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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0924**

Karen Young Trenne, as Trustee of the Jeanne Benson Family Trust,  
Respondent,

vs.

Bruce W. Eagle, et al.,  
Appellants.

**Filed January 21, 2014  
Affirmed  
Hooten, Judge**

Cass County District Court  
File No. 11-CV-12-1147

Ryan K. Kieson, Drahos Kieson & Christopher, P.A., Bemidji, Minnesota (for appellants)

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respondent)

Considered and decided by Stoneburner, Presiding Judge; Hooten, Judge; and  
Kirk, Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

In this easement dispute, the district court granted partial summary judgment to  
respondent trustee of a trust that owns lakeshore property, ruling that appellants'  
lakeshore property is subject to an easement in favor of land owned by the trust.  
Appellants assert that the district court erred in granting partial summary judgment

because neither the document granting the easement nor the district court's order precisely identifies the easement's location, there are questions of material fact regarding the easement's location, and the lack of a definite location for the easement allows appellants to set the location of the easement. Because we discern no material fact issue that would preclude summary judgment, we affirm.

## **FACTS**

Respondent Karen Trenne is the trustee of the Jeanne Benson Family Trust (BFT), which owns parcel 1 on the south shore of Leech Lake in Cass County. Adjacent to the east border of parcel 1 is parcel 6, which is owned by appellants Bruce and Setsu Eagle. To the east of parcel 6 is parcel 8. Leech Lake is located on the northern boundary of parcels 1, 6, and 8 and a road is located at the southern boundary of all three parcels. However, because of a steep grade near the lake, parcels 1 and 8 lack convenient access to the lake. At some point, a stairway was installed on the northeast corner of parcel 6 to access the lake.

In 1977, parcels 1 and 6, both of which had been part of a larger resort, were purchased by Thomas and Patricia Dobson. Many parts of this larger resort, including the parcels owned by the Dobsons, had combined to become Pine Cliff, Inc., a harbor association. By 1983, BFT<sup>1</sup> had acquired parcel 1, and started using parcel 6 to access the lake. On March 17, 2004, the members of Pine Cliff recorded an "AMENDED DECLARATION OF CONVENANTS, CONDITIONS, RESTRICTIONS AND

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<sup>1</sup> This opinion uses "BFT" to refer to BFT as well as any of pre-BFT owners of parcel 1 who were members of the Benson family.

EASEMENTS OF PINE CLIFF, INC.,” which, among other things, memorialized a “Staircase Easement,” stating that the Dobsons granted BFT, which owned parcel 1, and the Manskes, who then owned parcel 8, an easement for use of the staircase, together with an easement over parcel 6 as was reasonably necessary to access that staircase. This staircase easement was not described with a metes and bounds description in the amended declarations.

In 2010, the Dobsons sold parcel 6 to the Eagles. By late September 2011, the Eagles had installed a fence with “no trespassing” signs and trees along their west boundary between their parcel 6 and BFT’s parcel 1. In March and April 2012, without BFT’s knowledge, the Eagles had a survey, a certificate of survey, and a declaration of easement prepared and recorded. In doing so, the Eagles tried to set the location of the staircase easement to start at the southwest corner of parcel 6, then east along the southern boundary of parcel 6 and the road, and then north along the east boundary of parcel 6, to the staircase. Also, in April 2012, the Eagles sent BFT a letter identifying this route for the easement.

BFT sued the Eagles, asserting that they interfered with BFT’s easement, and slandered BFT’s title. The Eagles counterclaimed, asking the district court to adopt their proposed placement of the easement. Later, BFT moved the district court for partial summary judgment regarding the existence of the easement and the Eagles’ inability to unilaterally alter that easement. The district court granted BFT’s motion for partial summary judgment, ruling that the easement existed on the northerly edge of the Eagles’ property, and that the Eagles could not unilaterally alter that easement. The district court

also noted in its partial summary judgment order that there was no just reason for delay, and directed immediate entry of the partial summary judgment. The Eagles appealed.

## D E C I S I O N

On appeal from a partial summary judgment, appellate courts “review de novo . . . whether genuine issues of material fact exist and whether the district court erred in applying the law. Statutory interpretation presents a question of law subject to de novo review.” *Ruiz v. 1st Fid. Loan Servicing, LLC*, 829 N.W.2d 53, 56 (Minn. 2013) (citation omitted). Here, the crux of the Eagles’ argument goes to the location of the easement.

### I.

The grant of an easement is contractual in nature:

The extent of an easement depends entirely upon the construction of the terms of the agreement granting the easement. When the terms of an easement grant are unclear, extrinsic evidence may be used to aid in the interpretation of the easement grant; however, when the language granting the easement is clear and unambiguous, the court’s power to determine the extent of the easement granted is limited. While ambiguities in contract agreements are resolved against the drafter, [g]enerally, an easement grant is to be strictly construed against the grantor.

*Scherger v. N. Natural Gas Co.*, 575 N.W.2d 578, 580 (Minn. 1998) (citations and quotation marks omitted). By granting the partial summary judgment, the district court implicitly ruled that there are no ambiguities in the declaration’s language regarding the easement’s location. The Eagles argue that the amended declaration is ambiguous regarding the location of the easement, that the meaning of an ambiguous document is a fact question, and therefore that the partial summary judgment is improper.

The amended declaration states that the Dobsons grant the Manskes and BFT,

for the benefit of parcel numbers 8 and 1, respectively, an easement for use of the staircase located in the northeasterly corner of parcel number 6, together with an easement over and across such portion of parcel number 6 as is reasonably necessary to gain access to the staircase from parcel numbers 1 and 8.

The Eagles assume that the lack of a metes and bounds description of the easement's location renders the amended declaration ambiguous regarding the easement's location.

When the location of a roadway easement is disputed, the easement grantor has the right to designate the location of the easement, and if he did not do so, the grantee can do so unless he abuses that right. *Larson v. Amundson*, 414 N.W.2d 413, 417 (Minn. App. 1987) (citing *Ingelson v. Olson*, 199 Minn. 422, 428, 272 N.W. 270, 274 (1937)). “Where a way is granted without fixing its location, but there is a way already located at the time of the grant, such way will be held to be the location of the way granted unless a contrary intention appears.” *Miller v. Snedeker*, 257 Minn. 204, 215, 101 N.W.2d 213, 222 (1960) (quoted in *Larson*, 414 N.W.2d at 417). Thus, if an agreement locating an easement exists when a document memorializes the grant of that easement, the document's failure to specify the location of the easement does not necessarily mean that the location of the easement is undefined.

#### **A. Easement location**

Here, the amended declaration granted BFT the right to travel “across such portion of parcel number 6 as is reasonably necessary to gain access to the staircase” without identifying the location of the easement. BFT, however, submitted an affidavit of

Thomas Dobson, a grantor of the easement, to support its motion for a partial summary judgment. Dobson's affidavit states: (a) BFT's parcel 1 lacks access to the lake; (b) with the Dobsons' "knowledge and permission," BFT's "family members, guests, invitees, and successors regularly, routinely and openly would walk on the north edge of the [Dobsons'] property to gain access to the stairway that leads to [the lake]"; (c) prior owners of the BFT property did the same; (d) the route taken to the stairway was "four to six feet wide, ran along the lake shore embankment, and became the established route from [BFT's] property to [the lake;] after the stairway was built[,] the same walkway and path was then used by [BFT and its predecessors] to reach the stairway"; and (e) "in an effort to memorialize the rights of [BFT] to continue their historic use of the walkway and path across our property, [the Dobsons] executed and recorded an Amended Declaration . . . [and] understood that the reference to the stairway access was intended to allow [BFT] and their successors the continued use of the historical walkway and path in its originally established location across the northerly edge of our property."

Dobson's affidavit shows both that BFT and the Dobsons agreed to a route to the staircase over the northern part of the Dobsons' parcel 6, and that this agreement predated the amended declaration. This locating of the easement "is a way already located at the time of the grant, [and] such way will be held to be the location of the way granted unless a contrary intention appears." *See Miller*, 257 Minn. at 215, 101 N.W.2d at 222. Further, when, in requests for admissions, BFT asked Bruce Eagle whether prior owners of parcel 6 had "knowingly consented to the use of the historically established trail, walkway, and path across [the Eagles'] property by [BFT], its predecessors in interest

and beneficiaries, guests and invitees for purposes of reaching the stairway[,]” Bruce Eagle candidly responded that the Eagles “had no knowledge of the actions of his predecessors in title.” Thus, not only does the record lack any expression of intent on the part of the easement’s creator that is contrary to the intent to create an easement over the part of parcel 6 just south of the embankment, Bruce Eagle admitted that the Eagles lack the knowledge necessary to assert that the Dobsons had a contrary intent.

## **B. Other questions**

The Eagles assert that there is no evidence of a path on parcel 6 showing the route to the staircase described by the Dobsons. The video evidence suggests that this assertion is debatable. But, regardless of whether there was a recognizable path along the north boundary of the Dobson property, it is sufficient that family members, guests, invitees, and successors would regularly, routinely and openly walk in an area that was four to six feet wide, which ran along the shore embankment near the north edge of parcels 1 and 6 to gain access to the lake by using the stairway on parcel 6. *See id.* (stating that, “[i]n describing an easement all that is required is that the land which is subject to the easement be identified and the intention of the parties expressed”).

The Eagles suggest that there was no indication of the existence of a path for the easement when they bought the property. But any lack of knowledge by the Eagles of the easement when they bought parcel 6 is relevant only to the conveyance of parcel 6, not to the easement’s location.

The Eagles assert that their proposed location for the easement is reasonable. Under *Miller*, however, the Eagles get to identify or specify a location for the easement only if, as is *not* the case here, a location does not already exist.

The Eagles assert that BFT accessed the stairway by multiple routes, some of which are inconsistent with the easement described by Dobson's affidavit. Because the grantor of an easement can designate the easement's location, and because Dobson's affidavit identified the easement as being near the northern part of parcel 6, the Eagles' assertions that BFT used other routes to the stairway does not change the location of the easement. Indeed, as BFT stated before the district court, any use of parcel 6 beyond the portion subject to the easement was an "enforcement issue" rather than proof of the fact that the easement lacked a location.

## **II.**

The Eagles assert that an evidentiary hearing is necessary to identify a location for the easement because "[n]othing in the [district] [c]ourt's [o]rder locates the alleged easement." The memorandum accompanying the district court's order granting partial summary judgment states that "[u]nder Minnesota case law, the long-time historic use of the northern part of [the Eagles'] property along with the intent of the [Dobsons] controls the location of the easement." And Dobson's affidavit locates the easement four to six feet south of the embankment near the shore. Accordingly, the district court correctly located the easement on the northerly edge of the Eagles' property.

**Affirmed.**