STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1135

Ellen Kalahar-Grissom,
Respondent,

vs.

Marvin W. Stroschein, et al.,
Appellants.

Filed February 11, 2019
Reversed and remanded
Bratvold, Judge

Morrison County District Court
File No. 49-CV-17-1071

Rory C. Mattson, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondent)

Jonathan D. Wolf, Rinke Noonan, St. Cloud, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and Klaphake, Judge*

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

BRATVOLD , Judge

Between 1992 and 1993, mother conveyed land to her adult daughter, adult son and his spouse, in separate deeds. Mother retained ownership of land that is south of and

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

adjacent to son's and daughter's parcels. Daughter's parcel is land-locked and mother's deed to daughter referred to an easement for ingress and egress across an existing roadway that ran across the middle of the section. The existing roadway, in part, ran along the southern border of son's parcel. In 2016, son informed daughter in a letter that, although he had allowed her access "[o]ver the years," he did not recognize a roadway easement.

Respondent-daughter sued appellants-son and his spouse, seeking to enforce an easement for ingress and egress. Mother is not a party. Appellants now seek review of the district court's order concluding that (1) daughter has an express roadway easement that burdens appellants' property and that (2) appellants are liable in nuisance for closing gates along the roadway, interfering with daughter's access to her land, and must remove the obstruction pursuant to an injunction. Appellants also assert that the district court erred in failing to consider their adverse-possession counterclaim.

We determine that mother's deed to daughter did not create an express easement benefiting daughter's property. Consequently, we reverse the district court's judgment for daughter on her express easement claim. We remand daughter's implied easement claim, which was not decided by the district court, and also reverse and remand daughter's nuisance/breach of quiet enjoyment claims for further proceedings consistent with this opinion.

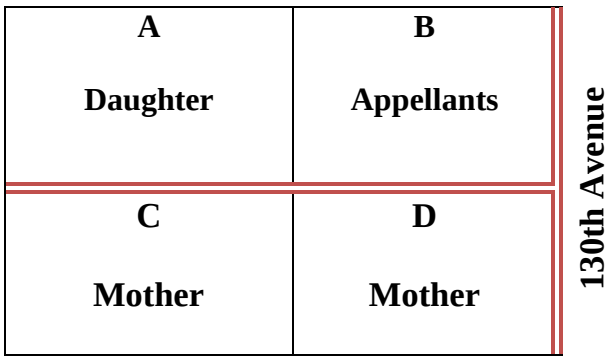
FACTS

In the early 1950s, Ruth and Marvin R. Stroschein obtained title to real property in Morrison County, which is generally described as section 12, township 130, range 30 (section 12 property). Marvin R. Stroschein died before 1992, and Ruth Stroschein

(mother) is still living. Mother conveyed two quarters of the section 12 property via quitclaim deed to her adult children between 1992 and 1993. Respondent Ellen Kalahar-Grissom (daughter) is mother's daughter. Appellants Marvin W. Stroschein (son) and Sharon Stroschein (collectively, appellants) are, respectively, mother's son and daughter-in-law.

Mother conveyed the northwest quarter of section 12 to daughter in two separate deeds that were recorded in April 1993. Mother also conveyed the northeast quarter to appellants in a deed that was also recorded at the same time. Mother retained ownership of the southern two quarters. The diagram below roughly depicts ownership of the parcels in section 12.

North↑



As indicated in the diagram, daughter's parcel A lies to the west of appellants' parcel and is without public access. Appellants' parcel B and mother's parcel D have direct access to 130th Avenue, which is a public right-of-way.

As mentioned, mother conveyed parcel A to daughter in two separate quitclaim deeds; the second deed conveyed the southern half of parcel A and stated that it was:

> subject . . . to a 33 foot wide easement for ingress and egress across the existing roadway running generally east and west across the middle of Section 12 from the East line of Section 12.

Mother conveyed parcel B to appellants in a single deed with similar language:

> Also reserved for Grantor, her heirs and assigns, is a 33 foot wide easement for ingress and egress across the existing roadway running generally east and west across the middle of Section 12 from the east line of Section 12.

About four months later, appellants conveyed parcel B back to mother in a deed recorded in June 1993. In a letter to mother, appellants stated they had "no interest in accepting the property and the attendant liabilities under the terms with which it was deeded." Appellants' deed to mother stated it was "[s]ubject to reservations, restrictions and easements of record."

Mother again conveyed parcel B to appellants, along with portions of parcels C and D; she used five separate deeds, each conveying a one-fifth interest, and recorded the deeds in 1994, 1995, 1996, 1997, and 1998. Each of these five deeds stated that mother reserved a life estate and the conveyance was made "together" with "all hereditaments and appurtenances belonging thereto."

The parties dispute how often daughter has used the existing roadway that divides section 12 from east to west. Daughter claims that she has used the roadway from December 1992 to the present to access parcel A, upon which she has a cabin. In his February 2018 affidavit, son attested that the roadway "is not and has not been suitable for passage as a road or even a trail for over 50 years." But son also submitted a November 2016 letter to daughter in which he stated that "[o]ver the years," appellants "have allowed"

daughter to pass over their property to access her property. In the letter, son also stated that daughter had asked him for a permanent easement, and that appellants would "not agree" to that. His letter added that, if daughter agreed not to seek an easement, appellants would provide written permission and "continue to allow [her] to access [her] property, as [they] have done in the past." If daughter did not agree by the end of the year, then "our permission allowing [her] to access [her] hunting land . . . [would] be revoked . . . and entry onto our land will from that time forward be considered trespassing."

Daughter sued appellants in July 2017, later amending her complaint to raise four claims. In count I, daughter sought declaratory judgment that the mother's deed conveying parcel A created a roadway easement to benefit daughter's parcel and provide ingress and egress. In count II, daughter sought an easement by necessity (implied easement) because parcel A lacks access to a public right-of-way. In counts III and IV, she sought damages for breach of quiet enjoyment and nuisance, alleging that appellants had obstructed access to her parcel. Appellants filed an answer denying the existence of a roadway easement and bringing a counterclaim for adverse possession of daughter's land, alleging that they had erected a fence "running easterly and westerly on the southern portion" of daughter's parcel.

Daughter moved for partial judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03, seeking a declaration of an express easement based on the deed submitted with the complaint and the answer. Daughter argued that she was entitled to judgment on her express and implied easement claims, and, if she prevailed on either of the easement claims, she was entitled to relief on her nuisance claim. Appellants opposed the motion and

submitted evidence. Appellants argued that any express easement created by mother had been extinguished and that fact issues precluded entering judgment on daughter's implied easement claim. Alternatively, appellants argued that the deeds reserved an easement for mother and not daughter. Neither party filed a dispositive motion on appellants' adverse-possession counterclaim.

After hearing arguments, the district court issued a written order that initially decided that summary judgment was the correct standard. The district court granted daughter's motion for partial summary judgment, ruling that mother created an express easement for roadway access in favor of daughter when she conveyed parcel A, and that her subsequent conveyances to appellants had "no legal effect" on the easement. Applying Minnesota law, as urged by daughter, the district court also determined that appellants' fence and gates were a nuisance as a matter of law because appellants admitted they had obstructed daughter's access to her property. Consequently, the district court issued an injunction directing appellants to abate the obstruction and allow daughter access to her property but allowed appellants to use fencing as "necessary" to manage livestock. Judgment was entered in favor of daughter. This appeal follows.

D E C I S I O N

If, on a motion for judgment on the pleadings, "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." Minn. R. Civ. P. 12.03. Summary judgment is only granted when "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of

law." Minn. R. Civ. P. 56.01.[1] On appeal, we view the evidence "in the light most favorable to the party against whom summary judgment was granted." *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). This court reviews a district court's summary judgment decision de novo to "determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

I. The district court erred in granting summary judgment for daughter on her express easement claim.

Appellants argue that summary judgment was not proper because there is, at least, an ambiguity in mother's deed to daughter regarding whether an express roadway easement burdened appellants' property for daughter's benefit. Daughter responds that summary judgment was appropriate because the language in mother's deed to daughter is unambiguous.

Deeds are read in the same manner as contracts and are subject to the same rules of interpretation. *See La Cook Farm Land Co. v. N. Lumber Co.*, 200 N.W. 801, 802 (Minn. 1924). "The primary goal of contract interpretation is to determine and enforce the intent

[1] The district court applied the former version of rule 56, which was recently "revamped" to more "closely follow" the federal rules. Minn. R. Civ. P. 56 2018 advisory comm. cmt. When promulgating amendments to rule 56, effective on July 1, 2018 and applicable to pending cases, the supreme court specifically indicated that amended language on the standard for granting summary judgment reflects recent Minnesota caselaw. *Order Promulgating Amendments to Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018). Because the legal standard is unchanged, we cite to the current version of rule 56.01, even though the district court's decision was issued before the amended rule took effect.

of the parties." *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). In a written contract, reviewing courts determine the intent of parties "from the plain language of the instrument itself." *Id.* If a contract is unambiguous, its effect "may be decided by the district court as a question of law and is subject to de novo review." *Apitz v. Hopkins*, 863 N.W.2d 437, 439 (Minn. App. 2015). However, if a contract is ambiguous because it "is reasonably susceptible of more than one interpretation," its interpretation is a question of fact for a jury to decide. *Current Tech. Concepts, Inc. v. Irie Enter., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995); *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (noting that "the interpretation of an ambiguous contract is a question of fact for the jury").

An easement is "an interest in land" and the "written instrument creating the easement . . . defines the scope and extent of the interest in land." *Larson v. State*, 790 N.W.2d 700, 704 (Minn. 2010). A grantor who conveys part of her land to another may create an easement in the deed of conveyance by reserving one to benefit the grantor's remaining property. *See Byram v. Chi., St. P., M. & O. Ry. Co.*, 21 F.2d 388, 393 (8th Cir. 1927) ("A grantor of land may, by an exception or reservation, in his deed, create an easement in the land granted for the benefit of his remaining land." (citations omitted)); *see also Winston v. Johnson*, 45 N.W. 958, 958 (Minn. 1890) ("Where it appears . . . that it was the intention of the parties to create or reserve a right in the nature of an easement in the property granted, for the benefit of other land of the grantor, and originally forming, with the land conveyed, one parcel, such right will be deemed appurtenant to the land of the grantor, and binding on that conveyed.").

Here, mother is the grantor and her deed conveying parcel A to daughter states that it is "subject . . . to a 33 foot wide easement for ingress and egress across the existing roadway running generally east and west across the middle of Section 12 from the East line of Section 12." The deed's language does not state that the easement benefits daughter's property, nor does it state that parcel B is the servient estate. In fact, the deed states that mother has conveyed parcel A to daughter "subject to" the described easement. By using the term "subject," mother's deed to daughter unambiguously describes an easement for mother's benefit, making mother's parcels the dominant estate and daughter's parcel the servient estate. We conclude that mother's deed to daughter is unambiguous, does not create an express easement for daughter's benefit, but creates a roadway easement for mother's benefit.[2]

At oral argument, both parties acknowledged that mother's deed conveying parcel A to daughter may have created a roadway easement to benefit mother's remaining property. At the time parcel A was conveyed, mother retained parcel C, which lies to the south of the "existing roadway" and is landlocked. The roadway easement benefitted mother's parcel C by ensuring access to a public-right-of-way via the existing roadway.

Appellants argue that, even so, there is a fact issue precluding summary judgment on any express easement. They concede that mother's deed conveying parcel B to appellants also created a roadway easement to benefit mother and burden appellants'

[2] Mother is not a party to this lawsuit, therefore, we lack jurisdiction over her. *See In re Ferlitto*, 565 N.W.2d 35, 37 (Minn. Ct. App. 1997). In other words, we acknowledge that this litigation does not bind mother.

property, but claim that they extinguished the easement either by not accepting the deed or by conveying parcel B back to mother. Appellants also point out that mother's subsequent five deeds to appellants did not refer to any easement. In response, daughter argues that appellants deeded parcel B back to mother "[s]ubject to . . . easements of record, if any" and that mother deeded parcel B, along with other parcels, to appellants "together" with "all hereditaments and appurtenances belonging thereto." Daughter claims that the term "appurtenances" is a reference to the roadway easement.

Fundamentally, we need not decide what, if anything, happened to the roadway easement created by mother's deed conveying parcel B to appellants. Because mother's deed conveying parcel A to daughter created the roadway easement at issue in this appeal and we have fully resolved daughter's claim in that regard, we need not consider appellants' arguments about the parcel B easement. As the district court succinctly stated, mother's conveyances of parcel B are without "legal effect" to the roadway easement created when mother conveyed parcel A to daughter.

The district court's comment is well grounded in Minnesota law, which clearly provides, once created, that an easement runs with the land. An easement "will pass to and be binding on all subsequent grantees of the respective parcels of land." *Winston*, 45 N.W. at 958. "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." *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 790 (Minn. 1970) (quoting *Grinnell Bros. v. Brown*, 171 N.W. 399, 400 (Mich. 1919)). An easement appurtenant to benefit a particular parcel "passes with the land . . . without express reference to it in the deed of conveyance."

Swedish-Am. Nat'l Bank of Minneapolis v. Conn. Mut. Life Ins. Co., 86 N.W. 420, 422 (Minn. 1901). Thus, once a roadway easement was established in mother's deed to daughter conveying parcel A, the easement ran with the land.[3]

Because mother's deed conveying parcel A to daughter did not expressly create a roadway easement for daughter's benefit and, instead, unambiguously created a roadway easement for mother's benefit, the district court erred in granting summary judgment to daughter on her express easement claim. Because the deed language is unambiguous, no questions of fact remain, and appellants are entitled to summary judgment against daughter on her express easement claim.

II. The implied easement and nuisance claims are remanded for further proceedings.

In district court, daughter requested a determination that she had an implied easement. The district court expressly declined to decide daughter's claim for an implied easement because it determined that daughter had an express easement as a matter of law. Because we determine that daughter does not have an express easement, we remand daughter's claim for an implied easement for further proceedings consistent with this opinion. *See Doe v. F.P.*, 667 N.W.2d 493, 500 (Minn. App. 2003) (remanding on appeal

[3] Even so, we are not persuaded that appellants extinguished the roadway easement created when mother conveyed parcel B to appellants. It is undisputed that appellants accepted mother's deed conveying parcel B because they conveyed parcel B to mother four months later. "It may be presumed as a fact that a grantee who personally accepts and retains a deed of conveyance knows the contents of it." *Blinn v. Chessman*, 51 N.W. 666, 666 (Minn. 1892). Moreover, if a grantee executes the delivered deed, this is evidence he believes that he has a legal interest in the property. *See Caskey v. Lewandowski*, 46 N.W.2d 865, 867 (Minn. 1951) (noting that a plaintiff's execution of a deed impeached her testimony that she was unaware of her rights in property).

from summary judgment because this court could not "review what the district court did not address").

Daughter also brought a claim for nuisance against appellants for installing gates and fencing that interfered with her access to parcel A. The district court determined that appellants admitted they obstructed daughter's access to parcel A by pleading adverse possession of the roadway through installation of gates and fencing. *See* Minn. Stat. § 561.01 (2018) ("Anything which is . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance."). After determining that daughter had an express roadway easement for access to parcel A, the court granted summary judgment in favor of daughter on her nuisance claim and issued an injunction to remove any obstruction to daughter's access over the existing roadway. Because we determine that daughter did not have an express easement, we reverse the district court's decision to grant injunctive relief on daughter's nuisance claim. Like daughter's claim for implied easement, her claims for nuisance and breach of quiet enjoyment are remanded for further proceedings consistent with this opinion.

III. The district court did not resolve appellants' adverse-possession counterclaim.

Appellants argue that the district court erred in granting summary judgment on respondent's express-easement and nuisance claims without considering appellants' adverse-possession claim. They acknowledge that they did not move for summary judgment on their adverse possession claim and that their appeal is taken from the order granting daughter an injunction. *See* Minn. R. Civ. App. P. 103.03(b) (allowing appeal from an order granting an injunction).

We understand appellants' argument to be that there is a genuine issue of material fact whether daughter established the existence of an easement and a nuisance by obstruction of the easement. Appellants did not make this argument to the district court, and we decline to address it in the first instance on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (determining that an appellate court generally will not consider matters not argued to and considered by the district court). The district court did not err in resolving daughter's partial summary-judgment motion without considering appellants' counterclaim; further, appellants' counterclaim may be resolved upon remand.

In sum, we reverse the district court's determination that daughter has an express easement, and remand for entry of judgment in favor of appellants on the express easement claim. We also remand for further proceedings consistent with this opinion daughter's claims for an implied easement, nuisance and breach of quiet enjoyment, along with appellants' adverse possession counterclaim.

Reversed and remanded.