

SUPREME COURT OF MONTANA

Pennington v. Flaherty

370 Mont. 388 (2013) · No. DA 12-0344 · Decided June 18, 2013

SUMMARY

The Montana Supreme Court reviewed a grant of summary judgment in a quiet title action involving claimed implied restrictions, negative easements, and equitable servitudes affecting neighboring subdivision tracts. The Court held that the recorded plat, restrictions, and chains of title did not impose a prohibition on development, and that the appellant’s brochure, alleged oral assurances, declaration, and notice arguments did not establish an enforceable restriction or equitable estoppel. The judgment in favor of Janice Pennington was affirmed.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Brian Morris; Michael E. Wheat; Patricia Cotter; Beth Baker; Jim Rice
JURISDICTION	Montana
DECIDED	June 18, 2013
DOCKET	DA 12-0344
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting summary judgment to Pennington in her quiet-title action.
STANDARD OF REVIEW	De novo review of the district court's grant or denial of summary judgment, applying the standards of M. R. Civ. P. 56(c).
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Frank E. Flaherty, The Estate of Margaret M. Flaherty v. Janice Pennington

TOPICS

- quiet title
- summary judgment
- implied easements
- evidence
- equitable relief

PRACTICE AREAS

- real estate
- civil procedure
- evidence
- remedies

QUESTIONS PRESENTED

1. Whether the District Court properly granted summary judgment to Pennington in her quiet-title action.
2. Whether Flaherty presented admissible evidence sufficient to establish an implied negative easement or equitable servitude restricting development of tracts 16 and 17.
3. Whether Flaherty's declaration, brochure, and alleged oral assurances created an enforceable restriction or supported equitable estoppel despite the absence of a restriction in the relevant chains of title.

HOLDINGS

1. Summary judgment for Pennington was proper because the recorded plat, restrictions, deeds, and chains of title imposed no restriction preventing development of tracts 16 and 17, and Flaherty failed to produce admissible evidence establishing an implied restriction.
2. Flaherty could not enforce an implied negative easement or equitable servitude because the relevant title documents contained no such restriction, and implied negative easements are evaluated with extreme caution.
3. The brochure and declaration did not defeat summary judgment because the brochure's authenticity was sufficiently doubtful, and the alleged oral assurances and the declaration's recitation of those assurances were hearsay offered for their truth.
4. Flaherty failed to establish equitable estoppel because he could not show conduct, acts, language, or silence by Nelson amounting to a representation or concealment of a material fact.

KEY QUOTATIONS

“We must consider with “extreme caution” any implied negative easements as to a particular lot, however, due to the fact that an implied negative easement deprives people the use of their property.” (¶ 21)

“As we noted in Ternes v. State Farm Fire & Cas. Co., 2011 MT 156, ¶ 24, 361 Mont. 129, 257 P.3d 352, hearsay “cannot be used to defeat summary judgment.”” (¶ 28)

FACTUAL BACKGROUND

Nelson subdivided property at Gibson Reservoir and recorded a plat and later restrictions concerning the combination and sanitary-facility approval for tracts 16 and 17. Flaherty purchased tract 18 and later recorded a declaration asserting that Nelson had promised that tracts 16 and 17 would not be sold or developed; he also relied on an unsigned brochure and alleged oral assurances. Nelson later sold tracts 16 and 17 to the Carlboms, who sold them to Pennington, whose deed contained no restriction, although Pennington knew of Flaherty's declaration. The recorded plat, restrictions, and chains of title contained no restriction preventing development of Pennington's property.

PROCEDURAL HISTORY

Pennington filed an action to quiet title to tracts 16 and 17 and remove any cloud arising from Flaherty's recorded declaration claiming an interest in those tracts. Flaherty asserted that the declaration and alleged oral and written assurances created a negative easement, equitable servitude, or equitable-estoppel claim, and he

moved for summary judgment. The District Court denied Flaherty's motion and later granted summary judgment to Pennington, concluding that the recorded plat and restrictions were the only restrictions and that Flaherty's materials did not create a restriction on development. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Sayers v. Choteau Co., 2013 MT 45, ¶ 21, 369 Mont. 98, 297 P.3d 312
- N. Cheyenne Tribe v. Roman Catholic Church, 2013 MT 24, ¶ 40, 368 Mont. 330, 296 P.3d 450
- Goeres v. Lindsey's, Inc., 190 Mont. 172, 177-78, 619 P.2d 1194, 1197-98 (1980)
- Prospect Dev. Co. v. Bershader, 515 S.E.2d 291 (Va. 1999)
- King v. Schultz, 141 Mont. 94, 98, 375 P.2d 108, 110 (1962)
- PPL Mont., LLC v. State, 2010 MT 64, ¶ 94, 355 Mont. 402, 229 P.3d 421
- Ternes v. State Farm Fire & Cas. Co., 2011 MT 156, ¶ 24, 361 Mont. 129, 257 P.3d 352
- Rigney v. Swingley, 112 Mont. 104, 109, 113 P.2d 344, 347 (1941)
- Loomis v. Luraski, 2001 MT 223, 306 Mont. 478, 36 P.3d 862
- Thisted v. Country Club Tower Corp., 146 Mont. 87, 405 P.2d 432 (1965)
- Avanta Fed. Credit Union v. Shupak, 2009 MT 458, ¶ 42, 354 Mont. 372, 223 P.3d 863