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NO. A11-721

State of Minnesota  
**In Court of Appeals**

THOMAS J. MADAY,

*Appellant,*

vs.

TIM GRATHWOHL, JASON GRATHWOHL,  
RANDY GRATHWOHL AND  
GRATHWOHL BROTHERS LLP,

*Respondents.*

**APPELLANT'S BRIEF, ADDENDUM AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF ISSUE PRESENTED

**Whether the district court erred in granting summary judgment to Respondent when it found that a prior oral agreement between the parties regarding Appellant's right to the manure produced at Respondent's hog facility was inadmissible parol evidence because of the existence of a subsequent manure easement agreement executed by the parties.**

After Respondents sold manure from Respondents' hog facility to individuals other than Appellant, Appellant filed a complaint for specific performance of the manure easement agreement. (A. 1-4). Defendant filed an answer and subsequently filed a motion for summary judgment. The district court granted Defendant's motion for summary judgment, concluding that the oral agreement was inadmissible under the parol evidence rule because the oral agreement was inconsistent with the Easement Agreement and the consideration offered to Maday under both the oral agreement and the Easement Agreement was manure to fertilize his fields. (Add. 1-5). The district court entered judgment on March 16, 2011. (A.36). Appellant filed a notice of appeal. (A.37).

### **Apposite cases:**

*Bussard v. College of St. Thomas*, 294 Minn. 215, 200 N.W.2d 155 (1972).

*Taylor v. More*, 195 Minn. 448, 453, 263 N.W. 537, 539 (1935)

*W.R. Millar Co. v. UCM Corp.*, 419 N.W.2d 852 (Minn. App. 1988).

## STATEMENT OF THE CASE AND FACTS

Respondent Grathwohl Brothers LLP (“Grathwohl Brothers”) operates hog barns and raises hogs for other entities. (A.28). Sometime in 2001, Grathwohl Brothers decided to enlarge its hog-raising operation and build more barns in Iowa. (A.17). Grathwohl Brothers had entered into an agreement with Christiansen Farms to raise pigs for Christiansen Farms in the barns Grathwohl Brothers intended to build in Iowa. (A.17-18). Grathwohl Brothers had a difficult time finding land in Iowa on which to construct the barns because “nobody wanted the headache of going through the – nobody wanted to be heckled, nobody liked pig barns.” (A.17).

Respondent Randy Grathwohl worked for Appellant and knew that Appellant owned farmland in Iowa. (A.17). Randy Grathwohl asked Appellant if he was willing to sell some land so Grathwohl Brothers could build some barns. (A.17). Appellant and Grathwohl Brothers entered into an agreement in which Appellant would sell Grathwohl Brothers the land if Grathwohl Brothers would supply all of the manure produced by the hog barns to Appellant.<sup>1</sup> (A.34). Appellant then conveyed six acres of farmland to Respondents in two separate transactions in 2001. (A.16-17).

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<sup>1</sup> In Respondents’ Reply in Further Support of Defendants’ Motion for Summary Judgment, Respondents stipulated to the existence of the prior oral agreement for summary judgment purposes. (A.7).

Subsequent to the sale of the land, Appellant and Grathwohl Brothers executed a Manure Easement Agreement (hereinafter "Easement Agreement"). (A.10-14). Pursuant to the Easement Agreement, Appellant conveyed an easement to Grathwohl Brothers permitting Grathwohl Brothers and its assigns or successors in interest to apply manure to certain property. (A.10-11). According to Respondents Tim Grathwohl and Randy Grathwohl, Grathwohl Brothers was required by its lender to execute the Easement Agreement, so in the event of default, the lender would have somewhere to legally put the manure if the barns were taken as collateral. (A.22-23; 32). The terms of the Easement Agreement were not negotiated by the parties; the Easement Agreement was drafted by Christiansen Farms and executed by Appellant and Respondents. (A.25-26). Respondents Randy Grathwohl and Tim Grathwohl agreed that the Easement Agreement had nothing to do with actually selling or supplying manure. (A.23; 32).

Grathwohl Brothers began operating the barns in September 2001. (A.28). Grathwohl Brothers did not have the ability to pump its own manure pits or haul manure away from the barns. (A.19; 29). Every fall, from 2002 to 2009, Appellant emptied the pits pursuant to the parties' oral agreement except for three occasions when the pits were full and Appellant did not have any farmland on which to apply the manure. (A.20; 36). However, on all three occasions, Appellant made arrangements to have the manure pumped from Grathwohl Brothers' pits and applied on other farmland. (A.35-36).

In fall 2009, after Appellant had already pumped some of the manure out of the pits, Grathwohl Brothers began selling to third parties the manure produced in the Iowa barns located on the land purchased from Appellant. (A.30). Grathwohl Brothers also

sold manure from the Iowa barns to a third party in 2010. (A.30). The sale of the manure was consistent with Grathwohl Brothers' handling of manure at its other hog facilities; while Grathwohl Brothers used to give its manure from its Minnesota barns away at no cost, Grathwohl Brothers began selling manure produced at barns in Minnesota four or five years ago. (A.21). Grathwohl Brothers receives \$2,500 per pit for the manure it sells. (A.21-22). Grathwohl Brothers is now selling all of its manure produced at all barns except for two. (A. 24).

Appellant brought an action against Respondents for specific performance of the oral agreement or for a judgment against Respondents. (A.1-4). Respondents moved for summary judgment, and the district court granted summary judgment for Respondents, finding that the oral agreement constituted inadmissible parol evidence because of the Manure Easement agreement executed by the parties. (Add.1-5).

### **STANDARD OF REVIEW**

The district court granted Respondents' motion for summary judgment and dismissed Appellant's complaint in its entirety. On appeal from summary judgment, this court asks "(1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court views the evidence "in the light most favorable to party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). This court need not defer to the district court's application of the law

when material facts are not in dispute. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989).

### ARGUMENT

The district court found that the prior oral agreement between Appellant and Respondents, which entitled Appellant to the manure produced by Respondents' barns, was inadmissible parol evidence and therefore granted Respondents' motion for summary judgment. Parol evidence is admissible "when the written agreement is incomplete or ambiguous." *Baker v. Citizens State Bank of St. Louis Park*, 349 N.W.2d 552, 558 (Minn. 1984). Parol evidence is also admissible to explain the parties' conduct subsequent to the written agreement. *Flynn v. Sawyer*, 272 N.W.2d 904, 908 (Minn. 1978). However, "[t]he parol evidence rule prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003) (quotation omitted).

The Minnesota Supreme Court has stated that in construing the surrounding circumstances of a writing which appears on its face to be fully integrated, three conditions must exist:

- (1) the agreement must in form be a collateral one;
- (2) it must not contradict express or implied provisions of the written contract;
- (3) it must be one that parties would not ordinarily be expected to embody in the

writing . . . . [o]r, again, it must not be so clearly connected with the principal transaction as to be part and parcel of it.

*Taylor v. More*, 195 Minn. 448, 453, 263 N.W. 537, 539 (1935) (quoting *Mitchell v. Lath*, 247 N.Y. 377, 160 N.E.646 (N.Y. 1928)). “An oral agreement is not superseded or invalidated by a subsequent integration if it is not inconsistent with the integrated contract and would naturally be made as a separate agreement.” *W.R. Millar Co. v. UCM Corp.*, 419 N.W.2d 852, 855 (Minn. App. 1988). Here, the oral agreement is not inconsistent with the terms of the Easement Agreement, and it addresses terms separate from those addressed in the Easement Agreement, therefore the district court erred in finding that the oral agreement was inadmissible parol evidence.

**I. THE ORAL AGREEMENT IS CONSISTENT WITH THE EASEMENT AGREEMENT.**

The oral agreement is admissible because the oral agreement regarding Appellant’s rights to the manure and the Easement Agreement are not inconsistent. In *W.R. Millar*, this court determined that consistency of an oral agreement and a subsequent written agreement is required for admissibility of parol evidence. 419 N.W.2d at 855. Here, the oral agreement is not inconsistent with the subsequent Easement Agreement because the oral agreement addressed Appellant’s rights to the manure as a result of the agreement to sell land to Respondents; the Easement Agreement addressed Respondents’ right to apply manure to Appellant’s land pursuant to Respondents’ manure management plan.

Appellant and Respondents entered into an oral agreement prior to the sale of Appellant's land to Respondents. (A.34). Under the oral agreement, in exchange for the land purchase, Appellant was entitled to the manure generated by Respondents' pig barns on the site in Iowa. (A.37). The oral agreement did not address responsibility for removal or application of the manure; rather it was agreed that Appellant had rights to the manure produced by Respondents' pig barns. (A.37). Appellant arranged for the pits to be emptied every fall. (A.36). Appellant did not always apply the manure to Appellant's land; but if Appellant did not use the manure, Appellant would find another location for the manure. (A.36-37). Appellant removed the manure from the pits and applied the manure to his own fields; if he did not use the manure and made arrangements for someone else to receive the manure, the individual receiving the manure removed and applied the manure to their land. (A.36-37). Respondents did not take any steps to remove any of the manure or supply any of the manure.

The Easement Agreement did not address ownership or rights to the manure, but merely granted Respondents an easement onto a specified parcel of Appellant's land to apply the manure. The Easement Agreement states that "[Appellant] will receive the benefit of reduced costs and expenses with regard to fertilizer *application* on account of such manure application and other related benefits." (A.10). (emphasis added). The benefit received by Appellant under the oral agreement was rights to the manure; the benefit received by Appellant under the Easement Agreement was the application of the manure to a specified parcel of land, consistent with Respondents' manure management plan.

The Easement Agreement and the oral agreement are also consistent regarding the amount of manure, as neither agreement states a quantity of manure. Pursuant to the oral agreement, Appellant was entitled to all the manure generated by Respondents' pig barns; whatever that amount would be. (A.34). If Appellant had no need for manure and excess manure was available, he ensured that the excess manure was removed from the pits and applied elsewhere. (A.35-36). The Easement Agreement states that "[Appellant] acknowledges and agrees to accept Grantee's manure in accordance with Grantee's manure management plan but understands and acknowledges that Grantee is making no warranty as to the quality or quantity of manure to be delivered." (A.10). Appellant was not entitled to any specific volume of manure under either agreement, and Appellant was not entitled to any specific volume of manure applied by Grathwohl Brothers under either agreement. Because the oral agreement is not inconsistent with the Easement Agreement, the oral agreement is admissible as a prior agreement, and the district court erred in holding that the oral agreement was inadmissible parol evidence.

## **II. THE ORAL AGREEMENT ADDRESSES TERMS THAT WOULD BE A SEPARATE AGREEMENT.**

The Easement Agreement and the oral agreement address terms that would naturally be contained in separate agreements because one addresses all rights to the manure, while the other addresses Respondents' right to apply manure to a specified parcel of Appellant's land. In *W.R. Millar*, the court of appeals concluded that a contract for the sale of cassette tapes and a contract for sales representative services were separate and distinct agreements and an integration clause in the sales representative contract did

not apply to the earlier contract because the contracts addressed different subject matter. 419 N.W.2d at 855.

Similar to the contracts in *W.R. Millar*, the agreements here address different subject matter. Although both agreements appear to address manure, the oral agreement addresses ownership rights to the manure, while the Easement Agreement addresses the Respondents' rights, and the rights of Respondents' successors and assigns, to apply such manure to a particular parcel of Appellant's land. The parties agreed in the oral agreement that in exchange for allowing Respondents to purchase the parcel of land from Appellant, that Appellant would be entitled to the entirety of the manure generated by the pig barns that were to be built on the parcel of land. (A.34). Conversely, the Easement Agreement merely granted Respondents an easement onto a specific parcel of Appellant's land for the application of manure, and entitled Appellant to receive the benefit of manure application from Respondents. The Easement Agreement was required for Grathwohl Brothers to secure financing to build its barns and was drafted by Respondents' lender, not by Appellant or Respondents. (A.37).

Under the oral agreement, Appellant had all rights to the manure. (A.34). Appellant removed the manure from the pits and applied it to his own land, using his own equipment, and did not pay to use the manure on his fields. Appellant could apply the manure wherever he wished, and in whatever manner he wished. Grathwohl Brothers were not aware where Appellant applied the manure. (A.30). The oral agreement did not limit Appellant to the application of the manure on a specific parcel of land.

Under the Easement Agreement Respondents were granted a right to apply manure to Appellant's land, and Appellant received the benefit of manure application. (A.10). The Easement Agreement was consistent with Respondents' manure management plan. Respondents were required to have a manure management plan for application of the manure in order to operate the pig barns. Application of the manure involved pumping the pits, hauling the manure to the land, and then applying the manure to the land. By executing the Easement Agreement, Respondents and Appellant agreed that Respondents would undertake the application and Appellant would accept the manure application on that particular field, and that easement would extend to Respondents' successors and assigns. However, the oral agreement with Appellant and Respondents did not also extend to Respondents' successors and assigns.

It is reasonable that separate agreements would address Appellant's rights to all the manure produced by Respondents' pig barns and the right of Respondents, their successors and assigns to apply the manure to a specific parcel of Appellant's land consistent with the manure management plan for those pig barns. This is a natural distinction between ownership of all rights to the manure and the right to application of the manure consistent with the manure management plan. *See W. R. Millar*, 419 N.W.2d at 855. Consequently, the district court erred when it concluded that the oral agreement was inadmissible parol evidence.

**III. THE CIRCUMSTANCES OF THE CASE AND THE CONDUCT OF THE PARTIES INDICATE THAT THE ORAL AGREEMENT WAS A SEPARATE AGREEMENT NOT SUPERSEDED BY THE EASEMENT AGREEMENT.**

The parties' oral agreement is not prohibited by the parol evidence rule because the circumstances surrounding the case and the conduct of the parties indicate that the parties did not intend for the Easement Agreement to be the complete statement of their agreement. Parol evidence is admissible if the court infers from the circumstances of the case that the parties did not intend a written agreement to be a complete and final statement of the whole transaction between them. *Phoenix Pub. Co. v. Riverside Clothing Co.*, 54 Minn. 205, 206, 55 N.W. 912, 912 (1893). "A determination of whether the written document is a complete and accurate 'integration' of the terms of the contract is not made solely by an inspection of the writing itself, important as that is, for the writing must be read in light of the situation of the parties, the subject matter and purposes of the transaction, and like attendant circumstances." *Bussard v. College of St. Thomas*, 294 Minn. 215, 224, 200 N.W.2d 155, 161 (1972).

From 2002 to 2009, Appellant proceeded under the oral agreement and removed the manure from Grathwohl Brothers' pits at the Iowa site or arranged for the removal of manure from Respondents' pits. Appellant did not pay anything for the manure that he pumped from the Grathwohl Brothers' pits. (A.36). Grathwohl Brothers has never emptied the pits or applied manure to Appellant's land since the barns were built. (A.36). Respondents did not have knowledge about where Appellant applied the manure that was

removed from the pits at issue. (A.30). The conduct of Appellant and Respondents following execution of the Easement Agreement was not consistent with the terms of the Easement Agreement; however, the conduct of the parties was consistent with the oral agreement – Appellant had rights to the manure and removed it from 2002 until 2009, when Grathwohl Brothers began selling the manure to other individuals. The conduct of the parties since execution of the Easement Agreement indicates that the oral agreement was a separate agreement and was not superseded by the Easement Agreement.

The Easement Agreement, although executed by Grathwohl Brothers and Appellants, was not drafted by either of the parties – it was drafted by Christiansen Farms. (A.26). Both Grathwohl Brothers and Appellant believed that the Easement Agreement was a necessity for the pig barns to be built. (A.22-23; 37). Appellant believed that the Easement Agreement was “for the lender,” and that was the reason for the Easement Agreement. (A.35, 37). Similarly, Tim Grathwohl believed that the Easement Agreement is “for the lender to guarantee they have a spot to put manure on” and has nothing to do with who Grathwohl Brothers could or could not sell to. (A.32). In fact, Grathwohl Brothers has not applied the manure pursuant to the Easement Agreement; it has instead sold the manure to others for profit since 2009. Because the parties did not draft the Easement Agreement, nor does their course of conduct follow it, the Easement Agreement should not be considered a complete statement of their agreement.

Together, the conduct and situation of the parties and the other circumstances surrounding the situation indicate that the parties did not intend for the oral agreement to

be superseded by the Easement Agreement. The Easement Agreement was a condition required by Christiansen Farms and was supplied by Christiansen Farms, the parties executed the Easement Agreement without alteration, and the parties' conduct was not consistent with the specific terms of the Easement Agreement.

### CONCLUSION

The district court erroneously concluded that the prior oral agreement between the parties was inadmissible parol evidence. The oral agreement was not inconsistent with the Easement Agreement, the oral agreement addressed different subject matter than that contained in the Easement Agreement, and the parties course of conduct was directly contradictory to the provisions of the Easement Agreement, therefore the oral agreement is not inadmissible parol evidence.

Dated: May 19, 2011

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