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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

BARRY ALLEN KINMAN, MARILYN P. CURRY, Plaintiffs and Appellants, v. EARLE LLOYD, GAIL LLOYD, Defendants and Respondents.	2d Civil No. B240886 (Super. Ct. No. CV118100) (San Luis Obispo County)

Barry Alan Kinman and Marilyn P. Curry, proceeding in propria persona, appeal from the judgment in favor of respondents Gail Lloyd and her husband, Earle Lloyd.[1] Appellants contend that the trial court erroneously concluded that respondents have an easement to use a dirt road that runs through appellants' property.

Respondents have not filed a brief. "The rule we follow in such circumstances 'is to examine the record on the basis of appellant[s'] brief and to reverse only if prejudicial error is found. [Citations.]' [Citations.]" (*Lee v. Wells Fargo Bank, N.A.* (2001) 88 Cal.App.4th 1187, 1192, Fn. 7.) There is no prejudicial error. We affirm.

[1] Kinman and Curry are active members of the California State Bar.

Factual and Procedural Background[2]

The parties own property in the Dunning and Dresser Tract, which is situated east of Paso Robles. Appellants own lot 69 on Vista de Robles Road. Respondent Gail Lloyd owns lot 77 on Stoney Place Road in the tract. The lots are depicted on a map recorded in 1889. The map is entitled "Map of the Dunning and Dresser Tract" (hereafter the 1889 tract map).

Appellants filed against respondents a complaint consisting of two causes of action. In the first cause of action, appellants sought a declaration that (1) they own a portion of Stoney Place Road that runs through their property (hereafter the dirt road), (2) respondents do not have an easement to use the dirt road; and (3) if respondents do have an easement, they must pay for maintenance of the dirt road. In the second cause of action, appellants sought to quiet title to the dirt road.

Appellants wanted to erect a fence that would prevent respondents from having access to the dirt road. Appellants admitted that, on the 1889 tract map, the dirt road is "labeled as part of Stoney Place."

Respondents alleged that the 1889 tract map created a subdivision that includes the parties' property. Respondents stated that their "theory of the case is that their deed to their lot in the subdivision conveys an implied easement for use" of the dirt road. Respondents argued that the implied easement arose from the deed's reference to the 1889 tract map, which depicts "Stoney Place Road as a road servicing the

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[2] In their brief, appellants state that they "primarily reference the [trial court's] Tentative Decision for all determinations of fact and law." But the tentative decision was superseded by the court's statement of decision. References to the tentative decision "are improper and must be disregarded. [Citation.]" (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 647.) " ' "It is the statement of decision which allows the court to place upon *the record* its view of facts and law of the case. [Citation.]" [Citation.]' [Citation.]" (*Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1756.)

subdivision." (Respondents contended "that a deed referencing the [1889 tract] map confers rights to use the streets depicted on the map."

Appellants contended that the 1889 tract map is an "antiquated map" and "antiquated maps recorded prior to 1893 do not establish legal parcels or subdivisons." They argued that the 1889 tract map could not have created an easement over appellants' property, and "there is no other mechanism that could have created the easement." They relied upon *Gardner v. County of Sonoma* (2003) 29 Cal.4th 990.

Statement of Decision and Judgment

In its statement of decision, the trial court noted that the 1889 tract map was an "antiquated map." Nevertheless, the court concluded that the map was a "subdivision map" that had created the Dunning and Dresser Tract. The court found that respondents' lot 77 "is accessed exclusively via Stoney Place Road. No other road provides ingress and egress to the remainder of the Dunning & Dresser Tract, nor to a public road."

The trial court further found that the deed to respondents' lot 77 referenced the 1889 tract map, which "depicted Stoney Place as a road servicing the Tract, and in particular, servicing Lot 77." Therefore, the court concluded that lot 77 "is benefitted by a private, appurtenant easement to use Stoney Place," including the dirt road portion that runs though appellants' property. The court relied upon *Danielson v. Sykes* (1910) 157 Cal. 686.

As to appellants' request for a declaration that respondents must pay for the maintenance of the dirt road, the trial court found that other owners of lots within the Dunning and Dresser Tract also have an implied easement to use that road. The court concluded that, pursuant to Civil Code section 845, subdivision (c), appellants must apply to the court for appointment of an impartial arbitrator to apportion maintenance costs among the co-owners of the easement.[3]

[3] Civil Code section 845, subdivision (c) provides: "In the absence of an agreement, the cost [of maintaining a right-of-way easement] shall be shared proportionately to

The court's judgment provides that appellants "shall take nothing by way of their complaint." It further provides that respondents "have an implied easement for ingress and egress over the road known as Stoney Place, including such portions of Stoney Place which pass through [appellants'] property."

Subdivision Map Act

" ' "Subdivision" means the division . . . of any unit or units of improved or unimproved land . . . for the purpose of sale, lease or financing . . . .' [Citation.] Hence, land is 'subdivided' when one unit is separated from the contiguous units surrounding it." (*Lakeview Meadows Ranch v. County of Santa Clara* (1994) 27 Cal.App.4th 593, 598.)

"The Subdivision Map Act (hereafter the SMA) [Gov. Code, § 66410 et seq.] regulates the subdivision of real property. Under the provisions of the SMA, land cannot be subdivided without obtaining local agency approval of a parcel map which meets the requirements of the SMA and local ordinances. [Citations.] To enforce this rule, the SMA prohibits the sale, lease or financing of parcels unless the requirements of the SMA have been met for that parcel." (*Lakeview Meadows Ranch v. County of Santa Clara*, *supra*, 27 Cal.App.4th at p. 598, fn. omitted.)

Discussion

Appellants argue that a reversal of the judgment is required by *Gardner v. County of Sonoma*, *supra*, 29 Cal.4th 990. There, the plaintiffs owned 158 acres of land in Sonoma County. They sought to establish that their property consisted of "12 lawfully subdivided parcels that may be sold, leased, or financed in compliance with

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the use made of the easement by each owner. [¶] Any owner of the easement, or any owner of land to which the easement is attached, may apply to any court where the right-of-way is located and that has jurisdiction over the amount in controversy for the appointment of an impartial arbitrator to apportion the cost. . . . If the arbitration award is not accepted by all of the owners, the court may enter a judgment determining the proportionate liability of each owner. The judgment may be enforced as a money judgment by any party against any other party to the action."

the [SMA]." (***Id***., at p. 994.) The plaintiffs relied upon a map recorded in 1865. "The map purported to depict a vast subdivision" that included plaintiffs' land. (***Ibid***.) Our Supreme Court concluded that this map was an "antiquated map" that "did not establish a subdivision and did not create legally cognizable parcels in 1865 when it was recorded." (***Id***., at p. 1006) The court explained: "[T]he map's recordation preceded the first statewide map legislation enacted in 1893, and plaintiffs make no claim that the map was recorded pursuant to some other preexisting statute or regulation specifically governing the subdivision of property in Sonoma County." (***Id***., at pp. 1002-1003.) Thus, the court decided that plaintiffs were not entitled to certificates of compliance with the SMA for parcels depicted on the 1865 map.

Appellants note that, pursuant to *Gardner*, the 1889 tract map did not establish a subdivision when it was recorded. Therefore, appellants argue, reference to the map in the deeds to lot 77 could not have created easement rights over appellants' lot 69. (AOB 16-20) But the 1889 tract map was not a nullity. The *Gardner* court recognized that "antiquated maps served to facilitate land conveyances involving the properties they depicted." (*Gardner v. County of* Sonoma, *supra*, 29 Cal.4th at p. 1002.) Such maps "could properly supply the legal description of property conveyed by deed." (***Id***., at p. 1001.)

A subdivision and legally cognizable parcels were arguably established by the conveyance of lots depicted in the 1889 tract map. The trial court found that "over one hundred parcels have been described and conveyed by reference to the antiquated 1889 Dunning & Dresser Map, including [appellants'] and [respondents'] parcels." (2AA 369, lines 7-9) In *Gardner* our Supreme Court recognized that a subdivided lot on an antiquated map (i.e., a map recorded before 1893) attained independent legal status when the owner "actually conveyed the lot separately from the surrounding lands through a deed or patent. [Citations.]" (*Gardner v. County of Sonoma*, *supra*, 29 Cal.4th at p. 1001, fn. omitted.) This rule was of no benefit to the plaintiffs in *Gardner*: "[I]t is undisputed that the property in question [plaintiffs' 158 acres of land]

has remained intact under sequential owners throughout its history; consequently, plaintiffs cannot fit their case within the decisions recognizing the establishment of subdivisions by conveyance." (***Id***., at p. 1003.) Unlike plaintiffs' 158 acres of land, the Dunning and Dresser Tract "has [not] remained intact under sequential owners throughout its history." (***Ibid***.) Lots depicted in the 1889 tract map have been conveyed "separately from the surrounding lands." (***Id***., at p. 1001.) For purposes of this appeal, we need not and do not decide whether the Dunning and Dresser Tract falls "within the decisions recognizing the establishment of subdivisions by conveyance." (***Id***., at p. 1003.)

The trial court correctly concluded that *Danielson v. Sykes*, *supra*, 157 Cal. 686, "controls the outcome of [the easement] issue." In *Danielson* our Supreme Court declared: "When a lot conveyed by a deed is described by reference to a map, such map becomes a part of the deed. If the map exhibits streets and alleys, it necessarily implies or expresses a design that such passageways shall be used in connection with the lots, and for the convenience of the owners in going from each lot to any and all the other lots in the tract so laid off." (***Id***., at p. 690.) The *Danielson* court held that "when one lays out a tract of land onto lots and streets and sells the lots by reference to a map which exhibits the lots and streets as they lie with relation to each other," the purchasers of the lots have a private easement to use the streets "in connection with the lots and for the convenience of the owners in going from each lot to any and all the other lots in the tract so laid [out]." (***Id***., at pp. 690-691; see also 6 Miller & Starr, Cal.Real Estate (3rd ed. 2011) § 15:26, p. 15-99, fns. omitted ["The sale of lots by reference to a map or plot plan creates a private easement over the streets and alleys for the use and benefit of the property purchased, whether or not the map has been recorded. Each of the lots shown on the map is a dominant tenement that is benefited by the easement in the streets shown on the map."].)

Based on *Danielson*, the trial court properly reasoned: ". . . Gail Lloyd purchased a lot in the Dunning & Dresser Tract via a deed which referenced the

Dunning & Dresser Map. The Dunning & Dresser Map . . . depicted Stoney Place as a road servicing the Tract, and in particular, servicing Lot 77. . . . Gail Lloyd was shown this map when purchasing Lot 77. Thus, . . . lot 77 is benefited by a private, appurtenant easement to use Stoney Place."

Disposition

The judgment is affirmed. Respondents shall recover their costs, if any, on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Donald G. Umhofer, Judge

Superior Court County of San Luis Obispo

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Kinman & Curry, Barry Alan Kinman and Marilyn P. Curry, in pro per, Appellants.

No appearance for Respondents.