STATE OF MINNESOTA
IN COURT OF APPEALS
A10-971

Celeste L. Brausen, et al.,
Respondents,

vs.

Brian J. Peterson,
Appellant,

Mary Ann Peterson, et al.,
Appellants.

Filed February 15, 2011
Affirmed; motions denied
Klaphake, Judge

Carver County District Court
File No. 10-CV-08-1441

Robert J. Shainess, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondents)

Brian J. Peterson, Excelsior, Minnesota (pro se appellant)

Jordan J. Kimbel, Minneapolis, Minnesota (for appellants Mary Ann Peterson, et al.)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

In this action to affirm the existence of an easement, appellants Brian Peterson, Mary Ann Peterson, Peterson-M-Family Limited Partnership, and Peterson-J-Family

Limited Partnership (appellants), challenge the district court's award of summary judgment to respondents Celeste L. Brausen and Eldon and Valerie Oldre, as well as the court's award of sanction-based attorney fees and costs.

Because the district court did not err by concluding that appellants' property is subject to a driveway easement for the benefit of respondents, and the district court's award of sanctions and costs are supported by the record, we affirm.

FACTS

Appellants and respondents are neighbors in Victoria, Minnesota. Appellants' property is the westernmost of the three properties; the Oldres are in the middle, and Brausen is the easternmost of the three. The Oldre/Brausen properties were once one parcel of land that was re-platted and subdivided in 1999 or 2000.

Appellants' property consists of three parcels, Tract A, Registered Land Survey No. 100, and Outlots A and B, Thornberry. All three parcels are registered, or Torrens, property. Appellants purchased the three parcels between 1986 and 2000.

In 1941, the previous owners of appellants' property, the Chandlers, conveyed a driveway easement over their property for the benefit of the then-owners of respondents' property. This deed of easement was recorded in 1942. After the Chandlers' deaths, the property was owned by a trust in favor of the Chandler children. The trustees began an action to register the land and named the surrounding landowners as defendants in the action. This included the Bassets, prior owners of respondents' property. Although the Bassets initially contested the registration action, they withdrew their answer, apparently when it became clear that the driveway easement would be included in the certificate of

title. In December 1982, the district court issued an order to register the Chandler's land as Torrens property, subject to a 20-foot driveway easement. The court's 1982 order described the easement as a "non-exclusive easement for driveway purposes . . . for the use and benefit of the neighboring lands and the owners thereof as described and set forth in the Application and in the Land Title Survey on file in Torrens Case No. 483." The easement appears as a memorial to appellants' certificate of title.

In 1993, the City of Victoria brought two actions to condemn portions of the driveway easement in order to build a public road. Appellants opposed the condemnation actions; in doing so, appellant Brian Peterson acknowledged the existence of the driveway easement. Ultimately, the city decided not to pursue condemnation.

Respondents Oldres purchased their lot in 2002; respondent Brausen purchased her lot in 2007. The driveway easement provided access to their properties. The driveway easement also extends over properties to the west of appellants' property; Oldres and appellants shared in the cost of paving this western portion of the driveway easement.

In July 2008, appellants blocked access to the driveway easement in order to prevent respondents from using the easement. Respondents began a declaratory judgment action and requested a temporary restraining order (TRO) prohibiting appellants from blocking the easement. The district court granted the TRO on September 23, 2008. Thereafter, both appellants and respondents moved for summary judgment. On March 5, 2009, the district court concluded that the 1982 registration order created a valid 20-foot driveway easement and that respondents had "the right to

maintain, repair, and replace, as necessary, at their own cost and expense the existing driveway running through the Driveway Easement as described." The court further concluded that the easement was permanent and ran with the land, and enjoined appellants from blocking access to the easement. Finally, the court concluded that (1) appellants were barred from challenging the 1982 registration order; (2) the certificates of title were valid and enforceable; (3) subdivision of the Basset property, now the Oldre and Brausen properties, did not deprive the Brausen property of the benefit of the driveway easement; (4) appellants should not be permitted to amend their answer to allege equitable and promissory estoppel claims; (5) the driveway easement did not place an undue burden on appellants' property; (6) the court had jurisdiction to hear the matter; and (7) all necessary parties were joined. The court granted partial summary judgment because it believed that there could be fact issues regarding appellants' counterclaim for trespass. In a subsequent hearing, the district court ordered appellants to pay $25,000 of respondents' attorney fees as a sanction for unnecessary delay or needlessly increasing the cost of litigation.

On February 9, 2010, the district court issued its order for summary judgment dismissing appellants' trespass claims sua sponte and ordering appellants to pay $8,717.77 in costs and disbursements. After noting that the existing driveway did not conform to the easement, the court ordered that respondents were permitted to grade, excavate, and pave a suitable driveway within the driveway easement. This appeal followed.

D E C I S I O N

Standard of Review

The district court shall grant summary judgment if, based on the entire record, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. We conduct a de novo review of the district court's summary judgment, to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *Riverview Muir Doran, LLC v. JADC Dev. Group, LLC*, 790 N.W.2d 167, 171 (Minn. 2010). We review the district court's award of sanctions under Minn. Stat. § 549.211 (2010), and its award of attorney fees and costs for an abuse of discretion. *In re Rollins*, 738 N.W.2d 798, 803 (Minn. App. 2007) (sanctions); *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007) (attorney fees and costs), *review denied* (Minn. Mar. 18, 2008).

Easement

Appellants contend that there is no easement for the benefit of respondents because (1) the registration order entered in 1982 did not identify respondents' predecessors-in-interest as benefiting from the driveway easement; and (2) appellants' transfer-of-title documents did not identify the easement.

According to the Torrens statute, the effect of registration is as follows:

> [E]very decree of registration shall bind the land described in it, forever quiet the title to it, and be forever binding and conclusive upon all persons, regardless whether they were mentioned in the application or in the report of the examiner or whether they possessed an interest in the land not referred to in the application or in the report of the examiner, whether they were mentioned by name in the summons, or included in

> the phrase, "all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the application herein."

Minn. Stat. § 508.22 (2010). An appurtenant easement may be registered along with the fee simple estate and remains in effect until an order of the court terminates the easement. Minn. Stat. § 508.04, subd. 2 (2010).[1] A landowner receiving a certificate of title to registered land holds it "free from all encumbrances and adverse claims, excepting only the estates, mortgages, liens, charges, and interests" noted on the certificate of title.[2] Minn. Stat. § 508.25 (2010).

"An easement is an interest in land possessed by another which entitles the grantee of the interest to a limited use or enjoyment of that land." *Scherger v. N. Natural Gas Co.*, 575 N.W.2d 578, 580 (Minn. 1998). "The extent of an easement depends entirely upon the construction of the terms of the agreement granting the easement." *Id.* If the grant terms are unclear or ambiguous, extrinsic evidence may be considered; if not, the court's review is limited. *Id.*

The 1982 registration order stated that the driveway easement was "for the use and benefit of the owner or owners of the hereinabove described land and for the use and benefit of the neighboring lands and the owners thereof as described and set forth in the [the application for registration]." Among the documents filed with the application for registration was the Title Examiner's Report, which included the names of respondents'

[1] *Black's Law Dictionary* defines an "easement appurtenant" as "[a]n easement created to benefit another tract of land, the use of easement being incident to the ownership of the other tract." 586 (9th ed. 2009).

[2] There are some exceptions to this rule that are not applicable here.

predecessors-in-interest. Further, the easement itself is recorded by exact legal description and described as a "non-exclusive easement for private driveway purposes."

A registered title "shall be deemed as an agreement" that runs with the land and is binding upon the successors in the title of the land. Minn. Stat. § 508.24, subd. 1 (2010). This includes encumbrances, liens, charges, and other interests properly registered. *Id.* Further, every decree of registration is forever "binding and conclusive" against all persons, whether named or not in the application for registration or the title examiner's report. Minn. Stat. § 508.22. The Torrens Act does not require that a beneficiary of an easement or encumbrance be identified on the certificate of title; the certificate of title must contain "the name and residence of the owner, a description of the land, and of the estate of the owner therein, and shall by memorial contain a description of all encumbrances, liens, and interests in which the estate of the owner is subject." Minn. Stat. § 508.35 (2010). The fact that respondents or their predecessors are not named in the various title documents does not affect the validity of the easement.[3] In light of this unambiguous statement of easement, our review is limited. *See Scherger*, 575 N.W.2d at 580.

Appellants contend that respondents failed to join as necessary parties the property owners to the west of appellants' land. Appellants assert that these property owners are

[3] Appellants rely on several cases to support their claim that failure to note the beneficiaries of an easement on the certificate of title is conclusive proof that no easement exists. *See Moore v. Henricksen*, 282 Minn. 509, 519, 165 N.W.2d 209, 217 (1968); *Kane v. State*, 237 Minn. 261, 267, 55 N.W.2d 333, 337 (1952); *In re Petition of Willmus*, 568 N.W.2d 722, 725 (Minn. App. 1997), *review denied* (Minn. Oct. 21, 1997). But in each of these cases, no easement or restriction was registered on the certificate of title; here, the easement is a part of the certificate of title.

necessary parties because the driveway easement extends across their lands as well. We review the district court's determination concerning who is a necessary party for an abuse of discretion. *Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 716 N.W.2d 366, 377 (Minn. App. 2006), *aff'd* 736 N.W.2d 313 (Minn. 2007). A person is a necessary party if (1) without that person, complete relief could not be accorded among the existing parties; or (2) the person claims an interest in the subject of the action and failure to join the person would either impair his interests or expose a current party to the risk of multiple or inconsistent obligations. *Id.* Here, the district court did not abuse its discretion by concluding that these western neighbors were not necessary parties because they have not sought to deny or hinder access to the easement.

Finally, appellants contend that the easement is not valid as to the Brausen property because the original lot to the east of appellants was divided into the Oldres and Brausen property. Appellants rely on *Dawson v. St. Paul Fire & Marine Ins. Co.*, 15 Minn. 136, 15 Gil. 102 (1870), for the proposition that subdivision of a property destroys an easement. But the issue in *Dawson* was whether there was an easement by implication; here, there is a recorded easement. In dicta, the *Dawson* court stated, "[I]f the premises to which the right of way attached are divided, the right of way passes to each portion into whosoever hands it may come, but only so far as applicable to such portion." *Id.* at 142, 15 Gil. at 109. Here, there is a registered easement that extends to the Oldres' property line, and which is for the benefit of "neighboring lands." The Oldres have voiced no objection to the Brausens using part of the Oldres' land for access to the

Brausen property. The district court correctly determined that subdivision of the property did not destroy the easement.

In light of our limited review and the binding and conclusive effect of the registration of property under the Torrens law, we conclude that the district court did not err by finding a valid easement and granting summary judgment to respondents.

Sanctions and Costs

Appellants challenge the district court's award of $25,000 in attorney fees as a sanction for what it termed claims of a "frivolous nature" made by appellants, and the district court's award to respondents of their costs, in the amount of $8,717.77. Appellants contend that the district court's award of sanctions was not justified under Minn. R. Civ. P. 11.03 and Minn. Stat. § 549.211 (2008) and further argue that the award of costs cannot be sustained for various reasons.

We review the district court's imposition of sanctions under Minn. Stat. § 549.211 or Minn. R. Civ. P. 11.03[4] for an abuse of discretion. *Gibson v. Trustees of the Minn. State Basic Bldg. Trades Fringe Benefits Funds*, 703 N.W.2d 864, 869 (Minn. App. 2005).[5] Both statute and rule have similar procedural requirements: (1) a motion for sanctions must be made and served separately from other motions or requests; (2) the motion may not be filed for 21 days after service to permit the offending party to correct

[4] These two sections are essentially identical as applied here.

[5] This case was reversed as it applied to the individual client because Minn. R. Civ. P. 11.03(b)(1) and Minn. Stat. § 549.211, subd. 5(b) do not permit an award of monetary sanctions for frivolous claims and defenses against a represented party. *See Gibson v. Trustees of the Minn. State Basic Bldg. Trades Fringe Benefits Funds*, 2005 WL 6240754 (Minn. Dec. 13, 2005). The standards remain pertinent, however.

or withdraw the challenged document or claim; (3) the sanction must be limited to what is sufficient to deter the conduct; (4) monetary sanctions cannot be awarded against a represented party for legal claims, defenses, or contentions made in pleadings;[6] and (5) the district court must include in its order a description of the conduct that violates the rule or statute and the basis for the sanction. Minn. Stat. § 549.21, subds. 4, 5; Minn. R. Civ. P. 11.03(a), (b), (c).

Our review of the record demonstrates that respondents complied in every respect with the procedural requirements of the statute or rule, and that appellants' objections on that basis are meritless. Further, although appellants contend that there is no legal or factual basis for an award of sanctions, we note that "[t]he fundamental purpose of imposing sanctions is deterrence." *Gibson*, 659 N.W.2d at 790; *Kellar v. Von Holtum*, 605 N.W.2d 696, 701 (Minn. 2000) (stating that primary goal of sanctions is not punishment but to deter party from asserting bad faith claims or engaging in frivolous litigation). A lawsuit that lacks "objective reasonableness" will support an award of sanctions. *Brown v. State*, 617 N.W.2d 421, 427 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000).

The district court here made detailed findings supporting its award of sanctions. The court noted that appellant Brian Peterson is a disbarred attorney who formerly practiced in front of this district court in his area of specialty, real estate law; although Peterson is a pro se party, the court held him to a higher standard because of his

[6] Appellants were represented by counsel at the TRO hearing, but they appeared pro se until after the court issued its sanctions order. Appellants signed the various pleadings pro se and acknowledged their responsibility under Minn. Stat. § 549.211.

expertise. The court found that "most of [Brian Peterson's] submissions had no basis in common or statutory law, nor were they anything more than frivolous arguments." In earlier litigation, Peterson had admitted the existence of the easement in argument before the court and in a sworn affidavit. This matter began when appellants obstructed a long-used easement. The court found that "the frivolous nature of many of [appellants'] claims needlessly increased the cost of this litigation to the [respondents]." Appellants continued to submit pleadings that re-argued matters the court had determined in its first partial summary judgment. The court found that Peterson submitted pleadings "unsupported by legitimate documentation" and "asserted arguments that are unfounded and frivolous." Respondents incurred attorney fees in excess of $80,000 at the time of the sanction motion hearing, which occurred in June 2009. At least two more hearings followed this hearing.

The district court heard this matter from the TRO through the final order, giving it a good opportunity to assess appellant Peterson's credibility and conduct. Based on the abuse of discretion standard of review, the district court has provided ample support for its decision to impose sanctions. Appellants' objections to the award of costs to respondents, who prevailed on every count, are meritless.

Other Challenges

Appellants challenge the district court's denial of their motion to amend their answer to assert defenses of equitable and promissory estoppel and laches. The district court's decision about an amendment to appellants' answer is reviewed for an abuse of discretion. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A request for

amendment of an answer may be denied if the claim would not survive summary judgment. *Bebo v. Delander*, 632 N.W.2d 732, 740 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

Appellants' claims of equitable and promissory estoppel are based on oral statements made by a developer, who apparently assured them that the driveway to respondents' properties would be blocked if appellants did not object to division of the parcel of land. Cancellation of an interest less than fee simple in registered land must be registered by filing the instrument cancelling the interest. Minn. Stat. § 508.49 (2010). An oral representation is not effective to create or cancel such an interest. Further, "every decree of registration shall bind the land described in it, forever quiet title to it, and be forever binding and conclusive upon all persons." Minn. Stat. § 508.22. Against these considerations, appellants' claims of promissory and equitable estoppel would not survive summary judgment.

Appellants challenge the district court's order permitting respondents to excavate and pave a driveway within the existing easement. This order was issued after it was discovered that the existing driveway was not perfectly within the easement and appellants would not permit respondents to use the areas of the driveway falling outside of the easement. The grant of an easement is considered to include all rights that make use of an easement possible:

> The general rule is that a grantee of land or of an easement in land is entitled by implied grant to any easement in the land of the grantor which is necessary to render the land or the easement granted capable of enjoyment[:] that a grant carries with it all things, as included in it, without which the thing

> granted cannot be enjoyed. This rule depends upon the principle that where a grant is made it must have been the intention of the parties that the grantee should have the means of using the thing granted.

St. Anthony Falls Water-Power Co. v. City of Minneapolis, 41 Minn. 270, 274, 43 N.W. 56, 57 (1889). Because the easement is intended to be driven on, the district court's conclusion that respondents are permitted to pave the surface within the easement is not erroneous.

Appellants' claims of adverse possession and abandonment are also meritless. Title to registered land is not acquired by prescription or adverse possession. Minn. Stat. § 508.02 (2010); *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 232 (Minn. 2008). Registration runs with the land and all "dealings with the land, or any estate or interest therein, and all liens, encumbrances, and charges upon the same" are subject to the terms of the Torrens Act. Minn. Stat. § 508.24, subd. 1.

Further, to prove abandonment of an easement, one must prove not only failure to use the easement but also an intention to abandon the easement. *Richards Asphalt Co. v. Bunge Corp.*, 399 N.W.2d 188, 192 (Minn. App. 1987). Because the easement here has been used continuously since it was first granted in 1940, appellants cannot offer proof of intent to abandon the easement.

Finally, appellants assert that the district court erred by sua sponte granting summary judgment in favor of respondents on appellants' claim of trespass. The district court has the authority to sua sponte grant summary judgment "without notice to either party where there remains no genuine issue of material fact, one of the parties deserves

judgment as a matter of law, and the absence of a formal motion creates no prejudice to the party against whom summary judgment is entered." *Kellar v. Von Holtum*, 568 N.W.2d 186, 191 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997) (quotation omitted). Here, the district court granted summary judgment on appellants' trespass claim after being presented evidence from both parties that showed that the complained-of activity occurred within the driveway easement. This is not error.

Motions

Appellants moved this court to take judicial notice of a registered land survey of appellants' property that was not submitted to the district court, apparently because it could not be found. "The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. The registered land survey was not a part of the district court record and thus should not be included in the appellate record. We may take judicial notice of a fact not subject to reasonable dispute "in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Minn. R. Evid. 201(b). "An appellate court may take judicial notice of a fact for the first time on appeal." *Smisek v. Comm'r of Pub. Safety*, 400 N.W.2d 766, 768 (Minn. App. 1987). Although the fact that this document is a registered land survey may not be subject to dispute, the import of the document is. Therefore, we decline to take judicial notice of the document and deny appellants' motion.

Respondents moved this court to strike page 11 of appellants' appendix and appellants' entire supplemental appendix, and all arguments in appellants' brief based thereon. These documents include the registered land survey that appellants ask us to consider. Because of our decision here, we conclude that respondents' motion is moot and we therefore deny it.

Affirmed; motions denied.