Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Jul 09 2009, 9:20 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANTS:

JERE L. HUMPHREY
Wyland, Humphrey, Wagner
& Clevenger, LLP
Plymouth, Indiana

ATTORNEY FOR APPELLEE:

MARTIN R. LUCAS
North Judson, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KOONTZ LAKE TRUST and JOAN DARFLINGER, (Individual and as Trustee of the Trust),	)	
Appellants-Defendants,	)	
vs.	)	No. 75A04-0812-CV-703
JOHN M. KNIGHT,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Jeanene Calabrese, Special Judge
Cause No. 75C01-0607-PL-030

July 9, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

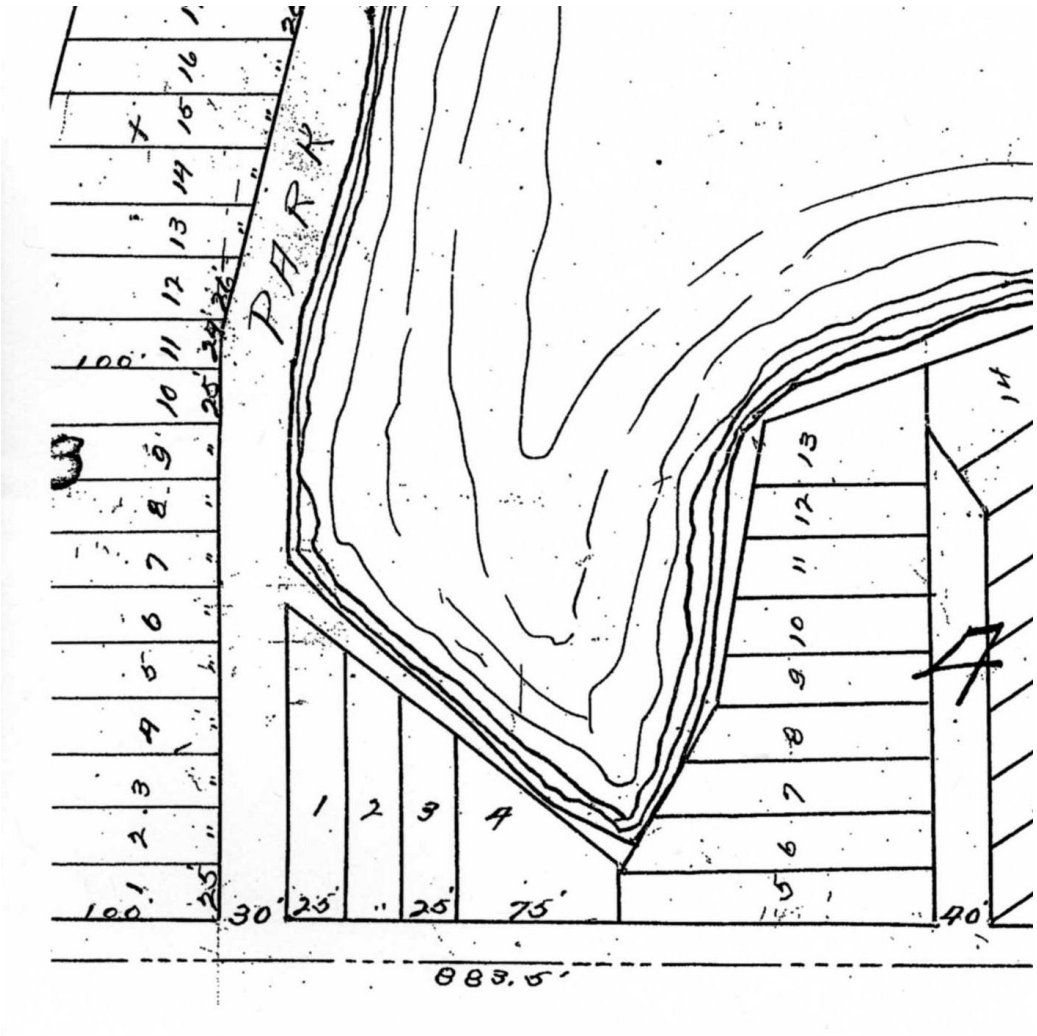
John M. Knight ("Knight") filed an action seeking a declaratory judgment, an injunction, and to quiet title of riparian rights, naming as a defendant Joan Darflinger, individually and as the Trustee of the Koontz Lake Trust ("Darflinger"). The trial court granted judgment in favor of Knight. Darflinger appeals and presents two issues, which we restate as: (1) whether the trial court's judgment is supported by the evidence; and (2) whether the trial court's order exceeded the scope of the question before the court.

We affirm.

Facts and Procedural History

Joan Darflinger is both the trustee and the beneficiary of the Koontz Lake Trust, which owns Lot 2, Lot 3, and the adjacent, western portion of Lot 4 in Block 4 of the Simpson and Frost Addition to Koontz Lake in Starke County, Indiana ("the Darflinger Property"). Knight owns property west of and adjacent to the Darflinger Property, specifically Lot 1 in Block 4 of the Simpson and Frost Addition to Koontz Lake ("the Knight Property").[1] The Simpson and Frost Addition to Koontz Lake was dedicated and recorded in 1915 in a map in a plat book in the Stark County Recorder's Office ("the Plat"). The Plat is divided broadly into ten blocks, with each block further divided into a number of lots. The Plat also has certain areas adjacent to Koontz Lake marked "PARK." Appellant's App. p. 42. The portion of the Plat map at issue is reproduced below for reference:

[1] Knight also owns Lots 8 and 9 in Block 3 of the Simpson and Frost Addition to Koontz Lake.



Appellant's App. p. 42.[2]

On August 1, 1935, Elmer and Mary Catherine Yoder executed a Deed of Dedication ("the Deed") which was recorded on August 8, 1935, and which stated in relevant part:

> I do hereby constitute and declare the said plat appearing of record at pages 232 and 233 of Plat Book one in the office of the Recorder of Starke County, Indiana and known and designated as Simpson & Frost's Addition to Koontz Lake to be a true and complete plat of the lands which I intended to embody therein and I do hereby ratify, approve and confirm the said plat as so appearing and *do hereby dedicate for public usage all streets, alleys,*

[2] In this map, up is north, down is south, right is east, and left is west.

> *road-ways, park areas and other public areas shown upon said plat* as the same appears of record and do further dedicate to the owners of the several lots and parcels of land within said plat, as a right appurtenant to said lands, the right to use the waters of Koontz Lake adjacent [to] said plat and lying over lands owned by me, for fishing, boating, bathing and other recreational purposes, which rights however, shall not be exclusive to the owners of said lots and lands but shall be enjoyed by them with whomsoever I may grant a like right and privilege.

Appellant's App. p. 29 (emphasis added).

As revealed in the map reproduced above, the area to the west of the Knight Property is clearly marked as a "PARK" on the Plat. However, the area to the north of the Knight Property and the Darflinger Property is not clearly marked as a park. Darflinger treated the property to the north of her lots and adjacent to the lake as not being part of any parkland and claimed that her property line extended to the lake. Darflinger erected a fence that blocked public access to the lake in the area north of the Darflinger Property. Knight claimed that the lots in Block 4 had a northern boundary line and did not extend to the lake and that the parkland extended into the area immediately south of the lake and north of the northern boundary line of the lots in Block 4.

On July 31, 2006, Knight filed a complaint seeking a declaratory judgment, an injunction, and to quiet title of riparian rights. Darflinger filed an answer on March 12, 2007, and an amended answer on August 23, 2007. On June 16, 2008, a bench trial was held on the matter. At trial, Knight called as a witness Terrance Lang ("Lang"), a surveyor who testified that the Plat contained a straight line south of the lakeshore indicating the northern boundary of the lots in Block 4. Lang further testified that the

area to the north of this line and south of the lakeshore was contiguous with the area clearly marked as parkland on the Plat.

Lang also testified that he was able to fix a northern boundary line for the lots in Block 4 using tie-ins and a two-inch open-top iron pipe he found at the northeast corner of the Knight Property. Lang explained that such pipes were customarily used as survey monuments, and that the location of this pipe was strong evidence that it was placed as a monument by a prior surveyor to mark the northern boundary line of the Knight Property, and thus the southern line of the parkland area.

Darflinger called as witnesses long-time residents of Koontz Lake who testified that the area in question had not been used as parkland. Darflinger also called as a witness Van Janovic ("Janovic"), a surveyor who testified that the Plat listed no north-south dimensions for the lots in Block 4, and that the line drawn on the map on the north of these lots was not an indication of a northern boundary line, but instead was a meandering line indicating the lakeshore. Janovic therefore concluded that the lots in Block 4 extended to the lakeshore.

On September 1, 2008, the trial court entered findings of fact and conclusions of law granting judgment in favor of Knight. On September 22, 2008, Darflinger filed a motion to correct error, a motion to correct and supplement the record, and a petition for clarification. Knight filed a response and his own motion to correct error on October 3, 2008. The trial court held a hearing on these motions on October 16, 2008, and denied both motions to correct error on November 7, 2008. Darflinger filed a notice of appeal on November 21, 2008.

Standard of Review

At Darflinger's request, the trial court entered specific findings of fact and conclusions of law pursuant to Indiana Trial Rule 52. As such, our standard of review is two-tiered:

> [W]e determine whether the evidence supports the trial court's findings, and we determine whether the findings support the judgment. We will not disturb the trial court's findings or judgment unless they are clearly erroneous. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them, and the trial court's judgment is clearly erroneous if it is unsupported by the findings and the conclusions which rely upon those findings. In determining whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom.

Infinity Products, Inc. v. Quandt, 810 N.E.2d 1028, 1031 (Ind. 2004) (quoting Bussing v. Ind. Dep't of Transp., 779 N.E.2d 98, 102 (Ind. Ct. App. 2002), trans. denied).

I. Sufficiency of the Evidence

Darflinger claims that the trial court's judgment is not supported by the evidence. We disagree. The trial court first looked to both the Plat and the Deed to resolve this issue. The object of deed interpretation is to identify and implement the intent of the parties to the transaction as expressed in the plain language of the deed. Parkison v. McCue, 831 N.E.2d 118, 128 (Ind. Ct. App. 2005), trans. denied. We read the language of real covenants in the ordinary and popular sense, not in a technical or legal sense. Id. If the terms of the deed are not ambiguous, we apply them according to their clear and ordinary meaning. Id. We presume that the parties intended for every part of a deed to have some meaning, and we favor a construction that reconciles and harmonizes the

entire deed. Id. Courts may resort to extrinsic evidence to ascertain the intent of the grantors only where the language of the deed is ambiguous. See id. A deed is ambiguous if it is susceptible to more than one interpretation and reasonably intelligent persons would honestly differ as to its meaning. Id. When lands are granted according to a plat, the plat becomes part of the grant or deed by which the land is conveyed, with respect to the limitations placed upon the land. Grandview Lot Owners Ass'n, Inc. v. Harmon, 754 N.E.2d 554, 557 (Ind. Ct. App. 2001). A duly recorded plat gives notice to all prospective purchasers of the restrictions contained therein. Id.

Here, the Deed confirmed that the land listed on the Plat as a park was intended to be dedicated to public use. Of course, here, the question is not whether the Deed and the Plat dedicated certain areas as parks for public use, but whether the area south of the lake in Block 4 is part of this dedicated parkland. As reproduced above, the Plat clearly shows a straight line going from the northwest corner of Lot 1 in Block 4 to the northeast corner of Lot 4 in Block 4. Even though the Plat lists no north-south length of these lots, this line is a clear indication that a northern boundary, just south of the lake shore, was intended. The Plat also shows that the area north of this northern boundary line and south of the lakeshore is contiguous with the area to the west which is clearly labeled as parkland. Further, Lang testified that he was able to determine a northern boundary line for the lots in Block 4, specifically noting the location of a two-inch open-top iron pipe commonly used as a surveying monument.

From this, the trial court could conclude that the parkland marked on the Plat and dedicated in the 1935 deed extended to the area south of the lake in Block 4 and north of

the northern boundary lines of the lots at issue in Block 4. Darflinger's arguments to the contrary are simply a request that we ignore the evidence favorable to the trial court's decision, consider the testimony of Darflinger's witnesses, and come to a different conclusion than did the trial court. This is not our role as an appellate court. See Quandt, 810 N.E.2d at 1031 (quoting Bussing, 779 N.E.2d at 102). Instead, applying the proper standard of review, we must conclude that the evidence is sufficient to support the trial court's findings and the findings are sufficient to support the judgment.

II. Scope of the Issues

Darflinger also claims that the trial court's order exceeded the scope of the relief sought by Knight. Specifically, Darflinger claims that the trial court's order recognizes riparian rights of back-lot owners, which Darflinger claims was not an issue before the court. Knight too claims that the back-lot owners have no riparian rights, and agrees that he sought no such determination by the trial court.[3] However, Knight argues that any error in the trial court's order is not reversible error. We agree.

Regardless of whether the trial court's discussion of the rights of back-lot owners was proper or even an issue before the court, the fact remains that only Knight and Darflinger were parties to the present case. Thus, as far as the rights of the back-lot owners are concerned, the trial court's judgment is not res judicata. See Perry v. Gulf Stream Coach, Inc., 871 N.E.2d 1038, 1048 (Ind. Ct. App. 2007) (both claim preclusion

[3] As a general rule, riparian rights are acquired by owning fee title in land that abuts a lake, river, or stream. Lukis v. Ray, 888 N.E.2d 325, 330 (Ind. Ct. App. 2008), trans. denied; Daisy Farm P'ship v. Morrolf, 886 N.E.2d 604, 607 (Ind. Ct. App. 2008), trans. denied.

or issue preclusion components of the doctrine of res judicata apply only where the controversy adjudicated in the former action was between the parties or their privies). Even if we were to reverse the trial court on this matter, the rights of the non-party back-lot owners would remain unaffected. The trial court's judgment is in this regard, therefore, at most harmless error.

Affirmed.

RILEY, J., and KIRSCH, J., concur.