

SUPREME COURT OF THE STATE OF MONTANA

Zapel v. Parker

2004 MT 123N (2004) · No. No. 02-742 · Decided May 11, 2004

SUMMARY

The Montana Supreme Court affirmed summary judgment dismissing claims by property purchasers against subdivision developers for negligent misrepresentation and breach of the covenant of seisin. The court held that the purchasers failed to establish required elements of negligent misrepresentation and that their deeds did not provide a contractual basis for a private road easement.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	James C. Nelson; Karla M. Gray; Jim Regnier; W. William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	May 11, 2004
DOCKET	No. 02-742
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the District Court's dismissal of their claims for negligent misrepresentation and breach of the covenant of seisin. The District Court treated the defendants' motion to dismiss as a motion for summary judgment and granted it.
STANDARD OF REVIEW	De novo review applies to an appeal from summary judgment. The Supreme Court applies the same Rule 56 evaluation as the district court and asks whether the moving party demonstrated that no genuine issue of material fact existed.
PRECEDENTIAL VALUE	noncitable
PARTIES	Arthur and Emilee Zapel, Don Leese, Neka Leese v. Gerald Parker, Leonard Hamilton, individually and d/b/a Georgetown Lake Estates, Nelson Lumber Company

TOPICS

- negligent misrepresentation
- contract interpretation
- summary judgment
- real estate
- appellate procedure

PRACTICE AREAS

real estate

torts

contracts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Georgetown Lake Estates negligently misrepresented that the plaintiffs' lots included certain 30-foot strips of land and access to Marmot Road.
2. Whether Georgetown Lake Estates breached the covenant of seisin by failing to convey the promised private road or easement.

HOLDINGS

1. The plaintiffs failed to establish a negligent misrepresentation claim because they did not demonstrate that Georgetown Lake Estates made the alleged representation without reasonable grounds for believing it to be true or that it made the representation with intent to induce reliance.
2. The plaintiffs did not establish a breach of the covenant of seisin because the deeds did not convey or reference a private road or easement, and the clear deed language controlled the parties' rights.

KEY QUOTATIONS

"We have held that a claim for negligent misrepresentation requires proof of the following elements:" (2004 MT 123N, ¶ 15)

"We have held that a contract's language governs its interpretation if the language is clear, explicit, and unambiguous." (2004 MT 123N, ¶ 20)

FACTUAL BACKGROUND

Nelson Lumber Company agreed to sell Section 2 in Granite County to Gerald Parker and Leonard Hamilton for subdivision development and was responsible under the contract for subdivision and survey work. The Zapels and Leeses later purchased lots 25, 24, and 18 from Georgetown Lake Estates after being told that certain 30-foot strips and use of Marmot Road were included. A later survey showed that several corner markers had been placed approximately 30 feet north of their proper locations, causing the plaintiffs to lose the disputed strips and potentially part of Marmot Road, and neighboring owners threatened to terminate or restrict road access.

PROCEDURAL HISTORY

The Zapels and Leeses filed separate complaints against Parker and Hamilton, doing business as Georgetown Lake Estates, alleging several claims arising from the sale of subdivision lots. The cases were consolidated, and Georgetown Lake Estates filed a third-party complaint against Nelson Lumber Company. After the District Court requested a statement of damages, it granted a renewed motion to dismiss, treating the matter as summary judgment, because the plaintiffs had not shown damages and had failed to state a claim. The Montana Supreme Court affirmed, although it relied on grounds different from those cited by the District Court as to negligent misrepresentation.

DISPOSITION

affirmed

CASES CITED

- *Motarie v. N. Mont. Joint Refuse Disposal Dist.*, 274 Mont. 239, 242, 907 P.2d 154, 156 (1995)
- *Bruner v. Yellowstone County*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995)
- *Cechovic v. Hardin & Associates, Inc.*, 273 Mont. 104, 112, 902 P.2d 520, 525
- *Yellowstone Bank of Absarokee v. Morse*, 226 Mont. 126, 128, 733 P.2d 1310, 1312
- *Proctor v. Werk*, 220 Mont. 246, 248, 714 P.2d 171, 172

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