

SUPREME COURT OF RHODE ISLAND

Virginia B. Kinder, individually and in her capacity as Trustee of the Virginia B. Kinder Trust v. Jil Westcott et al.

Kinder v. Westcott · No. No. 2014-5-Appeal (PC 12-4718) · Decided January 12, 2015

SUMMARY

The Rhode Island Supreme Court affirmed summary judgment recognizing an express easement appurtenant over the plaintiff's property. The Court held that the recorded instrument's references to the grantee's heirs and assigns, together with its statement that the easement was appurtenant to the land, made the easement freely assignable and running with the land.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Maureen McKenna Goldberg, Associate Justice; Frank Williams Suttell, Chief Justice; Maureen McKenna Goldberg, Justice; Francis X. Flaherty, Justice; William P. Robinson III, Justice; Gilbert V. Indeglia, Justice
JURISDICTION	Rhode Island
DECIDED	January 12, 2015
DOCKET	No. 2014-5-Appeal (PC 12-4718)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a Providence County Superior Court judgment granting defendant's motion for summary judgment and declaring that defendant had an express easement appurtenant.
STANDARD OF REVIEW	The Supreme Court reviewed the Superior Court's summary-judgment judgment de novo, applying the same standards as the trial court and viewing the evidence in the light most favorable to the nonmoving party. Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published opinion
PARTIES	Virginia B. Kinder, individually and in her capacity as Trustee of the Virginia B. Kinder Trust v. Jil Westcott et al.

TOPICS

easements

real estate

summary judgment

standard of review

appellate procedure

PRACTICE AREAS

real estate

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the recorded easement instrument clearly and unambiguously created an easement appurtenant that was assignable to the owners of the dominant land.
2. Whether the alleged conflict between the granting clause and the instrument's references to the grantee's heirs and assigns created a factual ambiguity precluding summary judgment.

HOLDINGS

1. The instrument clearly and unambiguously created an easement appurtenant to the grantee's land and made the easement assignable to the grantee's heirs and assigns.
2. Summary judgment was proper because the easement instrument was clear and unambiguous, and no genuine issue of material fact required resolution by a factfinder.

KEY QUOTATIONS

“However, when the provisions of a written agreement are clear and unambiguous, such provisions “can be interpreted and applied to the undisputed facts as a matter of law” and “neither oral testimony nor extrinsic evidence will be received to explain the nature or extent of the rights acquired.”” (at 5)

“In fact, because the definition of grantee also embraced the grantee’s “heirs and assigns,” repeating the terms in the granting clause would amount to surplusage.” (at 6)

FACTUAL BACKGROUND

In 1961, Ralph F. Kinder and Virginia B. Kinder executed an instrument granting Joseph C. Kinder a sixteen-foot right-of-way across portions of lots 6 and 9 to provide access from lot 15 to Poppasquash Road. The instrument defined the grantee to include his executors, administrators, heirs, and assigns, and stated that the easement was to be held as appurtenant to the grantee's lands. After Joseph's death, his family and estate continued using the right-of-way, and the property was eventually conveyed to Jil Westcott, who used the easement to access her property. Virginia B. Kinder later demanded that Westcott cease using the right-of-way and filed an action to quiet title and recover trespass damages.

PROCEDURAL HISTORY

The plaintiff filed an action seeking a declaratory judgment to quiet title to a right-of-way and damages for trespass. The defendant counterclaimed that her right of access arose from an instrument expressly granting an easement appurtenant and moved for summary judgment. The Superior Court granted summary judgment for

defendant, and the Rhode Island Supreme Court affirmed after directing the parties to show cause why the appeal should not be summarily decided.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The papers were remanded to the Superior Court.

CASES CITED

- Hazard v. East Hills, Inc., 45 A.3d 1262, 1268 (R.I. 2012)
- Tavares ex rel. Guitierrez v. Barbour, 790 A.2d 1110, 1112 (R.I. 2002)
- Long v. Dell, Inc., 93 A.3d 988, 995-96 (R.I. 2014)
- Sullo v. Greenberg, 68 A.3d 404, 406 (R.I. 2013)
- Sola v. Leighton, 45 A.3d 502, 506 (R.I. 2012)
- Pelletier v. Laureanno, 46 A.3d 28, 35-36 (R.I. 2012)
- Ondis v. City of Woonsocket ex rel. Treasurer Touzin, 934 A.2d 799, 803 (R.I. 2007)
- Carpenter v. Hanslin, 900 A.2d 1136, 1147 (R.I. 2006)
- Bradish v. Sullivan, 54 R.I. 434, 440, 173 A. 117, 119 (1934)
- Mattos v. Seaton, 839 A.2d 553, 557 (R.I. 2004)
- Thomas v. Ross, 119 R.I. 231, 240, 376 A.2d 1368, 1373 (1977)

OPINION

PER CURIAM.

Supreme Court No. 2014-5-Appeal. (PC 12-4718) Virginia B. Kinder, individually and in her capacity as Trustee of the Virginia B. Kinder Trust. v.: Jil Westcott et al.: NOTICE: This opinion is subject to formal revision before publication in the Rhode Island Reporter. Readers are requested to notify the Opinion Analyst, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, at Telephone 222-3258 of any typographical or other formal errors in order that corrections may be made before the opinion is published.

Supreme Court No. 2014-5-Appeal. (PC 12-4718) Virginia B. Kinder, individually and in her capacity as Trustee of the Virginia B. Kinder Trust. v.: Jil Westcott et al.: Present: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ. OPINION Justice Goldberg, for the Court. This case came before the Supreme Court on December 4, 2014, pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not summarily be decided.

The plaintiff, Virginia B. Kinder 1 (plaintiff), appeals from a Superior Court judgment which declared that Jil Westcott (defendant) had established the existence of an express easement appurtenant. After hearing the arguments of counsel and examining the memoranda submitted by the parties, we are of the opinion that cause has not been shown and that this case should be decided without further briefing or argument.

Because we hold, pursuant to the express terms of the recorded instrument creating the easement, that the easement was freely assignable and appurtenant to the defendant's land, we affirm the judgment of the Superior Court. 1 Virginia B. Kinder passed away while this appeal was pending; Edward Austin—her nephew and co-executor of her estate—is substituted as plaintiff. -1- Facts and Travel The plaintiff currently owns a parcel of land located at 158 Poppasquash Road, Bristol, Rhode Island, designated as assessors plat No. 182, lot No. 9 (lot No. 9).

Additionally, plaintiff owns real property designated as assessors plat No. 182, lot No. 6 (lot No. 6). The defendant currently owns a lot located at 153 Poppasquash Road, Bristol, Rhode Island, designated as assessors plat No. 182, lot No. 15 (lot No. 15). This controversy arose from an easement over a sixteen-foot wide right-of-way that runs along a driveway on lot No. 9 and a portion of lot No. 6.

The easement allows access to Poppasquash Road from defendant's property. The following brief history sets forth the facts relevant to this appeal. In 1952, Ralph F. Kinder (Ralph), 2 plaintiff's late husband, conveyed lot No. 15 to his brother Joseph C. Kinder (Joseph). Ralph and plaintiff owned lot No. 9 in a joint tenancy; and Ralph, individually, owned lot No. 6.

On March 18, 1961, Ralph and plaintiff executed a grant of an easement, in favor of Joseph. The easement was sixteen feet in width, extended from lot No. 15 over portions of lots Nos. 6 and 9, and provided Joseph with access to Poppasquash Road from lot No. 15.

The instrument contains the following pertinent language: "JOSEPH C. KINDER * * * hereinafter called Grantee, which expression shall include his executors, administrators, heirs and assigns, of the other part. "* * * "[I]n consideration of the total sum of Ten (\$10) Dollars, paid by Grantee to Grantors, as Joint Tenants, and to RALPH F. KINDER, in his sole and individual capacity, the respective receipts whereof are hereby acknowledged, Grantors hereby grant unto Grantee the full and free right and liberty for him, his tenants, agents, servants, employees, licensees, guests and invitees, in common with all others having the like right, at all times hereafter, on foot or with 2 For ease of reference, first names may be used throughout this opinion.

No disrespect is intended. -2- vehicles of any description, for all lawful purposes connected with the use and enjoyment of Grantee's aforescribed two (2) parcels of land, to pass and repass over, upon and across a certain strip of land sixteen (16) foot [sic] wide, as presently located, extending southerly from said Poppasquash Road * * *. "* * * "To Have and to Hold the same unto Grantee,

his executors, administrators, heirs and assigns, as appurtenant to said lands of Grantee and every part thereof.” Upon Ralph’s death, plaintiff became the owner of lots Nos. 6 and 9.

Joseph died in 1986, but his wife, Shirley N. Kinder (Shirley), and their children continued to use the easement across lots Nos. 6 and 9 for access to lot No. 15. In 2002, Shirley passed away and her estate became the owner of lot No. 15. Later in 2002, the Town of Bristol approved the merger of lot No. 15 with lot No. 17, thus creating a buildable lot.

On June 28, 2004, Shirley’s son, in his capacity as executor of Shirley’s estate, conveyed this lot—now designated as lot No. 15—to defendant. A few years later, defendant constructed a home on lot No. 15, and her family began using the right-of-way across lots Nos. 6 and 9 to access Poppasquash Road from their property. 3 In 2012, plaintiff sent cease-and-desist letters to defendant, demanding that defendant stop using the right-of-way.

On September 10, 2012, plaintiff filed this action, seeking a declaratory judgment to quiet title to the right-of-way and damages for trespass. The defendant counterclaimed that her right of access derived from an instrument expressly granting the owner of lot No. 15 an easement appurtenant. Subsequently, defendant moved for summary judgment, asserting that she had an express easement permitting her to travel on the right-of-way.

In opposition to summary 3 The plaintiff asserts that, during construction of defendant’s home, the contractors did not use the right-of-way across lots Nos. 6 and 9; instead, plaintiff states that the contractors accessed lot No. 15 through property owned by Joseph and Shirley’s son. -3- judgment, plaintiff submitted an affidavit declaring that plaintiff, as grantor, did not intend for the easement to run with the land; instead, she intended the easement to serve only Joseph and his family.

On October 1, 2013, a hearing on defendant’s motion for summary judgment was held in Providence County Superior Court. The defendant argued that the language in the instrument that created the easement was clear and unambiguous, citing the habendum clause 4 which stated, “To Have and to Hold the same unto Grantee, his executors, administrators, heirs and assigns, as appurtenant to said lands of Grantee and every part thereof.” (Emphasis added.)

Conversely, plaintiff argued that the instrument was ambiguous because the language in the granting clause— which omitted “heirs and assigns”—conflicted with the language in the habendum clause. According to plaintiff, this ambiguity requires extrinsic evidence on the grantors’ intent when construing the document.

The plaintiff contends that the grantors did not intend for the easement to run with the land. After hearing the arguments of counsel, the trial justice found that the language in the instrument created an express easement in favor of Joseph and his heirs and assigns. Specifically, the trial justice noted that both the definition of grantee and the language of the habendum clause referenced the

grantee's "heirs and assigns." He concluded that this was clear and convincing evidence that the easement would be for the benefit of Joseph's heirs and assigns and was appurtenant to the dominant estate.

Accordingly, the trial justice granted defendant's motion for summary judgment from which plaintiff timely appealed. 4 "The introductory words to the [habendum] clause are ordinarily to have and to hold." Black's Law Dictionary 825 (10th ed. 2014) (emphasis added). -4- Issue on Appeal Before this Court, plaintiff contends that the trial justice erred in granting summary judgment, arguing that the creation of an easement appurtenant involves questions of fact.

The defendant asserts that the language of the easement clearly and unambiguously granted a right of easement to the assigns of Joseph, such that summary judgment appropriately was granted. Standard of Review "In reviewing the Superior Court's judgment on a motion for summary judgment, we examine the matter de novo and apply the same standards as those used by the trial court." Hazard v. East Hills, Inc., 45 A.3d 1262, 1268 (R.I.

2012) (quoting Tavares ex rel. Guiterrez v. Barbour, 790 A.2d 1110, 1112 (R.I. 2002)). "[W]e view the evidence in the light most favorable to the nonmoving party * * *." Long v. Dell, Inc., 93 A.3d 988, 995 (R.I. 2014) (quoting Sullo v. Greenberg, 68 A.3d 404, 406 (R.I. 2013)). "Summary judgment is appropriate only when 'there is no genuine issue as to any material fact and * * * the moving party is entitled to judgment as [a] matter of law.'" Id. at 995-96 (quoting Sola v. Leighton, 45 A.3d 502, 506 (R.I.

2012)). Analysis "Although a plaintiff in a civil action is ordinarily required to prove his or her case by only a preponderance of the evidence, a plaintiff seeking to prove an easement must instead 'overcome a higher clear and convincing standard[.]'" Pelletier v. Laureanno, 46 A.3d 28, 35 (R.I. 2012) (quoting Ondis v. City of Woonsocket ex rel. Treasurer Touzin, 934 A.2d 799, 803 (R.I.

2007)). When interpreting an instrument that purportedly creates an easement, this Court must effectuate the intent of the parties. See Carpenter v. Hanslin, 900 A.2d 1136, 1147 (R.I. 2006). When construing its provisions, this Court examines the entire deed. See Bradish v. Sullivan, 54 R.I. 434, 440, 173 A. 117, 119 (1934).

However, when the provisions of a written -5- agreement are clear and unambiguous, such provisions "can be interpreted and applied to the undisputed facts as a matter of law" and "neither oral testimony nor extrinsic evidence will be received to explain the nature of extent of the rights acquired." Carpenter, 900 A.2d at 1147 (quoting Mattos v. Seaton, 839 A.2d 553, 557 (R.I.

2004)). "[T]o create an easement by express grant, there must be a writing containing plain and direct language evincing the grantor's intent to create a right in the nature of an easement rather

than a license.” Pelletier, 46 A.3d at 36 (quoting 25 Am. Jur. 2d Easements and Licenses § 15 at 513 (2004)).

In the case before us, the language in the deed is clear and unambiguous. The first paragraph of the instrument defines the term “grantee” to include “his executors, administrators, heirs and assigns[.]” 5 (Emphasis added.) Even though the granting clause 6 does not specifically include the words “heirs and assigns,” that clause must be read in harmony with this definition which includes the grantee’s heirs and assigns.

In fact, because the definition of grantee also embraced the grantee’s “heirs and assigns,” repeating the terms in the granting clause would amount to surplusage. 5 The exact language in the definition clause states: “JOSEPH C. KINDER * * * hereinafter called Grantee, which expression shall include his executors, administrators, heirs and assigns, of the other part.” 6 The language of the granting clause is as follows: “[I]n consideration of the total sum of Ten (\$10) Dollars, paid by Grantee to Grantors, as Joint Tenants, and to RALPH F. KINDER, in his sole and individual capacity, the respective receipts whereof are hereby acknowledged, Grantors hereby grant unto Grantee the full and free right and liberty for him, his tenants, agents, servants, employees, licensees, guests and invitees, in common with all others having the like right, at all times hereafter, on foot or with vehicles of any description, for all lawful purposes connected with the use and enjoyment of Grantee’s aforescribed two (2) parcels of land, to pass and repass over, upon and across a certain strip of land sixteen (16) foot [sic] wide, as presently located, extending southerly from said Poppasquash Road * * *.” -6- Furthermore, the habendum clause also refers to “heirs and assigns” when referencing the grantee, thus confirming that defendant’s easement was appurtenant.

7 Lastly, an easement is presumed to be appurtenant and the language in the instrument before us plainly indicates that the easement is “appurtenant to said lands.” See *Thomas v. Ross*, 119 R.I. 231, 240, 376 A.2d 1368, 1373 (1977).

Therefore, we conclude that the trial justice correctly concluded that the easement runs with the land. Accordingly, we are satisfied that the easement was assignable and that the instrument created an easement appurtenant. Conclusion For the foregoing reasons, we affirm the judgment of the Superior Court, to which the papers in this case may be remanded. 7 The habendum clause states: “To Have and to Hold the same unto Grantee, his executors, administrators, heirs and assigns, as appurtenant to said lands of Grantee and every part thereof.” (Emphasis added.) -7- RHODE ISLAND SUPREME COURT CLERK’S OFFICE Clerk’s Office Order/Opinion Cover Sheet TITLE OF CASE: Virginia B. Kinder, individually and in her capacity as Trustee of the Virginia B. Kinder Trust v. Jil Westcott et al. CASE NO: No. 2014-5-Appeal.

(PC 12-4718) COURT: Supreme Court DATE OPINION FILED: January 12, 2015 JUSTICES: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ. WRITTEN BY: Associate Justice

Maureen McKenna Goldberg SOURCE OF APPEAL: Providence County Superior Court JUDGE
FROM LOWER COURT: Associate Justice Joseph A. Montalbano ATTORNEYS ON APPEAL:
For Plaintiff: John M. Verdecchia, Esq.

For Defendants: Rachelle R. Green, Esq.

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