all of the original Stowring property "less" Lots One through Ten and the West Half of Lot Eleven of Birchdale Knolls "according to the plat thereof on file and of record in the office of the Register of Deeds in and for Morrison County, Minnesota[, l]ess mineral reservations and [e]asements heretofore granted."

The current dispute involves ownership of fee title to the land underlying the road that abuts Thueringers' Lot 8 and Kittridges' unplatted land. Thueringers brought an action to determine adverse claims under Minn. Stat. § 559.01 (2008). Both parties claimed fee ownership of all of the land under the road.

After a bench trial, the district court held that neither the subdivision plat nor the deeds resolve the issue because none of the documents addresses fee interest in the road. The district court held that neither party had presented any evidence of Stowrings' intent regarding fee title to the road. To determine the adverse claims, the district court applied

the general legal rule that, where there is no express reservation or conveyance of fee title to a dedicated right-of-way, abutting land owners take title to the center of a road. The district court adjudicated Thueringers fee-title owners of the half of the road abutting their property and Kittridges fee-title owners of the half of the road abutting their property, subject to easements and the township's dedication interests as stipulated. This appeal followed.[1]

D E C I S I O N

Thueringers argue that the district court erred by ignoring the involved deeds and by failing to construe them as resolving the issue of fee-title ownership. The rules for construing contracts apply to deeds. *La Cook Farm Land Co. v. N. Lumber Co.*, 159 Minn. 523, 527, 200 N.W. 801, 802 (1924). "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.*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). Whether a deed is ambiguous is a question of law subject to de novo review. *Mollico v. Mollico*, 628 N.W.2d 637, 641 (Minn. App. 2001). "An appellate court is not bound by, and need not give deference to, the district court's decision on a question of law." *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001). When construing a deed, a court's primary objective is to ascertain and give effect to the parties' intent. *Dittrich v. Ubl*, 216 Minn. 396, 406, 13 N.W.2d 384, 390 (1944).

[1] Respondents did not file a notice of review. Therefore, by separate order, this court granted appellants' motion to strike portions of respondents' appellate brief arguing that the district court erred by failing to award them fee title to the entire disputed property.

There is a presumption that the owners of property abutting a dedicated street are also the fee-title owners of the street. *Drake v. Chicago, R.I. & P. Ry. Co.*, 136 Minn. 366, 367, 162 N.W. 453, 454 (1917). "Every intendment favors ownership in the abutters rather than a reservation of title in the platter, and to constitute such a reservation there must be something equivalent to an express declaration." *Id.* In this case, the district court examined the deeds, and the record supports the district court's finding that neither the dedication nor any of the deeds contains an express declaration that Stowrings reserved or conveyed fee title to the road. The district court quoted the relevant language in each deed and concluded that, although the deeds expressly address easement interests in the road, they do not expressly address *fee title* to the road, which the parties agree is the only issue in this dispute. Thueringers argument that the district court ignored the deeds is meritless.

Thueringers cite *State v. Hess*, 684 N.W.2d 414 (Minn. 2004), and *Carlson v. Duluth Short Line Ry. Co.*, 38 Minn. 305, 37 N.W. 341 (1888), for the proposition that the language "less . . . easements heretofore granted," used in the deeds that conveyed the unplatted property, must be construed to specifically except fee title to the road from conveyances of the unplatted property. But the cases cited both involved exceptions for described *land*, and, in this case, the deeds to the unplatted land excepted an *easement.* "An easement, in contrast [to fee title], is an entitlement to the use or enjoyment of the land rather than an interest in the real property itself. An easement does not convey an estate; rather it passes only a right of use." *Hess*, 684 N.W.2d at 420 (citations omitted). "An easement, whether it is a right to use the surface or a space above or below it, does

not carry with it title to or right of possession of the land itself." *Romans v. Nadler*, 217 Minn. 174, 181, 14 N.W.2d 482, 487 (1944).[2] Therefore, despite the testimony of Thueringers' expert surveyor, who opined that the legal descriptions in the deeds conveying the unplatted land specifically excluded any fee interest in the entire dedicated right-of-way, the language excepting the easement cannot be construed as an express reservation of fee title to the road.[3] Thueringers argue that reading the deed to except the easement creates an absurdity. Even if that is the case, the language does not express the clear intent to except fee title to the road.

Thueringers next argue that "when the original dedicator transfers ownership of the platted lots, the purchaser of the lot also takes fee title to the adjoining platted right-of-way, and has a right to rely on that adjoining land as an appurtenance," citing *Kochevar v. City of Gilbert*, 273 Minn. 274, 276, 141 N.W.2d 24, 26 (1966). But *Kochevar* states: "The rule appears to be elemental that any abutting landowner owns to the middle of the platted street or alley and that the soil and its appurtenances, within the limits of such street or alley, belong to the owner in fee . . . ." *Id*. None of the cases

[2] Likewise, a mineral reservation reserves only an interest in the minerals in or under the real property, not the real property itself. *See Black's Law Dictionary* 424 (9th ed. 2009) (defining a mineral deed as the conveyance of an interest in the minerals in or under the land).

[3] Additionally, if we were to construe the language as Thueringers urge, fee title to the road would remain with Stowrings. This construction would defeat Kittridges' claim to the property but would not advance Thueringers' claim.

relied on by Thueringers support their assertion that abutting owners own fee title to the entire road rather than to the center of the road.[4]

Absent an express reservation or conveyance of fee title to a dedicated road, the only situation in which an abutting owner takes title to the entire road is when the dedicator did not own the land on both sides of the road.

> Where a street is dedicated by plat and there are lots on both sides of the street owned by the platter and dedicator, the lots on each side of the street carry title to the underlying fee only to the center of the street . . . . But, where there are lots or land owned by the dedicator on only one side of the street and he owns the lots or land only up to and including the street, so that the street extends to the boundary of his land and he owns nothing on the other side thereof, the rule seems to be that the dedicator, after parting with the lots bordering the street, retains no further fee or interest in the street, and, upon vacation thereof, the fee to the street reverts to the lot owners who obtained title from the platter or dedicator.

Lamprey v. Amer. Hoist & Derrick Co., 197 Minn. 112, 117–18, 266 N.W. 434, 437–38 (1936).

In this case, Stowrings, the platters and dedicators, owned the property on both sides of the road. Therefore, because we agree that the involved deeds do not contain an

[4] *White v. Jefferson* states that where a deed does not reserve fee to the roadbed in the grantor and circumstances do not justify an inference of intention to reserve, courts have imputed the intention to transfer fee to the middle of the street to abutting owners. 110 Minn. 276, 282–83, 124 N.W. 373, 375 (1910). And *Bolen v. Glass* states: "As to the ownership of the underlying fee interest, we have recognized 'that any abutting landowner owns to the middle of the platted street . . . .'" 755 N.W.2d 1, 4 (Minn. 2008) (citing *Kochevar*, 273 Minn. at 276, 141 N.W.2d at 26).

express reservation or conveyance of fee title to the road, the district court did not err in concluding that the abutting owners each own to the center of the road.

Affirmed.