97236-2

Court of Appeal Cause No. 77526-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Erik J. Murphy, Respondent

v.

KEVIN HENDRICKSON, Petitioner

PETITION FOR REVIEW

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WSBA#45681

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A. Identity of Petitioner

Kevin Hendrickson asks this court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. Court of Appeals Decision

Petitioner Hendrickson seeks review of the Court of Appeals' March 25, 2019 decision affirming the Snohomish Superior Court's grant of summary judgment in favor of the plaintiff, Erik J. Murphy, quieting title to an easement on plaintiff's property that had been held by Hendrickson by court action judicially extinguishing the easement.

Petitioner Hendrickson seeks particular review of the Appeals Court's reliance on case law it construed to grant Washington courts broad power to extinguish property rights acquired for consideration by express grant that they deem no longer provide owners beneficial use.

Also, Petitioner Hendrickson seeks review of the Appeals Court's failure to adhere to established Washington appellate court published case law precedents circumscribing the circumstances under which the owner of a burdened estate can modify an existing easement without notice to or acquiescence of the easement holder.

Hendrickson's Motion for Reconsideration was denied by a majority of the Division One Court of Appeals panel on April 22, 2019.

A copy of the decision is in the Appendix at page A-1. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at page A-2.

C. Issues Presented for Review

Did the Court of Appeals err in ratifying Plaintiff Murphy's modification of an easement on its property without notice to the easement holder, in abrogation of the requirements itemized in *Hanna v. Marritan,* 373 P.3d. 300, 193 Wn.App. 596, 606-07 (2016) and the notice requirement articulated by the court in *Coast Storage,* 55 Wn.2d. 848, 854, 351 P.2d.520 (1960),?

Did the Court of Appeals err in construing *Coast Storage* to grant Washington courts broad new powers to take away from owners vested private property rights they acquired for consideration by express grant?

Did the Court of Appeals err in affirming the Superior Court's grant of summary judgment to the plaintiff, based on a flawed construction and application of the law?

D. Statement of the Case

Petitioner, Mr. Hendrickson, acquired for consideration in 1993 a plot of land. That property's 1993 statutory warranty deed granted to Mr. Hendrickson an "ingress, egress and utilities" easement as described in the "Town of Woodway Short Plat." The Priscilla Collins Short Plat,

established in 1978 comprising the four relevant lots, describes the easement as "serving Lots 1, 2, 3 and 4." Lot 4 is the Hendrickson Property, still currently owned by Appellant. Mr. Hendrickson, as a result of this purchase of Lot 4, is the holder of an appurtenant easement serving Lot 4 and burdening adjacent lots.

The plaintiff in the court below sought to extinguish by court ruling a recorded, expressly granted appurtenant easement owned since 1993 by Mr. Hendrickson. The Snohomish County Superior Court granted the plaintiff's request for judicial extinguishment of the easement on summary judgment and denied reconsideration. (CP 44-47). The Washington Court of Appeals Division One affirmed the summary judgment ruling in March 2019 and denied reconsideration in April 2019.

E. Argument Why Review Should Be Accepted

Washington Rule of Appellate Procedure 13.4(b) states that a petition for review may be accepted by the Supreme Court if one or more of the following conditions are met:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The conditions for granting review stated under RAP 13.4 (b)(1), RAP 13.4 (b)(2), RAP 13.4 (b) (3), and RAP 13.4 (b)(4) are all clearly met in the present petition from Division One of the Washington Court of Appeals.

In *Case Storage*, the Washington Supreme Court held, "the consent of all interested parties is prerequisite to the relocation of an easement." (at 854) Nonetheless, the Court of Appeals affirmed the Superior Court's grant of summary judgment despite the clear contradiction between the plaintiff's conduct and this Supreme Court holding. The plaintiff modified or relocated Mr. Hendrickson's easement without his consent merely by filing in the county recorder's office without notice to the easement holder a boundary change altering the location of the easement's terminus and affecting its use. Therefore, the condition for granting review under RAP 13.4 (b)(1) has been satisfied.

The Appeals Court decision extinguishing Petitioner's easement conflicts with the express holding in the 2016 publishing appellate court opinion, *Hanna v. Marritan*, which limits such extinguishments to certain specified circumstances, none of which were met in the present case:

> Easements are only extinguishable in specific situations, such as when the easement holder releases it in an instrument that complies with the statute of frauds, the owner of the servient estate uses the easement adversely, the easement is abandoned, or the dominant and servient estates merge.

Therefore, the RAP 13.4 (b)(2) condition for review has been met.

Article I, Section 16 of the Washington State Constitution places clear limitations on government takings of private property, expressly stating that a right-of-way may not be appropriated without compensation except for municipal use, an exception irrelevant to the present case:

> No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation,...

The Washington Supreme Court stated unequivocally in *Manufactured Housing Communities of Washington v. State*, 13 P.3d 183, 142 Wn.2d 347, 362 (2000):

> The eminent domain provision of the Washington State Constitution provides a complete restriction against taking private property for private use: "Private property shall not be taken for private use...." Const. art. I, § 16 (amend.9).

The Court of Appeals in the present case divested Petitioner of a right-of-way, not for public or municipal use, but for the benefit of the private owners of the neighboring burden estates, without providing full, or even any, compensation, so the prerequisite for review under RAP 13.4 (b) (3) has been satisfied.

The United States Constitution, following a foundational principle of property rights central to the aspirations of the Founding Fathers, has restricted conditions under which the government can take private property. The Fifth Amendment "takings clause" limits the scope of the government's exercise of eminent domain powers to circumstances in which property is taken for public use and in which just compensation for the property taken is provided: "nor shall private property be taken for public use, without just compensation." The United States Supreme Court has repeatedly stated "one person's property may not be taken for the benefit of another private person without justifying public purpose, even though compensation be paid." *Thompson v. Consolidated Gas Utils. Corp.*, 300 U.S. 55, 80, 57 S.Ct. 364, 376, 81 L.Ed. 510 (1937); *Cincinnati v. Vester,* 281 U.S. 439, 447, 50 S.Ct. 360, 362, 74 L.Ed. 950 (1930); *Madisonville Traction Co. v. St. Bernard Mining Co.,* 196 U.S. 239, 251-52, 25 S.Ct. 251, 255-56, 49 L.Ed. 462 (1905); *Fallbrook Irrigation Dist. v. Bradley,* 164 U.S. 112, 159, 17 S.Ct. 56, 63, 41 L.Ed. 369 (1896).

The United States Supreme Court has long construed the Fourteenth Amendment as requiring the same public use and just compensation requirements for any takings of private property by each state government. See, e.g., *Chicago B. & Q. R.R. v. City of Chicago*, 166 U.S. 226, 233, 236–37 (1897); *Sweet v. Rechel*, 159 U.S. 380, 398 (1895).

The United States Supreme Court has long held that property interests such as easements are expressly included among those falling under the provisions of the Eminent Domain clauses of the Constitution. See, *United States v. Welch*, 217 U.S. 333 (1910).

The Court of Appeals' broad construction of dictum that "[a]n easement is a use interest, and to exist as an appurtenance to land, must serve some beneficial use" in a 1960 Washington Supreme Court case, *Coast Storage* at 853, in its opinion published in the case on April 25, 2019, if left standing, would have the effect of greatly expanding state government power to take away private property rights obtained for consideration, eliminating the public use and just compensation requirements. The Appeals Court construed this dictum as a binding holding empowering Washington courts to extinguish easements whenever it concludes that they serve no beneficial use. Such a holding, which has since been published and thus serves as binding Washington law, contradicts not only the restrictions on takings of private property rights for the private use of another property owner articulated in the Washington case law cited, *supra,* but it also contradicts well-established principles of both the state and federal constitution. The prerequisite for review under RAP 13.4 (b) (3) based on significant constitutional questions has been met.

The requirement for review under RAP 13.4 (b)(4) has also been satisfied since there is a significant public interest both to property owners and to the real estate industry. If the owner of a burdened property can with impunity unilaterally modify a neighbor's appurtenant easement acquired for consideration by express grant, without providing notice to the owner of the dominant estate or negotiating the modification for new consideration, merely by surreptitiously filing a modification in the county recorder's office, then owners of servient estates in Washington, in response to the April 25 Division One published opinion will run to county recorders offices throughout the state to do so, unburdening their property to acquire unclouded title to their estates in order to enhance the resale value of their property.

Holders of easements and other non-possessory interests in neighboring estates will potentially lose their property rights without any notice, and when they eventually become aware of the modification, will run to the court with quiet-title actions, attempting to reclaim their lost property rights, flooding Washington courts with litigation. Alternatively, the owners of burdened estates will flood the courts with litigation, hoping, as happened in the present case, that the courts will rule that the newly secretly modified easement or property right no longer serves any

beneficial use to the holder and can be judicially extinguished, even on summary judgment.

Such a scenario will create great instability in the real estate industry. When a realtor sells a property to a buyer, promising as part of the property sold certain vested appurtenant property rights, such as a right of way or other easement on neighboring estates, the buyer relies on that property right in assessing the value of the home and in negotiating the purchase price. If such appurtenant rights, acquired for added consideration by the buyer, cannot be relied on, but are instead subject to unpredictable modifications without notice and judicial extinguishment without compensation based on a subjective evaluation by the court that they no longer provide beneficial use to the holder, buyers will be wary to pay for such benefits and may even refrain from purchasing the property for fear that a right of way or other expected benefit might be stripped away.

Realtors may also find themselves subject to litigation for breach of contract for assuring buyers of a vested property interest that, according to the express grant, the acquired right exists in perpetuity and runs with the land with regard to both dominant and servient estates, regardless of changes in ownership of either property. While such purchasers are on at least constructive notice that there are a few limited and legally long-

established and well-defined conditions that might result in extinguishment of an easement (such as adverse possession), the Division One holding on April 25 greatly destabilizes the process of acquiring real property by creating a highly fluid approach to the extinguishment of an easement. While easements by prescription and hardship easements are judicial creations acquired for no consideration and may by judicially extinguished when the conditions for their judicial creation no longer exist, an easement by express grant is a private contract, and especially if acquired for consideration, is a vested private property right to be terminated only according to the express terms in the conveyance instrument. Alternatively, it may be extinguished if one of the four conditions itemized in *Hanna v. Marritan* has been met, but these are based on long-known common-law principles: written release by the holder of the right, adverse possession, abandonment, or merger of the dominant and servient estates. None of these conditions were cited by the Superior Court in in summary judgment extinguishing Hendrickson's easement, nor by the Court of Appeals. Instead, the Court of Appeals relied on a highly questionable broad construction of dictum in a 1960 case clearly distinguishable in its underlying material fact pattern from the present case to create a new condition for judicial extinguishment of a vested property right. Beyond the instability created by adding a new

court power to take private property, the subjective determination by the court that a property right no longer serves any beneficial use to the holder of that right creates further instability and uncertainty that destabilizes the real estate industry during the time of an overheated housing market and booming new construction.

F. Conclusion

If the Supreme Court of the State of Washington grants review of the Court of Appeals decision, it should reassert the clear limitation of conditions under which an appurtenant property right acquired for consideration by express grant can be judicially or otherwise extinguished to those four situations itemized in *Hanna v. Marritan*, namely, abandonment, adverse possession, merger of estates, or express agreement by the interested parties. The holdings by the Superior Court and the Court of Appeals in this case should thus be reversed with regard to their apparent ratification of the Plaintiff's modification of Mr. Hendrickson's easement across his estate simply by recording the modification in the County Recorders' Office without providing any notice to the holder nor negotiatting for new consideration to support any modification of Petitioner's vested right as expressly granted in perpetuity. This reversal would quiet title in favor of Petitioner, Mr. Hendrickson.

Petitioner also requests that the Supreme Court construe much more narrowly the statement in *Coast Storage* regarding courts' power to extinguish private property rights based on their perceived failure to continue to provide the holder of those rights beneficial use. In its original context, that statement referred only to a merger of the dominant and servient estates, a condition long known to terminate an easement. In such contexts, there is by definition no longer any beneficial use because the common owner of both estates no longer needs a special right of way across what is now his or her own property. This Court should not construe *Coast Storage* as greatly expanding judicial takings powers nor as adding a novel condition for extinguishment of an easement. The 1960 dictum was merely a recognition of the long-existing rule that merger of dominant and servient estates terminates an easement as a matter of law.

Petitioner Hendrickson thus respectfully requests that this Court remand the case for reconsideration based on a much narrower construction than the Appeals Court's broad application of its newly expanded judicial takings power assumed under its idiosyncratic understanding *of Coast Storage.*

At minimum, this Court should limit its application of the *Coast Storage* provision for judicial extinguishment of an easement based on its failure to provide further beneficial use to its holder to only such cases

where lack of beneficial use is as self-evident as it was in *Coast Storage*, where the merger of estates made the easement useless as a matter of law. In the present case, there was no such merger of estates, so any failure of the easement to continue provide beneficial use based on the secret modification by the owner of the burdened estate should not have been determined on summary judgment as a matter of law.

CR 56 allows for summary judgement where no dispute as to the material facts exist and the moving party is entitled to judgement as a matter of law. CR 56, *Elcon Const., Inc. v. Eastern Washington University,* 174 Wn.2d 157,165, 273 P.3d 965 (2012). Having determined that the "beneficial use" standard empowered the court to extinguish an easement, even if that newly claimed court power is legally sound and constitutionally valid, the disputed factual question of whether Mr. Hendrickson received beneficial use from the easement should have been properly adjudicated and summary judgment precluded. This Court, even if it were to embrace the Appeals Court's conclusion that Washington courts are now free to extinguish property rights that appear no longer to provide beneficial use to their owners, should remand the case for determination of beneficial use as a question in the instant case for the finder of fact at the trial court level.

May 21, 2019

Respectfully submitted,

s/ Joseph Militello
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WSBA# 45681

G. Appendix

FILED
3/25/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

KEVIN B. HENDRICKSON and JANE DOE HENDRICKSON, husband and wife and the marital community composed thereof; and JOHN AND JANE DOES NOS. 1-10, Appellants, v. ERIK J. MURPHY, Respondent.	No. 77526-0-I DIVISION ONE PUBLISHED OPINION FILED: March 25, 2019

ANDRUS, J. — Kevin Hendrickson appeals the trial court's order terminating an easement that crossed, but dead-ended within the boundaries of, property owned by Erik Murphy. Because the easement serves no beneficial use to Hendrickson, we affirm.

FACTS

Erik Murphy owns property at 11431 North Dogwood Lane, Woodway, Washington (hereinafter the Murphy Property). Kevin Hendrickson and his wife[1] own nearby property at 11411 North Dogwood Lane (hereinafter the Hendrickson Property). Both properties originated from the Priscilla Collins Short Plat, established in 1978 and comprised of four lots: Lot 1, Lot 2, Lot 3, and Lot 4.

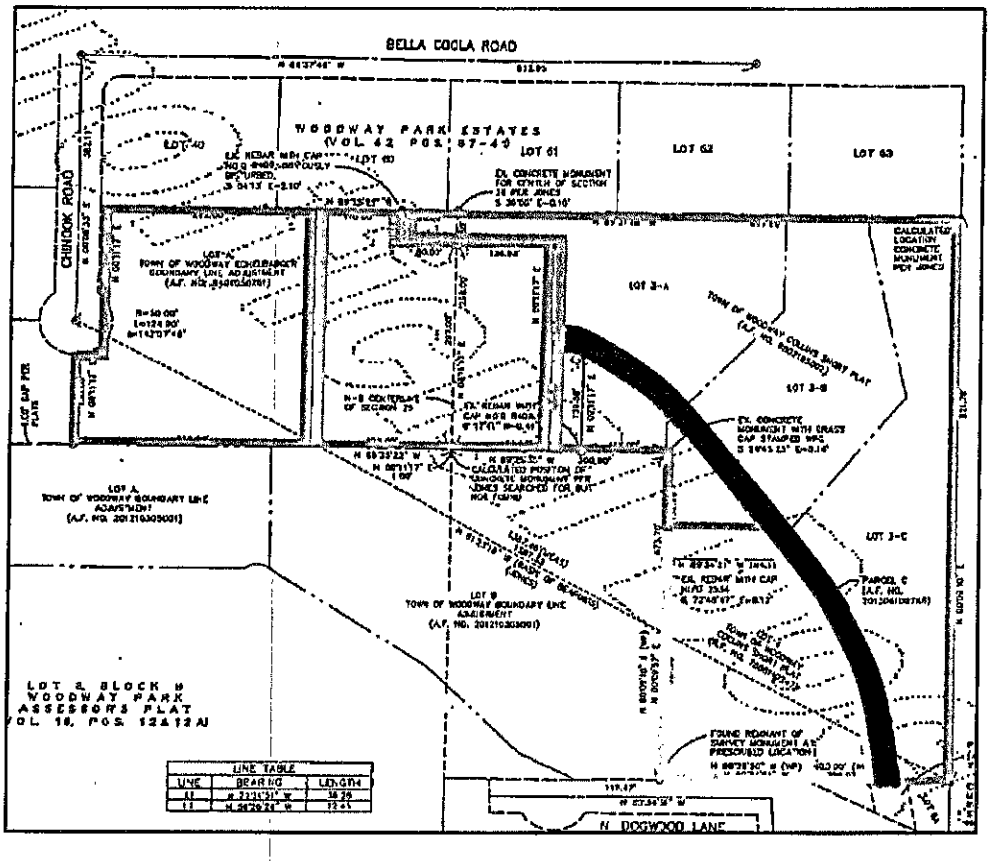
[1] Although "Jane Doe" Hendrickson is a named party in this appeal, we will refer to Kevin and "Jane Doe" Hendrickson collectively as Hendrickson.

According to the Collins Short Plat, the Murphy Property is Lot 2, and the Hendrickson Property is Lot 4. The properties are not adjacent to each other.

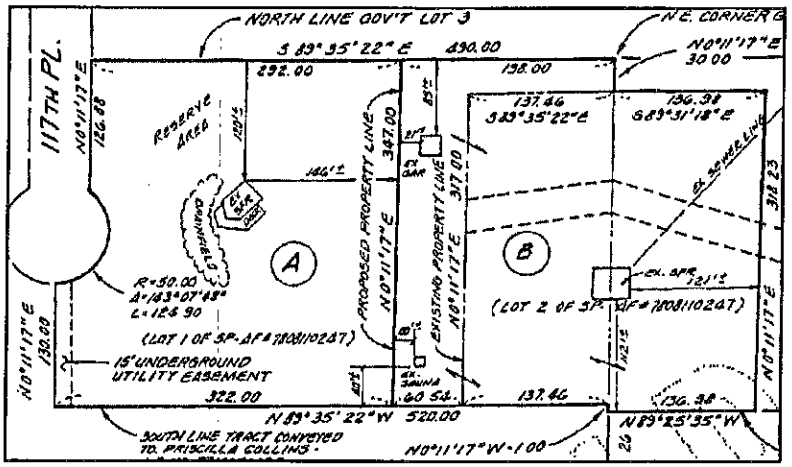
The Collins Short Plat included an ingress, egress, and utilities easement running in a northwesterly direction from its southern terminus near North Dogwood Lane, a public street, and ending at what was then the western boundary of the Murphy Property. The Hendrickson Property's 1993 statutory warranty deed subjects its title to the easement "for the benefit of Lots 2 and 3." But it also grants to the Hendrickson Property an "ingress, egress and utilities" easement as described in the "Town of Woodway Short Plat." The Collins Short Plat describes the easement as "serving Lots 1, 2, 3 and 4."

A diagram of the lots is below. Lot 1 is outlined in blue; Lot 2 (the Murphy Property) is outlined in orange; Lot 3 is outlined in green, and Lot 4 (the Hendrickson Property) is outlined in yellow. The easement appears in purple.[2]

[2] This diagram, as submitted to the record, does not show the easement as it crosses over the Murphy Property. The multicolored lines have been added for clarity. Please note this is for illustrative purposes only.



The western portion of the easement crossed through the Murphy Property, as is diagramed below.[3]



[3] In the diagram, Lot 1 is referred to as Parcel A, and Lot 2 (the Murphy Property) is referred to as Parcel B. The dotted line shows the easement location as it crossed the Murphy Property.

In 1994, the owner of Lot 2 proposed relocating its property line 60 feet to the west. The "Proposed Property Line" as depicted in the diagram above became the official adjusted property line on July 27, 1994, per the approval of the Woodway Planning Commission. The easement language was not modified in any way at the time, and the diagram depicts the easement where it now dead-ends within the Murphy Property.

The Murphy Property is landlocked by Lots 1, 3, and 4. The easement serves as the only way by which the owner of Lot 2 (the Murphy Property) can access a public road. Lot 4 (the Hendrickson Property) has frontage directly onto North Dogwood Lane and is also serviced by the southern portion of the easement. The portion of the easement located on the Murphy Property does not provide ingress to, or egress from, the Hendrickson Property, to any public road.

Dennis Delahunt, the successor trustee of the Robert M. Ryan Living Trust, the then owner of the Murphy Property, commenced this action in May 2017, seeking to quiet title to the portion of the easement that crossed the Murphy Property.[4] The trial court granted the motion and quieted title in favor of Delahunt and the Trust.[5]

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[4] The easement, as originally created, also benefitted the property north and east of the Hendrickson Property, known as Lot 3, but that owner released his interest in the portion of the easement crossing the Murphy Property because it serves no beneficial purpose to Lot 3. Thus, Hendrickson is the only person who claims a right of ingress and egress across the Murphy Property.

[5] Murphy purchased the property from the Trust in mid-2018 and became the Respondent in the present action. This court granted Respondent's motion to substitute Murphy for Delahunt on July 27, 2018.

ANALYSIS

The sole issue on appeal is whether the trial court erred in quieting title to the western portion of the easement to the Murphy Property. We conclude no error occurred because the easement (1) dead-ends within the boundary of the Murphy Property and (2) serves no beneficial use to the Hendrickson Property.

Standard of Review

This court reviews de novo a motion for summary judgment, engaging in the same inquiry as the trial court. Highline Sch. Dist. No. 401, v. Port of Seattle, 87 Wn.2d 6, 15, 548 P.2d 1085 (1976). "[S]ummary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Herskovits v. Grp. Health Co-op. of Puget Sound, 99 Wn.2d 609, 613, 664 P.2d 474 (1983). The reviewing court must draw all reasonable inferences in favor of the nonmoving party. Id.

The Easement's Western Terminus

Hendrickson first contends there is a material issue of fact as to whether the easement dead-ends within the Murphy Property or terminates at the Murphy Property's western boundary with Lot 1. As originally platted in 1978, the easement terminated at the western boundary of Lot 2 (the Murphy Property), where it met the eastern boundary of Lot 1. The easement provided in relevant part:

> An easement for ingress, egress and utilities over, across and under a strip of land 30.00 feet in width having 15.00 feet on each side of the following described center-line: Commencing at a stone monument at the center of Section 26, Township 27 North, Range 3 East, H.M.; thence S 89°31'18" E along the east and west center-line of said section 699.595 feet {S 89°38'30" E 700.00 feet in previous

> descriptions} to a monument; . . . thence S 84°03'04" N 138.25 feet, more or less, to an intersection with the east line of Lot 1 in the Priscilla Collins Short plat, said intersection being the terminus of the center-line of said easement for ingress, egress and utilities; the side-lines of said easement shall be lengthened or shortened in order to intersect the east line of said Lot 1 and the north line of said Lot 5A.

The survey attached to the easement shows the easement terminus at the boundary of Lot 1 and the Murphy Property (then known as Lot 2).

Hendrickson argues that when the boundary of the Murphy Property shifted west, the western terminus of the easement similarly extended to maintain an intersection with the eastern boundary of Lot 1. The rules of contract interpretation apply to interpretation of an easement. Pelly v. Panasyuk, 2 Wn. App. 2d 848, 864, 413 P.3d 619 (2018). The interpretation of an easement is a mixed question of law and fact. Id. What the original parties intended is a question of fact and the legal consequences of that intent is a question of law. Id. The intent of the original parties to an easement is determined from the deed as a whole. Sunnyside Valley Irrig. Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). If the plain language is unambiguous, extrinsic evidence will not be considered. Id. An easement can be expanded over time only if the express terms of an easement manifest a clear intention by the original parties to modify the initial scope of the easement based on future demands. Id. at 884. But the face of the easement must manifest this clear intent. The "four corners" rule ensures subsequent purchasers have clear actual or constructive notice of the encumbrance based on future demands. Id.

Hendrickson's argument is inconsistent with the clear language of the easement itself and the legal requirement to follow metes and bounds[6] descriptions in the instrument creating the easement.

Here, the four corners of the easement identified the exact location of the metes and bounds of the easement's lines and terminus. From this description, a surveyor located the area covered by the easement without recourse to any other document. The survey documents show the easement now terminates within the Murphy Property. We are bound by this legal description. See Maier v. Giske, 154 Wn. App. 6, 16, 223 P.3d 1265 (2010) (when easement location is described by metes and bounds description, the precise land covered by easement can be ascertained without resort to extrinsic evidence); Kave v. McIntosh Ridge Primary Road Ass'n, 198 Wn. App. 812, 820, 394 P.3d 446 (2017) (trial court lacked authority to quiet title to easement in any location other than metes and bounds description in instrument creating easement).

There is nothing in the easement to indicate the original parties intended to lengthen the easement in the event the boundary of Lot 1 changed from where it was originally located. The phrase "the sidelines of said easement shall be lengthened or shortened" to intersect with Lot 1's eastern boundary does not evidence such an intent. The metes and bounds of the easement are based on a described "center-line." The language regarding the "sidelines" merely ensured the sidelines corresponded to the center line, which is defined with specific

[6] "Metes and bounds" are "[t]he territorial limits of real property as measured by distances and angles from designated landmarks and in relation to adjoining properties." BLACK'S LAW DICTIONARY 1012 (8th ed. 2004).

compass coordinates. Although the boundary line adjustment led to the loss of ingress or egress onto Lot 1, Hendrickson does not own Lot 1 and has no legal right to ingress into or egress from that parcel.

Because the easement does not contemplate any change in length, we conclude as a matter of law the easement's terminus remained at the old property boundary, which placed it inside the Murphy Property after the 1994 boundary line adjustment.[7] There are no issues of material fact as to the location of the easement's western terminus.

Beneficial Use of the Easement to the Hendrickson Property

Hendrickson next claims that the easement onto the Murphy Property has future beneficial value to the Hendrickson Property because his currently undeveloped property might be able to use the easement for ingress or egress or for accessing utilities. He argues the trial court erred in concluding the easement has no beneficial use.

Hendrickson's argument, however, is foreclosed by our Supreme Court's holding in Coast Storage Co. v. Schwartz, 55 Wn.2d 848, 351 P.2d 520 (1960). As the Supreme Court held, "[a]n easement is a use interest, and to exist as an appurtenance to land, must serve some beneficial use." Id. at 853. An easement terminates as a matter of law when it serves no beneficial use to the dominant estate. Id. In Coast Storage, by virtue of several property transfers, the easement became a dead-end roadway in the middle of the plaintiff's property. Id. The Court

[7] Our conclusion is further supported by the fact that Lot 1 no longer needs the easement for access after a public road, identified as either Chinook Road or 117th Place in the two surveys in the record, was built along Lot 1's western border.

held that because the easement no longer lead to any public roadway and dead-ended on the plaintiffs' property, the defendants no longer had any beneficial use from the easement. Id. The Supreme Court affirmed the order quieting title of the easement to Coast Storage.

This case is analogous to Coast Storage. Like the easement in that case, the part of the easement running across the Murphy Property now dead-ends on that parcel. The dead-end easement leads to no public roadway, and thus, provides no ingress to or egress from the Hendrickson Property. Furthermore, there is no evidence that the easement onto the Murphy Property could ever be used by Hendrickson to access any utilities. To make it useful for utility installation, Hendrickson would either have to cross Lot 1 to reach a public roadway or gain access to Lot 1's utility easement on the western side of that lot. Hendrickson has no right to cross Lot 1, as the easement now ends on the Murphy Property. Under Coast Storage, there is no current or future beneficial use to be gained from the portion of the easement ending within the Murphy Property.

The trial court did not err in granting summary judgment and extinguishing the easement where it crossed the Murphy Property.

Affirmed.

WE CONCUR:

Andrus, J.

Chun, J.

Leach, J.

FILED
4/22/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

KEVIN B. HENDRICKSON and JANE DOE HENDRICKSON, husband and wife and the marital community composed thereof; and JOHN and JANE DOES NOS. 1-10, Appellants, v. ERIK J. MURPHY, Respondent.	No. 77526-0-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant has filed a motion for reconsideration of the opinion filed on March 25, 2018. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Andrus, J.

May 23, 2019 - 3:35 PM

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