

SOUTH DAKOTA SUPREME COURT

DRD Enterprises, LLC v. Flickema

791 N.W.2d 180 (S.D. 2010) · Decided November 17, 2010

SUMMARY

The South Dakota Supreme Court considered whether a purported blanket easement sufficiently described the servient tenement to burden later purchasers' properties. The court held that the description “grantor’s land” did not identify the servient properties with sufficient certainty and affirmed summary judgment for the subsequent purchasers.

CASE DETAILS

COURT	South Dakota Supreme Court
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Severson, Justice
JURISDICTION	South Dakota
DECIDED	November 17, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	DRD appealed from summary judgment entered for Todd and Dawn Flickema and PSC Properties, LLC in DRD's declaratory action seeking recognition of an access easement.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the moving party demonstrated the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Conclusions of law are reviewed de novo, and facts and favorable inferences are viewed in the light most favorable to the nonmoving party. The judgment will be affirmed if any valid basis supports it.
PRECEDENTIAL VALUE	Published precedential opinion of the South Dakota Supreme Court
PARTIES	DRD Enterprises, LLC v. Todd Flickema, Dawn Flickema, PSC Properties, LLC

TOPICS

- easements
- real estate
- summary judgment
- appellate procedure
- title disputes

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an easement instrument describing the servient tenement only as "grantor's land" sufficiently identifies the burdened property to create an enforceable easement against subsequent purchasers.
2. Whether the South Dakota Supreme Court could review the circuit court's earlier interlocutory ruling on the sufficiency of the easement description when reviewing the final summary judgment.

HOLDINGS

1. An easement instrument must either describe the servient tenement with sufficient certainty or refer to another document that makes the property identifiable with certainty. The phrase "grantor's land" did neither and therefore was insufficient to create an easement burdening the Flickemas' Lot 5 or PSC's Lot 6.
2. An appeal from a final judgment permits review of prior orders and rulings that involve the merits and necessarily affect the final judgment.

KEY QUOTATIONS

"The common denominator in these cases is that the conveying instrument must either describe the servient tenement with certainty or make reference to something else that makes the servient tenement identifiable with certainty." (791 N.W.2d at 188)

"We conclude that the words "grantor's land" are not by themselves "sufficient to serve as a pointer or a guide to the ascertainment of the location of the land."" (791 N.W.2d at 189)

FACTUAL BACKGROUND

Dakota Resorts Management Group executed and recorded a Blanket Easement granting ingress and egress for the benefit of Emery Nos. 4 and 5, but describing the purported servient property only as "grantor's land." Dakota Resorts later conveyed portions of the purported servient property to Aventure Estates, which subdivided the land and sold Lot 5 to the Flickemas and Lot 6 to PSC Properties. The purchasers' title commitments, deeds, and final title policies did not identify the easement, and inspections revealed no access road, trail, or path. DRD later sought to enforce the Blanket Easement across Lots 5 and 6.

PROCEDURAL HISTORY

DRD commenced a declaratory action in 2006 seeking to use a recorded Blanket Easement for access to its property. The circuit court initially granted DRD summary judgment on the sufficiency of the easement description but later entered summary judgment for Flickemas and PSC, concluding that the easement was not in their chains of title and that they were good-faith purchasers without notice. DRD appealed, and the South Dakota Supreme Court reviewed the earlier sufficiency ruling because it was intertwined with and necessarily affected the final judgment.

DISPOSITION

affirmed

CASES CITED

- United Bldg. Centers v. Ochs, 2010 S.D. 30, 781 N.W.2d 79 (S.D. 2010)
- Lang v. Burns, 77 S.D. 626, 97 N.W.2d 863 (1959)
- New York Life Insurance Co. v. Deshotel, 142 F.3d 873 (5th Cir. 1998)
- Trust Co. v. N.N.P. Inc., 104 F.3d 1478 (5th Cir. 1997)
- Greer v. St. Louis Regional Medical Center, 258 F.3d 843 (8th Cir. 2001)
- Badger Pharmacal, Inc. v. Colgate-Palmolive Co., 1 F.3d 621 (7th Cir. 1993)
- United States v. One 1977 Mercedes Benz, 708 F.2d 444 (9th Cir. 1983)
- Berg v. Ting, 125 Wash. 2d 544, 886 P.2d 564 (1995)
- Smith v. King, 27 Wash. App. 869, 620 P.2d 542 (1980)
- Heron v. Ramsey, 45 N.M. 483, 117 P.2d 242 (1941)
- Smith v. Federal Land Bank, 181 Ga. 1, 181 S.E. 149 (1935)
- Buckhorn Land & Timber Co. v. Yarbrough, 179 N.C. 335, 102 S.E. 630 (1920)
- Coppard v. Glasscock, 46 S.W.2d 298 (Tex. Comm'n App. 1932)
- Ault v. Clark, 62 Ind. App. 55, 112 N.E. 843 (1916)
- Ford v. Ford, 24 S.D. 644, 124 N.W. 1108 (1910)
- Hamilton v. Rudeen, 112 Or. 268, 224 P. 92 (1924)
- Cummings v. Dosam, Inc., 273 N.C. 28, 159 S.E.2d 513 (1968)
- Parkinson v. Board of Assessors of Medfield, 395 Mass. 643, 481 N.E.2d 491 (1985)
- Dunlap Investors, Ltd. v. Hogan, 133 Ariz. 130, 650 P.2d 432 (1982)
- Oliver v. Ernul, 277 N.C. 591, 178 S.E.2d 393 (1971)
- Hynes v. Lakeland, 451 So. 2d 505 (Fla. Dist. Ct. App. 1984)
- Germany v. Murdock, 99 N.M. 679, 662 P.2d 1346 (1983)
- Vrabel v. Donahoe Creek Watershed Authority, 545 S.W.2d 53 (Tex. Civ. App. 1977)
- McHale v. Treworgy, 325 Mass. 381, 90 N.E.2d 908 (1950)
- Allen v. Duvall, 311 N.C. 245, 316 S.E.2d 267 (1984)
- Thompson v. Umberger, 221 N.C. 178, 19 S.E.2d 484 (1942)
- Deans v. Deans, 241 N.C. 1, 84 S.E.2d 321 (1954)
- Matney v. Odom, 147 Tex. 26, 210 S.W.2d 980 (1948)
- Hoekman v. Nelson, 2000 S.D. 99, 614 N.W.2d 821 (S.D. 2000)
- Schmiedt v. Loewen, 2010 S.D. 76, 789 N.W.2d 312 (S.D. 2010)
- Flugge v. Flugge, 2004 S.D. 76, 681 N.W.2d 837 (S.D. 2004)
- Bernardy v. Colonial & U.S. Mortgage Co., 17 S.D. 637, 98 N.W. 166 (1904)
- Fullerton Lumber Co. v. Tinker, 22 S.D. 427, 118 N.W. 700 (1908)

- Lunstra v. Century 21 GKR-Lammers Realtors, 442 N.W.2d 448 (S.D. 1989)
- Betts v. Letcher, 1 S.D. 182, 46 N.W. 193 (1890)
- Williamson v. Brown, 15 N.Y. 354 (1857)
- Vander Heide v. Boke Ranch, Inc., 2007 S.D. 69, 736 N.W.2d 824 (S.D. 2007)

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