IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2011

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

Appellant,

v. Case No. 5D10-1611

FARMLAND RESERVE, INC.,

Appellee.
_____/

Opinion filed March 18, 2011

Appeal from the Circuit Court
for Orange County,
Frederick J. Lauten, Judge.

Stanley J. Niego and William H. Congdon,
Palatka, for Appellant.

Thomas B. Drage, Jr., County Attorney,
and John P. Lowndes, Assistant County
Attorney, Orange County, Florida, Amicus
Curiae, for Appellant.

Scott J. Johnson, Suzanne E. Gilbert and
Min K. Cho of Holland & Knight LLP,
Orlando, Frank E. Matthews, Eric T. Olsen
and Julie M. Murphy of Hopping, Green &
Sams, P.A., Tallahassee, for Appellee.

PER CURIAM.

We are asked to review a judgment on the pleadings that construed flowage and storage easements over lands owned by Appellee. Because we determine that the easements are ambiguous in scope, we reverse and remand for further proceedings.

The easements provided in pertinent part that Appellant's predecessor, its successors and assigns, had the right to use Appellee's property "for the purpose of the

flowage and storage of water on said lands, in the accomplishment of the water control program of the grantee . . . ." Pursuant to the easements, Appellant's predecessor constructed structures on Appellee's land to impound a natural tributary, creating a reservoir. As a result of a perceived dispute about Appellant's proposed use of the easements, Appellant filed an action seeking a declaration that the easements provide it "with the property interest necessary to utilize the Reservoir for public water supply," an apparent change in Appellant's use of the easements.

At a hearing on cross-motions for judgment on the pleadings, both parties argued that the easements could be construed as a matter of law because they were unambiguous. Despite repeated expressions of concern by the trial judge that extrinsic evidence was needed to determine the scope of the easements, both parties persisted in urging the trial court to construe the easements as a matter of law. Nevertheless, both parties offered extrinsic facts during their arguments to assist the trial court in construing what they claimed to be facially unambiguous documents. Although we are sympathetic to the plight of the trial court under these circumstances, we conclude that the construction of the easements at this procedural juncture was error. The intended scope of these easements cannot be discerned from the face of the documents without resorting to extrinsic evidence.

On remand, the trial court shall determine how Appellant intends to use the easements. We emphasize that, although the parties at times discuss the use of the water, which both agree belongs to the public, it is the use of the land that is the relevant consideration. Insofar as the proposed use of the land is concerned,

Appellant's complaint is woefully vague.[1] Appellant cannot seek a declaration of its rights under the easements while keeping its intentions close to the vest. Once the intended use is determined, the trial court must consider any admissible extrinsic evidence to discern what the parties intended at the time the easements were granted. We specifically reject Appellant's contention that these easements are "general and unlimited," thereby permitting unrestricted use for any purpose.

If the material extrinsic evidence is not in dispute and is properly introduced in the record, the resolution of this case might not necessitate a trial. If some material facts are disputed, a trial may be conducted to resolve those disputed issues of fact.

REVERSED and REMANDED.

ORFINGER and JACOBUS, JJ., concur.

TORPY, J., concurs and concurs specially with opinion.

[1] Whether Appellant's complaint was too vague to state a cause of action is not an issue on appeal.

TORPY, J., concurring specially.

I agree with the opinion of the majority that the trial court erred in granting judgment on the pleadings. This happens all too often that both sides seek a ruling on what both claim to be an unambiguous document. Then, when the trial judge takes the bait, the losing side cries foul, claiming an ambiguity. Maybe the rule should be that if you argue to the trial court that a document is unambiguous, then you can't have it the other way.

In any event, the second problem here is that the complaint is vague about what Appellant intends to do. Appellant filed a one-count complaint seeking a declaration from the trial court about an intended use of the easements, yet it only asked the court to declare that it has the "property interest necessary to utilize the Reservoir for public water supply." The dilemma with this is that everyone concedes that the water belongs to the public, so the real question is whether Appellant's easements permit it to construct whatever structures are needed to capture the water and convey it from the reservoir for whatever purpose. The intended use of the easements might also involve access to the reservoir for treatment or maintenance of the water. We don't know. The point is that it is impossible for a court to make a meaningful declaration about the propriety of an objective such as this without knowing how the accomplishment of the objective will involve the use of the land. This is why the trial judge asked Appellant's counsel so many questions. Although counsel finally answered the questions when pressed, acknowledging that Appellant might be putting a pipe in the lake, on appeal, Appellant takes issue with the trial judge for considering this fact. During oral argument,

we asked Appellant whether its intended use might also involve pumping water into the lake from elsewhere in the river. Counsel's affirmative reply was notably equivocal. Maybe the problem is that Appellant does not know what it needs. Maybe the vagueness of the complaint was an intentional strategy to get the camel's nose in the tent, after which the rest of the camel would follow.

On the merits, it appears to me that Appellant might be rowing upstream in its battle to convince the court that this particular use was contemplated by the parties when the easements were granted. The only extrinsic evidence of what was intended will probably be the parties' conduct since that time. The construction on this project was apparently substantially concluded over forty years ago. It consisted essentially of a dam to create a lake from a natural tributary. The tributary already "flowed" through the property. The flowage part of the easements was apparently given so that backed up water could flood surrounding lands. The storage part pertained to the lake itself. Nobody had in mind the use by Appellant's predecessor of this reservoir to supply water for a utility. Neither Appellant, nor its predecessor, is a public utility. Since that time, until recently, Appellant never attempted to pipe water from the lake. The now-intended use is clearly a new use. The question is whether Appellant's "water control program" in existence at the time the easements were granted contemplated this type of future use. This will have to be sorted out on remand. Hopefully, the lawyers will assist the trial court by stipulating to undisputed facts and crystallizing the disputed facts, if any, to facilitate the prompt resolution of this important case.