

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2012-0598, Kenneth J. Doerr & a. v. Philip Tuomala & a., the court on December 3, 2013, issued the following order:

The petitioners, Kenneth J. Doerr and Evelyn M. Doerr, appeal the trial court's order following a bench trial denying their request for a declaratory judgment concerning easement rights over property belonging to the respondents, Philip Tuomala and Dawn Tuomala. The petitioners argue that the trial court erred in concluding that Easement C is a "purely personal" driveway over which they have no right of way. The respondents cross-appeal, arguing that the court erred in ruling that the deeded easement rights benefit the petitioners' property. We affirm in part, reverse in part, and remand.

The record shows that the petitioners own a thirty-one acre parcel known as Lot A-68 in Wilton. The respondents own a nearby 14.7 acre parcel known as Lot A-71-1. All of the land at issue at one time belonged to John H. Bush. In 1978, Bush subdivided a 474.5 acre parcel into five lots and conveyed Lot 5, a 392.5 acre parcel, by warranty deed to Comvest Corporation (Comvest). The deed incorporates by reference a subdivision plan (Bush plan). The Bush plan depicts the area surrounding Lot 5, including a parcel referred to on the plan as "other land of John Bush," which is now the petitioners' parcel. The petitioners' parcel is separated from Lot 5 by a parcel formerly owned by Richard W. St. Claire. In 1998, Chalet Pearl, Inc., acquired Lot 5, and in 1999, Chalet Pearl subdivided Lot 5, creating the respondents' parcel.

We first address the respondents' cross-appeal. The respondents argue that the trial court erred in ruling that deeded easement rights across Lot 5 benefit the petitioners' property. Resolving this issue requires that we interpret the relevant deeds.

The interpretation of a deeded right of way is ultimately a question of law for this court to decide by determining the intention of the parties at the time of the deed in light of surrounding circumstances. If the terms of the deed are clear and unambiguous, those terms control how we construe the parties' intent. Thus, when the language of the deed is clear and unambiguous, we need not consider extrinsic evidence.

Gill v. Gerrato, 154 N.H. 36, 39 (2006) (quotations, citations and brackets omitted).

The deed from Bush to Comvest provides that the grantor and grantee, as well as their successors, “shall have joint and unlimited rights of way over all existing roadways, whether public or private, and which are now the property of the GRANTOR to convey, as well as over future roadways built by the GRANTOR or the GRANTEE,” with certain exceptions. The deed further provides that these rights of way:

shall not be limited to [Lot 5], but shall be extended to and may be used in conjunction with other land presently owned by the GRANTOR (see [Bush plan], to be recorded herewith[]), as well as land hereinafter acquired by the GRANTOR and/or the GRANTEE, their respective heirs, devisees, executors, administrators and assigns in the general area, provided said lands have common boundaries with the premises presently owned by the GRANTOR, includ[ing] those being hereby conveyed.

The respondents argue that the plain language of the deed demonstrates the parties’ intent to convey easements over Lot 5 only for the benefit of land having “common boundaries” with Lot 5, or properties connected to Lot 5 by other properties Bush owned in 1978 or thereafter acquired, not for non-contiguous parcels such as the petitioners’ property. There is no dispute that the petitioners’ parcel does not have common boundaries with any other land Bush owned in 1978 or later acquired. Nor is it disputed that Bush owned the petitioners’ parcel in 1978, when Lot 5 was created.

We construe the deed to unambiguously extend the right of way easements to the petitioners’ parcel. The deed states that the rights of way created therein extend to other land Bush owned at that time, as depicted on the Bush plan. The Bush plan depicts what is now the petitioners’ parcel, described as “other land of John Bush.” Thus, we agree with the petitioners that the “common boundaries” requirement applies only to “land hereinafter acquired,” not to land Bush owned in 1978. Although our conclusion is based upon the language of the deed and the incorporated plan, we note that the deeds conveying the petitioners’ parcel from Bush to Don R. Taylor and Dorothy B. Taylor in 1981, and from the Taylors to the petitioners in 2008, which contain nearly identical easement language, strongly support our interpretation. Accordingly, we affirm the trial court’s ruling that the easement rights benefit the petitioners’ property.

We next address the petitioners’ appeal. The petitioners argue that the trial court erred in concluding that Easement C is a “purely personal” driveway over which they have no right of way.

The deed from Bush to Comvest includes the following easement language:

THE GRANTOR AND THE GRANTEE, their respective heirs, devisees, executors, administrators, successors and assigns, shall have joint and unlimited rights of way over all existing roadways, whether public or private, and which are now the property of the GRANTOR to convey, as well as over future roadways built by the GRANTOR or the GRANTEE, their respective heirs, devisees, executors, administrators, successors and assigns (except for those driveways which are purely personal in nature and are solely for ingress to and egress from buildings on any of the premises or are for the sole purpose of using or enjoying the woodlands, field and the like and are not for subdivision-development purposes).

We first examine the deed's easement terms. Gill v. Gerrato, 154 N.H. at 39. If the language of the deed is clear and unambiguous, we will interpret the intended meaning from the deed itself without resort to extrinsic evidence. Austin v. Silver, 162 N.H. 352, 354 (2011). If the language of the deed fails to provide sufficient information to describe the conveyance adequately without reference to extrinsic evidence, we will consider extrinsic evidence to clarify its terms. Id. The issue in dispute is whether Easement C is a driveway "purely personal in nature . . . solely for ingress to and egress from buildings on any of the premises," and not a "roadway" for "subdivision-development purposes." Because the deed does not refer to specific, existing roadways and driveways on the property, the trial court properly considered extrinsic evidence. See id. Typically, a "driveway" is "a private road giving access from a public thoroughfare to a building or buildings on abutting grounds." Webster's Third New International Dictionary 692 (unabridged ed. 2002). The "way" in dispute, referred to as Easement C, is a relatively short section of a long dirt road that passes through Lot 5 connecting Burton Highway in the northeast and County Farm Road in the southwest. Easement C, in its original location, was approximately fifty feet from the respondents' cabin and garage, the only buildings on Lot 5, at its closest point. The respondents have since relocated Easement C so that it is now no closer than approximately 200 feet from their cabin and garage. Even before the relocation, however, there was a driveway from Easement C to the cabin and garage.

The trial court noted that Easement C was not designated on the Bush plan; the plan shows no roadway connecting Jackson Drive and Woods Road. The trial court found this absence to be significant, given that in 1978, the Wilton Planning Board, during its site plan review, required Bush to "designate all private roads as such." We note, however, that the deed does not refer to the Bush plan to identify then-existing roadways and driveways for purposes of the rights of way created therein. In addition, the respondents concede that the entire length of the way from Jackson Drive to Woods Road, including

Easement C, existed at the time the Bush plan was created. Therefore, we attach no particular significance to the omission of Easement C from the Bush plan, and conclude that the trial court erred in relying upon it to find that Easement C is a “purely personal” driveway.

Ordinarily, we will remand unresolved factual issues for analysis under the appropriate legal standard. Auger v. Town of Strafford, 158 N.H. 609, 614 (2009). However, when the record reveals that a reasonable fact finder necessarily would reach a certain conclusion, we will decide the issue *as a* matter of law. Id. Based upon the location and configuration of the roadway of which Easement C is a part, we conclude as a matter of law that Easement C does not fall within the exception in the deed for driveways that are “purely personal in nature . . . solely for ingress to and egress from buildings on any of the premises,” and not for “subdivision-development purposes.” Accordingly, we reverse the trial court’s ruling that the petitioners have no deeded right of way in Easement C.

As a result of the trial court’s conclusion that Easement C is a purely personal driveway, it did not address the respondents’ counterclaim of adverse possession. Accordingly, we remand for the trial court to address this issue.

Affirmed in part; reversed in part; and remanded.

CONBOY, LYNN, and BASSETT, JJ., concurred.

**Eileen Fox,
Clerk**

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