

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP206

Cir. Ct. No. 2007CV228

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**JOHN RAMICH, LAURIE RAMICH, SCOTT KINGSTON
AND CARRIE KINGSTON,**

PLAINTIFFS-RESPONDENTS,

v.

DALE A. WORM AND CAROL A. WORM,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment and order of the circuit court for Waushara County: GUY D. DUTCHER, Judge. *Affirmed.*

Before Dykman, P.J., Higginbotham and Bridge, JJ.

¶1 DYKMAN, P.J. Dale and Carol Worm appeal from an order granting summary judgment to John and Laurie Ramich and Scott and Carrie Kingston (collectively, Ramiches) in the Ramiches' action for a declaratory

judgment to void documents the Worms filed with the Waushara County Register of Deeds asserting ownership of a four-foot by fourteen-foot strip of land along Little Silver Lake, and an injunction to prevent the Worms from filing any further documents asserting an ownership interest in that property.¹ The Worms argue that the trial court erred in granting summary judgment to the Ramiches because the final judgment in the Ramiches' prior adverse possession action against the Worms established that the Worms own the four-foot strip. The Ramiches respond that the adverse possession judgment established that they, rather than the Worms, own the four-foot strip. We conclude that the 2004 adverse possession judgment is reasonably susceptible to both parties' interpretations, and is therefore ambiguous. We further conclude that a review of the entire record reveals that the intent of the 2004 adverse possession judgment was to include the four-foot strip in the adverse possession parcel granted to the Ramiches. Accordingly, we affirm.

Background

¶2 The following undisputed facts are taken from the parties' summary judgment submissions. The Worms and the Ramiches own adjacent property on the shore of Little Silver Lake in Waushara County, Wisconsin. In November 2003, the Ramiches brought an adverse possession action against the Worms for a portion of land on the Ramiches' side of a fence running down the property titled to the Worms. In a judgment and order for judgment filed December 6, 2004, the trial court in that action found that the Ramiches had established adverse

¹ The Ramiches' complaint also included a claim for slander of title, but they later stipulated to dismiss that cause of action.

possession of the land on their side of the fence, and therefore granted title to the Ramiches to the following property:

Part of the SW1/4 SW1/4 Section 28, T20N, R11E, Town of Springwater, Waushara County, Wisconsin, commencing at the S1/4 Corner of said Section 28; thence N89°43'03"E along the South line of the SW1/4 1650.47'; thence N00°16'57"E 50.60'; thence S73°06'54"W 72.05' to the Point of Beginning, thence continuing S73°06'54"W 46.15' to a point on the meanderline of Silver Lake which is 4.00'± from the water's edge; thence N24°23'55"W along said meanderline 13.69' to a point which is 4.15'± from the water's edge; thence N78°52'18"E along a fence line 41.46'; thence S52°17'45"E along the South right-of-way line of County Road "H" 11.55' to the Point of Beginning. Containing 549 SF.

This description does not include the four-foot strip which is the subject of this lawsuit.

¶3 The court also granted the Worms' counterclaim for an easement "for beach access" over the land the Ramiches obtained through adverse possession, and over the following property owned by the Ramiches:

That part of Government Lot 1 of Section 28, Township 20 North, Range 11 East, Town of Springwater, Waushara County, Wisconsin described as follows: Beginning at the Southeast corner of said Government Lot 1 (SW ¼ SW ¼) of Section 28, Township 20 North, Range 11 East; thence West on the South Line of said Government Lot 1, 426 feet to an iron stake on the shore of Silver Lake; thence meander Northwesterly along the lake shore 15 feet; thence East to a point on a line which bears South 53°30' West from a point which is North 225 feet from the Southeast corner of said Government Lot 1; (being the extended East line of the lands described in Volume 96 of Deeds, page 21); thence North 53°30' East to a point which is north 225 feet from the Southeast corner of said Government Lot 1; thence South on the East line of said Government Lot 1, 225 feet of the point of beginning, intending to convey all lands to the waters edge of Silver Lake as the same may exist from time to time.

This description also does not include the disputed four-foot strip. However, even though neither of the metes and bounds descriptions contained the four-foot strip, the court also explained:

That the right of the defendants Dale Worm and Carol Worm to beach access, based upon the testimony at trial, shall be over that portion of the plaintiffs' above-described property lying between the meander line of the lake and the water's edge, and may change from time to time, based upon the water level of the lake.

¶4 In September 2005, the Worms moved the court to amend the judgment to clarify that the land between the end of the fence and the water's edge of Little Silver Lake was not included in the adverse possession parcel, and thus belonged to the Worms. After a motion hearing, the court denied the Worms' motion to amend the judgment. It explained:

Conceivably a packet of rights that would exist—it is not of much a practical effect in our lifetime, but there is such concepts as accretion and that kind of a thing, that it does not make any sense to divide up the legal rights in that fashion, and as the Court was really not—I have to admit, certainly not thinking about that aspect of it, I was more concerned about the use between these two parties which is the reason that we found the way that we did. It would—a claim of right along the fence could only—you know, the only commonsense way to look at that was a claim of all legal title to whatever there was along that line.

I don't see how we can divide it up.... I was not really thinking about those things at the time. I was thinking more along the lines of who was going to be able to use it, not who would claim legal title to the part between the fence and the water's edge, and it does not—I think that it is a bad idea to divide up the rights in that way, which is not the way that the average person would look at it. The judgment stands.

¶5 The Worms then asserted ownership of the four-foot strip in documents they filed with the Waushara County Register of Deeds. The

Ramiches filed this action in September 2007, seeking a declaratory judgment voiding the Worms' documents asserting ownership of the four-foot by fourteen-foot strip and quieting title to the four-foot by fourteen-foot strip along Little Silver Lake. The Ramiches also sought an injunction to prevent the Worms from filing any further documents asserting an interest in that property. The Worms answered, denying that the Ramiches had any ownership interest in the four-foot strip.

¶6 After the initial pleadings in this action, the Department of Natural Resources (DNR) set the ordinary high water mark on Little Silver Lake. The Ramiches then moved for summary judgment, arguing that the 2004 adverse possession judgment clearly intended to convey to them all of the property on their side of the fence to the ordinary high water mark, which had now been established. They argued that the Worms' claim of ownership in the four-foot strip was barred by issue and claim preclusion following the adverse possession action and their motion to amend the judgment. They also argued that the court had the power to correct any ambiguity in the 2004 judgment regarding the ownership of the four-foot strip, because that judgment was a conveyance of property. In response, the Worms argued that the first judgment established they owned the four-foot strip, and thus the Ramiches' claims were barred by issue and claim preclusion. They asserted that the Ramiches were required to move the first trial court for reconsideration if they were dissatisfied with the judgment, according to WIS. STAT. § 806.07 (2007-08).²

² All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶7 The court granted summary judgment to the Ramiches. It “applie[d] the doctrine of equitable reformation, and direct[ed] judgment reforming the Judgment and Order for Judgment entered within the previous proceeding in a manner declaring [the Ramiches] titleholders to the disputed area.” The Worms appeal.

Standard of Review

¶8 We review an order granting summary judgment de novo, using the same methodology employed by the trial court. *Old Tuckaway Assocs. Ltd. P’ship v. City of Greenfield*, 180 Wis. 2d 254, 278, 509 N.W.2d 323 (Ct. App. 1993). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2). When, as here, none of the material facts are in dispute, leaving only questions of law, summary judgment is appropriate. *See Johnson v. Burmaster*, 2008 WI App 4, ¶7, 307 Wis. 2d 213, 744 N.W.2d 900 (Ct. App. 2007). Whether issue or claim preclusion bar an action is also a question of law subject to our de novo review. *State v. Parrish*, 2002 WI App 263, ¶14, 258 Wis. 2d 521, 654 N.W.2d 273.

¶9 We interpret judgments as we do other written instruments. *Jacobson v. Jacobson*, 177 Wis. 2d 539, 546, 502 N.W.2d 869 (Ct. App. 1993). “While a written judgment that is clear on its face is not open to construction, the trial court does have the authority to construe an ambiguous judgment to effectuate the trial court’s objective.” *Cashin v. Cashin*, 2004 WI App 92, ¶10, 273 Wis. 2d 754, 681 N.W.2d 255. Thus, “[o]nly when judgments are ambiguous is construction permitted, allowing the court to consider the whole record—including

pleadings, findings of fact and conclusions of law” to resolve that ambiguity. *Jacobson*, 177 Wis. 2d at 547.

¶10 The threshold question of whether a judgment is ambiguous is a question of law, which we review de novo. *Cashin*, 273 Wis. 2d 754, ¶12. We give deference to a trial court’s interpretation of its own prior ambiguous judgment. *Schultz v. Schultz*, 194 Wis. 2d 799, 808, 535 N.W.2d 116 (Ct. App. 1995). Here, however, we are reviewing a trial court’s interpretation of another trial court’s judgment. In determining that we owed deference to a trial court’s interpretation of its own ambiguous judgment, we explained:

The rationale behind all appellate review may be fairly characterized in two extremes: an appellate court will defer in large part to a trial court’s determination where the lower court is in a better position to make that determination than is the appellate court; conversely, little or no deference is accorded where the appellate court is as capable of determining the question as is the trial court.

Id. at 807 (citation omitted). Because we are in the same position as the trial court in interpreting the previous judgment of another court, we review the judgment de novo.

Discussion

¶11 The Worms argue that the 2004 judgment is unambiguous, and establishes that the Worms retained ownership of a four-foot by fourteen-foot strip of land between the land adversely possessed by the Ramiches and the ordinary high water mark of Little Silver Lake. They argue that the 2004 judgment specifically excluded the four-foot strip from the metes and bounds description of the adversely possessed parcel, and the Worms therefore retain ownership of that land. They contend that the Ramiches’ action for a declaratory judgment of

ownership of the four-foot strip is barred by issue and claim preclusion because the previous judgment resolved the issue of ownership of the disputed land, and the Ramiches were required to bring a motion in the original action under WIS. STAT. § 806.07 if they were dissatisfied with the final judgment in that case. They also argue that the trial court erred in categorizing the 2004 judgment as a conveyance of property. Thus, the Worms contend, the trial court impermissibly modified the unambiguous final judgment of another court, while stating that it was modifying an ambiguous conveyance.

¶12 The Ramiches respond that the 2004 adverse possession judgment is a conveyance of property because it transfers title from the Worms to the Ramiches. They assert that the conveyance is ambiguous because it does not clearly establish who owns the four-foot by fourteen-foot strip of land along Little Silver Lake, and that the trial court properly resolved that ambiguity by equitably reforming the conveyance. Alternatively, the Ramiches argue that the 2004 judgment unambiguously establishes that the trial court intended to convey all the land on the Ramiches' side of the fence to the Ramiches, and thus they own the four-foot strip. They contend that the Worms are barred by issue or claim preclusion from asserting ownership of the four-foot strip following the 2004 adverse possession judgment and the court's denying their motion to amend the judgment.

¶13 We begin with the question of whether or not the 2004 adverse possession judgment is ambiguous. A judgment is ambiguous if “the language of the written instrument is subject to two or more reasonable interpretations, either on its face or as applied to the extrinsic facts to which it refers.” *Schultz*, 194 Wis.2d at 805-06. As with contract interpretation, we consider a written judgment as a whole, without isolating a single provision. *See id.* at 805.

¶14 The 2004 adverse possession judgment provides a metes and bounds description of the land that the court found the Ramiches acquired through adverse possession. The adverse possession parcel contains 549 square feet, and extends

to a point on the meanderline of Silver Lake which is 4.00'± from the water's edge; thence N24°23'55"W along said meanderline 13.69' to a point which is 4.15'± from the water's edge; thence N78°52'18"E along a fence line 41.46'; thence S52°17'45"E along the South right-of-way line of County Road "H" 11.55' to the Point of Beginning.

It is undisputed that this metes and bounds description of the adverse possession parcel stops four feet from the ordinary high water mark of Little Silver Lake, thus creating a four-foot by fourteen-foot strip between the parcel and the lake. However, the judgment also provides:

That the right of the defendants Dale Worm and Carol Worm to beach access, based upon the testimony at trial, shall be over that portion of the plaintiffs' above-described property lying between the meander line of the lake and the water's edge, and may change from time to time, based upon the water level of the lake.

Thus, the judgment contains a conflict: it provides that the Ramiches own, by adverse possession, a parcel of land that appears to exclude the four-foot strip. However, the judgment also specifically provides that the Worms have an easement over the four-foot strip between the meanderline and the lake, which it says the Ramiches have obtained through adverse possession.

¶15 The Ramiches posit that the only reasonable reading of the judgment, as a whole, is that the Ramiches were awarded all of the property on their side of the fence, up to the ordinary high water mark, by adverse possession. They point out that this is the only way to give effect to the easement provision, because there is no way to grant the Worms an easement over land they own. They contend that the court intended the adverse possession parcel to include all

of the land on the Worms' side of the fence, and the only reason its metes and bounds description of the adverse possession parcel fell short of the ordinary high water mark was that in 2004, the DNR had not yet set the ordinary high water mark of Little Silver Lake.³

¶16 The Worms posit that the only reasonable reading of the judgment is that the Ramiches obtained title to a specific parcel of land as stated in the metes and bounds description, excluding the four-foot strip. They argue that they were not granted an easement over the four-foot strip, but instead were granted an easement only over land specifically described in metes and bounds in the judgment. Thus, the Worms assert, they are the owners of the four-foot strip, and their easement is limited to crossing land owned by the Ramiches.⁴

¶17 We conclude that both parties have advanced reasonable interpretations of the 2004 adverse possession judgment. Because the judgment is susceptible to two reasonable interpretations, we conclude that it is ambiguous.⁵

³ A lake's ordinary high water mark exists, whether or not the DNR has established it. See *Diana Shooting Club v. Husting*, 156 Wis. 261, 272, 145 N.W.816 (1914).

⁴ The Ramiches also argue that no court has held that the Worms *ever* owned the land past the fence to the ordinary high water mark, and thus the Worms have not established ownership of that land even if the Ramiches did not obtain that land through adverse possession. Because we conclude that the judgment in the adverse possession action awarded all the land owned by the Worms on the Ramiches' side of the fence to the Ramiches, we need not address this argument.

⁵ Because we conclude that the 2004 judgment is ambiguous and that the entire record establishes that the intent of the judgment was to convey all the land on the Ramiches' side of the fence to the Ramiches, we need not address the parties' arguments over whether the judgment is a "conveyance" which can be modified by a trial court. See *Washington v. Washington*, 2000 WI 47, ¶19, 234 Wis. 2d 689, 611 N.W.2d 261 (stating that even if a trial court is prohibited from modifying or altering a prior final judgment, it may nonetheless construe an ambiguous judgment in order to enforce it).

¶18 We turn, then, to a review of the record to discern the court’s intent in rendering the 2004 judgment. *See Jacobson*, 177 Wis. 2d at 547. We begin by recognizing that the Ramiches brought the adverse possession action to acquire the land along Little Silver Lake on their side of the fence running down the Worms’ property; it would have been pointless for them to bring an adverse possession action to obtain land separated from the ordinary high water mark of Little Silver Lake by four feet. Similarly, the 2004 judgment, as a whole, appears to grant the Ramiches title to all the land on the Ramiches’ side of the fence, which is only contradicted by the metes and bounds description of the adverse possession parcel. However, the court’s intent is clarified by the court’s denying the Worms’ motion to amend the judgment to reflect the Worms’ ownership of the four-foot strip. Had the court intended in the 2004 judgment that the Worms retain that land, it would have granted the Worms’ motion to explicitly say so. Thus, we conclude that the entire record reveals that the intent of the 2004 judgment was to convey to the Ramiches, by adverse possession, all the land on their side of the fence and on their side of the four-foot line running from the fence to the ordinary high water mark of Little Silver Lake.

¶19 Lastly, we conclude that the 2004 judgment does not provide a basis to bar the Ramiches’ action based on issue or claim preclusion.⁶ “Under the doctrine of claim preclusion, a final judgment is conclusive in all subsequent actions between the same parties or their privies involving all matters litigated,

⁶ The Ramiches assert in their response brief that the Worms are barred by issue and claim preclusion from asserting ownership of the four-foot strip based on the first action between the parties. However, because we conclude that the Ramiches own the four-foot strip on the merits, we need not address whether issue or claim preclusion bars the Worms from asserting ownership.

and all matters that could have been litigated, in the proceeding leading to the judgment.” *Parrish*, 258 Wis. 2d 521, ¶14. Issue preclusion “bars the relitigation of a factual or legal issue that actually was litigated and decided in the earlier action.” *Id.* The premise of the Worms’ preclusion arguments is that the adverse possession judgment determined that they own the four-foot strip, and the Ramiches are therefore barred from asserting their ownership of that property in this action. We have concluded, however, that the 2004 adverse possession judgment was ambiguous as to ownership of that property, and that we resolve that ambiguity in favor of the Ramiches. Thus, the 2004 judgment does not provide a basis for the Worms to assert preclusion in their favor. Thus, we reject the Worms’ contention that the Ramiches’ action is barred by issue or claim preclusion based on the 2004 adverse possession final judgment. Accordingly, we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

