STATE OF MICHIGAN

COURT OF APPEALS

BARRIGER FAMILY TRUST, by HARRY A. BARRIGER, Trustee, Plaintiff/Counter-Defendant/Appellant,	UNPUBLISHED June 7, 2011
v	No. 295683 Marquette Circuit Court
TOWNSHIP OF FORSYTH, Defendant/Counter-Plaintiff/Appellee.	LC No. 08-046178-CH

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Plaintiff/Counter-Defendant Barriger Family Trust, by trustee Harry A. Barriger, appeals as of right the trial court's order granting judgment on defendant/counter-plaintiff Township of Forsyth's counterclaim requesting that a deed of easement be reformed. We affirm.

Plaintiff initiated this lawsuit seeking money damages for the misuse and abuse of an easement held by defendant over a portion of plaintiff's real property. According to plaintiff, unknown users of the easement had not restricted themselves to the easement area and deposited junk and debris both in the easement and on plaintiff's property not subject to the easement. Plaintiff alleged that despite its requests for assistance in remedying the situation and preventing further misuse/abuse of the easement, defendant had taken no action. Plaintiff alleged that as a result, it incurred costs and expenses to remedy the damage caused to its property and to protect its property from further damage.

Defendant filed a counter-claim against plaintiff requesting reformation of the deed granting it an easement. According to defendant, the deed contained a scrivener's error in one paragraph describing the easement as being across the eastern, rather than southern portion of plaintiff's property. The matter proceeded to a bench trial, at the conclusion of which the trial court entered a judgment in plaintiff's favor for damages on its claim in the amount of $850 with interest, and a judgment in favor of defendant on its counter-claim ordering that the deed of easement be reformed.

On appeal, plaintiff argues that the trial court erred by not recognizing or honoring the validity of the legal description contained in the deed of easement, considering that the

description clearly described the southeastern corner of the parcel as the easement location. Plaintiff also argues that it was error for the trial court to find an ambiguity in the deed when one was not pled or claimed and where none was present. Hence, plaintiff asserts that because there was no ambiguity, parol evidence should not have been allowed to reform the deed against it, a thrice removed bona fide purchaser.

We review equitable determinations regarding interests in land de novo and the findings of fact in support of those equitable decisions for clear error. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997). The interpretation of a deed, including whether a deed is ambiguous, is a question of law that we review de novo. See e.g., *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003); *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 389; 761 NW2d 353 (2008). Importantly, "in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; [] no language in the instrument may be needlessly rejected as meaningless . . ." *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005). Thus, plaintiff's argument that only the language in the legal description should have been considered, when such language clearly described a particular parcel of land, is without merit because the whole of the deed must be considered with no language needlessly rejected as meaningless. *Id*.

In addition, in this case, the language in the deed of easement was ambiguous. *Johnson Family Ltd Partnership*, 281-374 Mich App at 373. Here, although the deed of easement initially described the property to be at the southern boundary of the real property on an existing snowmobile and ORV trail, the deed went on to provide a legal description that referred, in particular, to the "Eastern Twenty (20) feet of the following parcel . . ." In addition, although the legal description ultimately described the easement as being at the southeastern border, this does not minimize the fact that the easement was initially described only as being at the southern border, not at the southeastern border. Moreover, the deed of easement referred to a 20-foot strip of property while the legal description described a 20-by-20-foot square of property. The word "strip" is defined as "a long narrow piece of material" and "a narrow expanse of water or land." *Random House Webster's College Dictionary* (1997). See *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 472; 688 NW2d 523 (2004)(a dictionary may be used to determine the meaning of ordinary terms). Hence, a "strip" of property generally is a long and narrow piece of property rather than a square piece of property. Accordingly, based on the inconsistencies set forth in the deed of easement, the language in the deed of easement was ambiguous. *Johnson Family Ltd Partnership*, 281 Mich App at 373.

Moreover, although plaintiff argues that it was error for the trial court to find an ambiguity when one was not pled or claimed, defendant requested in its counterclaim that the deed of easement be reformed. Case law clearly provides that in order for a deed to be reformed, the true intent of the parties must be determined, which requires examining the language of the deed and determining whether there was an ambiguity. *Id*. 371-372; *Scott v Grow*, 301 Mich 226, 239; 3 NW2d 254 (1942). Consequently, plaintiff's argument has no merit. Based on the foregoing, parol evidence was admissible to show the true intent of the parties and, thus, whether there was a mutual mistake in the deed. *Id*.; *Clark v Johnson*, 214 Mich 577, 582; 183 NW 41 (1921).

In this case, the trial court determined that based on the testimony of Bryan Filizetti, Don Britton, and Mike Jakubowski (former trustee and current supervisor of defendant), the parties to the deed of easement intended to convey a 20-foot strip at the southern border of the property and there was a mutual mistake in the deed. The trial court also noted that easement was specifically intended to be on an existing snowmobile trail, and that the photographs of the property reflected that the trail was in existence for many years.

Filizetti was the owner of the parcel at issue when the easement was granted. He testified as to his clear intent when he deeded the easement, which was to convey a 20-foot strip on the southern boundary of his property. Filizetti's testimony was supported by Britton's recollection that the easement was requested for the purpose of having a permanent snowmobile and ORV (off-road vehicle) trail. Jakubowski's testimony, as well as the pictures, also support that the 20-foot strip along the southern border of plaintiff's property was the parcel that was used as the easement for many years. Accordingly, the trial court's finding of fact as to the intent of the parties was not clearly erroneous. There was clear and satisfactory evidence that there was a mutual mistake of the parties when drafting the deed and that that mistake resulted in the deed not reflecting the intent of the parties. *Scott*, 301 Mich at 239; *Clark*, 214 Mich at 582; *Johnson Family Ltd Partnership*, 281 Mich App at 379-380. A mistake of law occurred when reducing the instrument to writing in that there were terms that were "used in or omitted from the instrument which [gave] it a legal effect not intended by the parties . . ." *Johnson Family Ltd Partnership*, 281 Mich App at 379-380.

Based on the foregoing, the deed of easement could be reformed as long as plaintiff was not a subsequent bona fide purchaser. This is necessarily so because a purchaser who is unaware of a defect in title is not subject to an unrecorded deed restriction. *Id*. at 392-393.

Here, the trial court found that plaintiff was not a subsequent bona fide purchaser because it had notice of the irregularities in the deed. In fact, the deed of easement provided that the easement was "on an existing snowmobile and ORV trail." The testimony of Filizetti, Britton, and Jakubowski clearly established that this easement along the southern border of plaintiff's property was used for many years and would have been clearly apparent to plaintiff if it had inspected the premises in an effort to ascertain the true scope of the easement[1]. Consequently, under the circumstances of this case, the trial court correctly concluded that plaintiff was not a subsequent bona fide purchaser because plaintiff was on notice of the irregularities in the deed and although it could have easily found out the true placement and size of the easement, it did not take steps to do so. *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951); *LaFond*, 226 Mich App at 450.

[1] Plaintiff testified that, to the best of his knowledge, the trail existed along the southern boundary of the property when he purchased the parcel, even though he did not discover the trail until the snow melted in 2007.

Based on the foregoing, we conclude that the trial court correctly granted defendant's request for relief in its counter-claim to reform the deed of easement. *LaFond*, 226 Mich App at 450; *Klapp*, 468 Mich at 463.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher