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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

STEVEN A. VELKEI, Plaintiff and Respondent, v. VIRGINIA VINCENT REVOCABLE TRUST et al., Defendants and Appellants.	B271487 (Los Angeles County Super. Ct. No. BC492991)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard L. Fruin, Judge. Affirmed.

Perez & Hawes, Eric Everett Hawes for Defendants and Appellants.

Steven A. Velkei, in pro. per., for Plaintiff and Respondent.

I. INTRODUCTION

Defendants and cross-complainants Darla and Gina Vincent[1] (appellants) appeal from a judgment following a bench trial. Plaintiff Steven Velkei (respondent) filed a complaint against defendants for declaratory relief. Appellants filed a cross-complaint for quiet title. All parties sought an interpretation of a 1958 grant deed as it applied to an easement across plaintiff's property. Appellants asserted the easement was exclusive for their use, which respondent disputed. Following trial, including testimony by the parties' expert witnesses, the court found in favor of respondent.

Among other contentions, appellants assert the trial court erred in its interpretation of the 1958 grant deed. We affirm.

II. BACKGROUND

A. The Easement

Appellants own a residence in the Hollywood Hills located at 7182 Chelan Way. Respondent owns residential property at 7204 Chelan Way, which is adjacent to, and west of, appellants' property. Appellants' residence is connected to the public street by a 16-foot wide, 120-foot long driveway crossing respondent's

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[1] Because several individuals share the same last name, we will occasionally refer to them by their first name for ease of reference. No disrespect is intended.

property. The driveway is within the 25-foot wide easement in dispute.[2]

Appellants' parents were Russ and Virginia. Russ owned a real estate development company named Dor-Mar Properties, Inc. (Dor-Mar). Dor-Mar owned the lands in question and engaged in subdividing and developing residential properties in that area.

Three grant deeds defined the 25-foot wide easement. Victor and Margie Jursik (the Jursiks) acquired from Dor-Mar title to the property now owned by plaintiff via grant deed recorded on December 3, 1957. In Grant Deed 1616, signed on July 10, 1958, and recorded on July 24, 1958, the Jursiks re-conveyed their property back to Dor-Mar. In Grant Deed 1617, also signed July 10, 1958, and recorded on July 24, 1958, Dor-Mar re-conveyed the property back to the Jursiks, with additional conditions on the easement. Grant Deed 1617 is the one at issue on appeal.[3]

By Grant Deed 1617, Dor-Mar reserved for itself and its successors "the following easements for ingress, egress, Public Utilities, and drainage purposes, for use in common with others . . . a strip of land of uniform width of 25.00 feet . . . ." The following provisions were included as to the easement: "It is

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[2] At the time the action was filed, some parts of the driveway were not within the easement and were part of respondent's property. The parties subsequently stipulated that the easement would be adjusted to encompass the entirety of the driveway.

[3] Grant Deed 1617 defines two 25-foot wide easements, one running in the north and one running in the south of respondent's property. The easement at issue concerns the northern easement.

further agreed that the following conditions shall apply to the foregoing roadway easements with public utilities rights thereunder reserved: [¶] 1. Said easements shall be floating easements to the following extent: said roadway may be raised or lowered by the grantor from 0 to 5 feet, resulting in a lateral displacement of said easements and the mathematical variation resulting therefrom shall be the position of the roadway easement by such raising and lowering of the roadway. [¶] 2. The grantor reserves the right to use such easements exclusively and does not hereby grant to the grantee any right to use the reserved easements. [¶] 3. In the event that said roadway(s) are dedicated by the grantor into a dedicated street, condition 2 shall apply and grantee shall without any charge execute grant deed necessary to effectuate such result, and to convey public utility rights. [¶] 4. The conditions herein shall be binding upon the heirs, executors, or assigns of the parties hereto." (Emphasis omitted.) The issues on appeal concern conditions 2 and 3.

Russ built appellants' property in 1962. He installed at the foot of the driveway stone or cement gate posts to anchor swinging metal gates to protect his family's exclusive use of the driveway for ingress and egress. Gina Vincent testified the gate was needed to provide security and privacy for the family, and the gate was always locked.[4] Appellants' inherited their property from their parents.

Respondent purchased the adjacent property containing the easement in 2002. For 10 years and without appellants' objection, respondent entered the driveway (using the code to open the gate to the driveway) to maintain his property on the

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[4] Virginia Vincent was a famous movie actress.

north side of the driveway. The area of respondent's property north of the driveway is a steep hillside slope.

B. The Complaint and Cross-Complaint

On October 2, 2012, respondent initiated his action against appellants. Appellants filed a cross-complaint against him. The trial court bifurcated the trial. The first part concerned the easement.[5] The only issues were respondent's first cause of action for declaratory relief in his first amended complaint and appellants' fifth cause of action in their second amended cross-complaint for quiet title as to the easement.

C. Trial

A bench trial was held from July 21 to July 25 of 2014. Respondent, Gina Vincent, and their expert witnesses testified. We summarize the expert witnesses' testimony below.

Respondent's expert, Samuel K. Freshman, is an attorney with expertise in the field of real estate. He testified that the general nature of the easement was nonexclusive and that condition 2 should be read in conjunction with condition 3. A developer such as Dor-Mar would want total control over an easement in order to eventually have a roadway. To have a dedicated roadway, an agency receiving the dedication would want to receive all the land rights. This is also why the language concerning possible execution of future grant deeds was included. It is undisputed there is no dedicated roadway.

Appellants' expert, Lore Hilburg, is an attorney in the field of title insurance. She was personally involved in easement

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[5] Before the second phase of trial began, the parties stipulated to dismissal of their remaining causes of action.

issues as part of her regular duties at a title insurance company. Hilburg opined the easement was exclusive to appellants' property based on the language of Grant Deed 1617. She testified the word "not" should have appeared in condition 3, such that condition 2 shall "not" apply when it is a dedicated roadway because one cannot have a dedicated road and an exclusive easement. Hilburg also testified that respondent's property contained a carport, parts of which were within the easement area. The carport on respondent's property was built in 1959, and was presumably used exclusively by the owners of respondent's property since that time.

The trial court issued its final statement of decision regarding the easement on November 2, 2015. It found in favor of respondent based on Freshman's testimony. The trial court ruled: "The court interprets the language of Deed 1617, in the context of the history of the development and use of the adjacent properties, to mean that [appellants] do not enjoy use of the driveway to the exclusion of [respondent's] reasonable use of the same area for purposes relating to the reasonable need to maintain or improve his property to the north of the easement. . . ." Judgment was subsequently entered on March 1, 2016. This appeal followed.

III. DISCUSSION

A. Standard of Review

In the absence of conflicting parol evidence, the interpretation of a written instrument is a judicial function subject to independent review on appeal. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865-866.) A trial court's

threshold determination as to whether there is an ambiguity in a written instrument permitting the admission of parol evidence is also a question of law subject to independent review. (*Fischer v. First Internat. Bank* (2003) 109 Cal.App.4th 1433, 1443; *Appleton v. Waessil* (1994) 27 Cal.App.4th 551, 554-555.) "In construing an instrument conveying an easement, the rules applicable to the construction of deeds generally apply. If the language is clear and explicit in the conveyance, there is no occasion for the use of parol evidence to show the nature and extent of the rights acquired. [Citations.] If the language is ambiguous, extrinsic evidence may be used as an aid to interpretation unless such evidence imparts a meaning to which the instrument creating the easement is not reasonably susceptible. [Citation.]" (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 702.)

Appellants contend that because the Grant Deed 1617 is unambiguous, the applicable standard of review is de novo. They further argue that even if it is ambiguous, Hilburg and Freshman did not provide competent evidence; and even if there was competent evidence, neither Hilburg nor Freshman provided controverted evidence. We disagree.

First, there is an ambiguity in Grant Deed 1617. It describes the easement as "for ingress, egress, Public Utilities, and drainage purposes, *for use in common with others* . . . ." The latter language of "for use in common with others" indicates that the easement was not intended to exclude the owners of respondent's property from the portion of the property subject to the easement. There is no language following the above description that indicates respondent could not use the easement, except for condition 2. Condition 2, as noted, provides that the grantor (or their assignees in this instance, appellants), would

have an exclusive easement and grantee would have no right to use it. Condition 3 adds yet another wrinkle to this matter because it requires that in the event grantor decides to dedicate the roadway as a public street, condition 2 shall apply. If the parties to Grant Deed 1617 wanted only condition 2 to apply, it is not at all clear why condition 3 or the requirement that the easement would be "for use in common with others" would also be in the deed. There is a conflict and thus an ambiguity in Grant Deed 1617.

We also disagree that Hilburg and Freshman provided incompetent testimony. A trial court's determination that expert testimony is admissible is reviewed for abuse of discretion. (*Summers v. A. L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1168.) Expert testimony can embrace the ultimate issue to be decided by the trier of fact. (Evid. Code, § 805; *Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 702.) However, expert testimony is inadmissible to determine questions of law. (*Summers v. A. L. Gilbert Co., supra*, 69 Cal.App.4th at p. 1178.)

Both experts were called by their respective parties to opine on the ambiguity in Grant Deed 1617. Furthermore, Freshman's testimony went to the industry practice at the time of the deed regarding how to dedicate a roadway as a public street. Thus, Freshman's testimony embraced the ultimate issue while also providing context for the deed's language. Indeed, it appears Hilburg's testimony regarding the interpretation of the deed based solely on its language would be inadmissible. However, even if there was inadmissible testimony by the parties' experts, appellants forfeited the issue on appeal by failing to raise it before the trial court. (Evid. Code, § 353; *SCI California Funeral*

Services, Inc. v. Five Bridges Foundation (2012) 203 Cal.App.4th 549, 563-565.)

Finally, we disagree that Hilburg and Freshman provided uncontroverted evidence. Freshman testified that condition 2 should be read in conjunction with condition 3 because a land developer like Dor-Mar would want such conditions in the event it wanted to dedicate a road. Hilburg testified that a dedicated road and an exclusive easement are not compatible, and that the parties to Grant Deed 1617 actually meant to include the word "not" in condition 3 in between "shall apply." Given such a dispute, we review the trial court's factual findings for substantial evidence. (*Parsons v. Bristol Development Co., supra*, 62 Cal.2d at pp. 865-866; *Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 750.)

B. Interpretation of Grant Deed

Appellants contend substantial evidence does not support the trial court's conclusion. "'Where the easement is founded upon a grant . . . only those interests expressed in the grant and those necessarily incident thereto pass from the owner of the fee.' [Citations.]" (*Rye v. Tahoe Truckee Sierra Disposal Co., Inc.* (2013) 222 Cal.App.4th 84, 92; see Civ. Code, § 806 ["The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired"].) General rules of contract interpretation apply to resolve ambiguities in the grant of an express easement. (Civ. Code, § 1066.) The grant of an express easement is interpreted to give effect to the mutual intent of the parties. (Civ. Code, § 1636; *Christian v. Flora* (2008) 164 Cal.App.4th 539, 550.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably

practicable, each clause helping to interpret the other." (Civ. Code, § 1641; *Ajax Magnolia One Corp. v. So. Cal. Edison Co.* (1959) 167 Cal.App.2d 743, 748.)

Substantial evidence supports the trial court's conclusion that respondent's interpretation is the most reasonable. Under such an interpretation, the dispute between the nonexclusive term ("for use in common with others") and condition 2 (exclusive easement) is resolved by condition 3. If a grantor wanted to dedicate the roadway easement into a public street, the grantor would have no difficulties doing so because the easement would become exclusive to the grantor in that instance. If there was no exclusivity term, Freshman testified that a public agency would have to negotiate separately with the grantee for the rights to the easement. If there was no dedication of the roadway easement, the easement would remain nonexclusive per the term "for use in common with others." Respondent's interpretation would also give full effect to the nonexclusive term in the event there is a dedication of the roadway easement as a public street because a public street is still for common use with others. Finally, Grant Deed 1617 refers to these conditions as applying to a "roadway easement," which further bolsters respondent's interpretation.

Appellants' interpretation is not persuasive. As asserted by Hilburg, condition 3 would have to be read to include the word "not" between the term "shall apply." Such a reading does not resolve the dispute between the nonexclusive term "for use in common with others" and the exclusive easement language in condition 2. Additionally, substantial evidence indicates the use of the easement was not exclusive. Hilburg's testimony indicated that the carport on respondent's property, created after Grant Deed 1617, was partly on the easement, but there was no

evidence of a dispute between appellants' parents and the Jursiks as to the exclusivity of the easement.

We find substantial evidence supports the trial court's finding that Grant Deed 1617 did not create an exclusive easement over respondent's property. Having resolved the issues on appeal above, we need not decide the parties' remaining arguments.

IV. DISPOSITION

The judgment is affirmed. Respondent Steven Velkei may recover his costs on appeal from appellants Gina and Darla Vincent.

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LANDIN, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.