

SUPREME COURT OF WYOMING

Zeimens v. City of Torrington, 2012 WY 97

280 P.3d 1181 (Wyo. 2012) · Decided July 18, 2012

SUMMARY

The Wyoming Supreme Court considered whether the right-of-way for Sheep Creek Road, Goshen County Road 72, was 66 feet or 80 feet wide. The court held that the absence of an express width in the recorded plat created an ambiguity that could be resolved through extrinsic evidence, including surveyor field notes and county road records, and affirmed judgment for the City of Torrington and Goshen County.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Burke, Justice; Burke; Golden; Hill; Kite; Voigt
JURISDICTION	Wyoming
DECIDED	July 18, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Zeimens appealed a judgment entered after a bench trial in favor of the City of Torrington and Goshen County in their action seeking damages for trespass and taking arising from the placement of utility poles.
STANDARD OF REVIEW	After a bench trial, factual findings are reviewed for clear error, with due regard for the trial court's assessment of witness credibility; the appellate court may examine properly admissible evidence but does not reweigh disputed evidence. Conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	George Zeimens, Geraldine Zeimens v. City of Torrington, Goshen County

TOPICS

[real estate](#)[easements](#)[evidence](#)[standard of review](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the county commissioners' failure to state the width of Sheep Creek Road rendered the road's width legally unestablished.
2. Whether the district court properly considered extrinsic evidence to determine that the right-of-way for Sheep Creek Road was eighty feet wide.
3. Whether the district court's finding that the right-of-way was eighty feet wide was clearly erroneous.

HOLDINGS

1. The county commissioners' failure to state the width of Sheep Creek Road was an ambiguity or irregularity, not a defect that prevented the road from being established or deprived the commissioners of jurisdiction.
2. Because the recorded plat was ambiguous as to the width of Sheep Creek Road, the district court properly considered extrinsic evidence, including the county surveyor's field-note transcription and the county road index, to determine the intended width.
3. The district court's finding that Sheep Creek Road had an eighty-foot right-of-way was not clearly erroneous.

KEY QUOTATIONS

“The handwritten transcription of the County Surveyor's field notes are not the official action that established Sheep Creek Road. They are, however, presumed to be an accurate reflection of the official action taken by the county commissioners.” (280 P.3d at 1185)

FACTUAL BACKGROUND

In 1908, Laramie County began establishing Sheep Creek Road and directed its county surveyor to prepare a survey and plat. The recorded plat identified the road's centerline but did not specify its width. After the City of Torrington obtained permission from Goshen County to construct an electric power line in the road right-of-way, two utility poles were erected on the Zeimens' property; the poles were outside the right-of-way if it was sixty-six feet wide but inside it if the right-of-way was eighty feet wide. Historical field-note records and a county road index contained evidence that the intended width was eighty feet.

PROCEDURAL HISTORY

The Zeimens sued the City and County after the City constructed an electric power line near their property along Sheep Creek Road. Following a bench trial, the district court ruled that the road right-of-way was eighty feet wide and entered judgment against the Zeimens. The Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Springer v. Blue Cross & Blue Shield, 944 P.2d 1173 (Wyo. 1997)
- R.C.R., Inc. v. Rainbow Canyon, Inc., 978 P.2d 581 (Wyo. 1999)
- Hasvold v. Park County School District No. 6, 2002 WY 65, 45 P.3d 635 (Wyo. 2002)
- Edgcomb v. Lower Valley Power & Light, Inc., 922 P.2d 850 (Wyo. 1996)
- Lozier v. Blattland Investments, LLC, 2004 WY 132, 100 P.3d 380 (Wyo. 2004)
- Brumbough v. Mikelson Land Co., 2008 WY 66, 185 P.3d 695 (Wyo. 2008)
- Rocky Mountain Sheep Co. v. Board of County Commissioners of Carbon County, 73 Wyo. 11, 269 P.2d 314 (1954)
- Nixon v. Edwards, 72 Wyo. 274, 264 P.2d 287 (1953)
- George W. Condon Co. v. Board of Comm'rs of Natrona County, 56 Wyo. 38, 103 P.2d 401 (1940)
- Ruby v. Schuett, 360 P.2d 170 (Wyo. 1961)
- Kern v. Deerwood Ranch, 528 P.2d 910 (Wyo. 1974)
- Harris v. Board of County Comm'rs, 76 Wyo. 120, 801 P.2d 382 (1956)
- Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979)
- Sheridan County v. Spiro, 697 P.2d 290 (Wyo. 1985)
- Hudson v. Erickson, 67 Wyo. 167, 216 P.2d 379 (1950)
- Sowerwine v. Nielson, 671 P.2d 295 (Wyo. 1983)
- Board of Comm'rs of Sheridan County v. Patrick, 18 Wyo. 130, 107 P. 748 (1910)