STATE OF MICHIGAN

COURT OF APPEALS

JERE D. JOHNSTON, FRANCIS M. ROSINSKI, DONALD R. PETTENGER, CHRISTA MISIAK, WILLIAM FREESE, DONALD DEADMAN, and STEVEN WESTROPE,

Plaintiffs-Appellants,

v

WILLIAM E. WATERMAN,

Defendant-Appellee.

UNPUBLISHED
May17, 2007

No. 275104
Alpena Circuit Court
LC No. 05-000656-CZ

Before: Schuette, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's opinion and order granting defendant summary disposition pursuant to MCR 2.116(I)(2). We affirm. This case arose when defendant purchased a parcel of property along Lake Huron. Defendant's predecessor in title had purchased the property from the Department of Natural Resources after the property's reversion to the state for tax delinquency. The deed to defendant's predecessor contained a reservation of ingress and egress rights to any watercourse along the property, which defendant does not oppose. However, defendant has sought a variance from the local zoning restrictions and other permits so that he can build a house on the 100-foot-wide parcel. Plaintiffs, several of defendant's neighbors, filed this suit to enjoin defendant from building a residence on the parcel, claiming that a building like the one defendant has proposed would unlawfully interfere with their rights, as citizens, to the state's reserved ingress and egress easement. After defendant essentially demurred to the deed's language but denied any interference with the easement, plaintiffs moved for summary disposition. The trial court reviewed the deed's language and the parties' presentation of other salient facts and ruled that no genuine issue of material fact existed and defendant was entitled to judgment as a matter of law.

Plaintiffs argue that the trial court erred by failing to enforce the clear language in the state's deed, relying instead on extrinsic evidence of the state's intent. We disagree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). On the page following the parcel's brief property description, the state's deed contains the following provision: "SAVING AND RESERVING unto the People of the State of Michigan the rights of ingress and egress over and across all of the above-mentioned descriptions of land lying along any watercourse or stream, pursuant to the provisions

of part 5, Act 451, P.A. 1994, as amended." According to MCL 324.503(3), when the DNR sells a parcel of property, "[t]he deed may reserve to the state the right of ingress and egress over and across land along watercourses and streams."

Plaintiffs rely on the inclusion of the word "all" in the easement provision to suggest that "all" of defendant's parcel must be open for the public to traverse. Framed in this light, the issue is whether the deed's easement language precludes defendant from building any structure on any portion of his land, because any building would necessarily interfere with some route from the adjacent public road to the shores of Lake Huron. Contrary to plaintiffs' arguments, the deed's plain language is not so restrictive. In context, the word "all" modifies the word "descriptions" and not the word "land."[1] The only description in the deed is the short description of defendant's parcel, and defendant admits that the named parcel is subject to an easement of ingress and egress to Lake Huron. Plaintiff argues that if we do not interpret the word "all" to mean the entire parcel, we will render it completely superfluous. Nevertheless, our primary goal is not to distort the contract to make every word fit, but "to ascertain the intention of the parties." *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924).[2] In this case, the deed's plain language simply provides for the possibility that the DNR may be using it to transfer multiple parcels of property, each of which may be separately described. Therefore, the construction assigned to the word "all" by plaintiffs—that defendant must preserve "all" of his parcel for foot traffic—is not the plain and unambiguous meaning of the deed's language. On the contrary, the deed plainly and unambiguously reserves an ingress and egress easement across defendant's described land. Because the deed's use of the word "all" does not preclude defendant from erecting a structure on any and every square inch of his property, plaintiffs' resort to the deed's "plain language" to preempt completely defendant's construct of a building is unavailing.

Notably, plaintiffs do not argue on appeal that defendant's proposal would interfere with the public's use of the easement, probably because defendant has conceded that he may not build on a ten-foot-wide strip that currently and adequately serves the neighborhood as a point of access to Lake Huron. Moreover, defendant's original plans for constructing a house have been repeatedly stymied by zoning and other regulatory blockades, so any analysis of actual or imminent interference with the public's easement is premature.

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[1] We note that an overly strict construction of the language would yield the ridiculous result that the parcel's "description," which is simply text on a piece of paper, is the only thing the public has a right to walk across, and then only if defendant happens to lay the deed beside a watercourse or stream. This rather cumbersome phrasing illustrates why courts should not read contract language with microscopes, but should consider the words' context, subject matter, and general import without abandoning the moorings of experience, convention, and common sense.

[2] The form deed also notifies its recipient that the described parcel may be located near a farm, but plaintiffs do not argue that we must restrict one of the nearby lakeside lots to husbandry to make this boilerplate language relevant.

Affirmed.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis