COURT OF APPEALS
DECISION
DATED AND FILED

May 6, 2004

Cornelia G. Clark
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. 03-1625 Cir. Ct. No. 01CV002072

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

FREDERICK J. CAMPBELL, MARTHA E. CAMPBELL, GARY DANIELSON, RHONDA DANIELSON, ROBERT L. HALVERSON, GREGORY MERGEN AND DENISE MERGEN,

PLAINTIFFS-RESPONDENTS,

GREENRIDGE PIER AND PARKS ASSOCIATION, INC. AND PROPERTY OWNERS OF LOTS IN THE GREENRIDGE PARK SUBDIVISION, TOWN OF DUNN, DANE COUNTY, WISCONSIN,

PLAINTIFFS-INTERVENORS-RESPONDENTS,

V.

JOSEPH H. BROWN, MAURICE BROWN, JOHNNY BROWN, MARY BROWN MAHONEY, DAVID BROWN, NOAH MERRICK, GLADYS MERRICK, EDNA TOLLEY, BYRIL MERRICK USELMANN, DOROTHY MERRICK, ALICE MERRICK OWENS, AND BLANCHE ZELLMER,

DEFENDANTS-(IN T. CT.),

TOWN OF DUNN,

DEFENDANT-RESPONDENT,

MARK PERNITZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: DANIEL J. MOESER, Judge. *Affirmed*.

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Mark Pernitz appeals a judgment and an order declaring ownership of four parcels in the Greenridge Park Subdivision, Town of Dunn. Pernitz contends that the parcels in question were dedicated to public use in 1933 and therefore owned by the Town. The trial court concluded that lot owners in the subdivision are the owners of the disputed parcels as tenants in common. We affirm that determination.

¶2 In 1931 numerous related individuals (the Brown heirs) inherited the farm where the subdivision now lies. The court granted their petition for a partition of the farm and appointed court commissioners to undertake the partition. The commissioners then created Greenridge Park and recorded a plat in 1933, containing approvals from the Town of Dunn board and the State board of health. It included 122 numbered lots, with four parcels labeled "park" spread throughout the lots. Nothing in the plat provides any elaboration on the intended purpose of these "park" lots, three of which lie along the shoreline of Lake Waubesa.

¶3 The commissioners sold most of the lots over the next several years, under powers of attorney granted by the Brown heirs. The powers of attorney forbade sale of the park lots, but did not otherwise specifically address their disposition. They granted the commissioners the right to "insert in such deeds of conveyance … such restrictions upon the use of said real estate … as they … may deem to be in our best interests." The deeds for each lot provided that the park

lots were "restricted to the use in common by the owners of the lots in the Greenridge Park plat for bathing, boating, fishing and recreation purposes."

¶4 Pernitz lives adjacent to one of the park lots and placed a structure on it several years ago. This action began when several Greenridge Park lot owners sued for a judgment declaring their ownership of the park lots and restraining Pernitz's use of the park lot adjacent to his lot. Pernitz answered, alleging adverse possession, and also alleging that the Town of Dunn owned the park lots. The Town of Dunn's answer alleged that it owned the park lots by dedication. The Greenridge Pier and Park Association intervened as a plaintiff. This appeal results from the trial court's determination that a dedication to the public never occurred, and that the Greenridge Park lot owners owned the park lots as tenants in common.[1] Pernitz's adverse possession claim to one of the park lots remains pending.

¶5 The material evidence in this case consists of documents in the public record dating back to 1931. What is disputed is whether those documents demonstrate that the Brown heirs intended to create public parks by dedication. It is agreed that if the Brown heirs did, in fact, have that intention, then the Town of Dunn is the rightful owner of the parcels, and they are now public parks.

¶6 In deciding this issue the trial court concluded that the use of the word "park" to identify the four parcels in the plat map was ambiguous. The court then reviewed the other documents of record, applied the relevant 1933 statutes,

[1] The trial court's decision thus extinguished the Town of Dunn's claim to the lots, but the Town has not participated in this appeal.

and held that the Brown heirs intended to create private parks for the benefit of subdivision lot owners.

¶7 Interpretation of a statute is a question of law. *See* ***State v. Peters***, 2003 WI 88, ¶13, 263 Wis. 2d 475, 665 N.W.2d 171. Whether a particular document is ambiguous is also a question of law. *See* ***Schmitz v. Grudzinski***, 141 Wis. 2d 867, 871, 416 N.W.2d 639 (Ct. App. 1987). Ambiguity exists if a document is reasonably susceptible to more than one meaning. ***Id.*** If it is ambiguous, the court may then look to extrinsic evidence to interpret it. *See* ***Edlin v. Soderstrom***, 83 Wis. 2d 58, 69, 264 N.W.2d 275 (1978). Interpretation of that evidence presents a question of fact. ***Berg-Zimmer v. Central Mfg. Corp.***, 148 Wis. 2d 341, 345, 434 N.W.2d 834 (Ct. App. 1988). We review the trial court's findings on questions of fact under the clearly erroneous standard. *See* WIS. STAT. § 805.17(2) (2001-02).

¶8 WISCONSIN STAT. § 236.11 (1933) provided that any dedication of land for public or private use was accomplished when "marked or noted as such" on a recorded plat or map. Pernitz first contends that the use of "park" to identify certain parcels in the plat plainly and unambiguously "marked or noted" them as dedications to the public under § 236.11. While that may be one reasonable interpretation of the plat, we conclude that one could also reasonably construe "park" to mean private recreational land. As the trial court noted, the latter is a common dictionary definition of park.[2] Because the term is reasonably susceptible

[2] We note Pernitz's reference to contemporaneous case law indicating that "park" carries the meaning of "public park." *See* ***State ex rel. Hammann v. Levitan***, 200 Wis. 271, 278-79, 228 N.W. 140 (1929). However, the issue in this case is the intent of the Brown heirs. The Wisconsin Supreme Court's interpretation of the word "park" is not dispositive of the Brown heirs' intent.

to two interpretations, the trial court properly considered extrinsic evidence to discover its intended meaning.

¶9 Extrinsic evidence of the Brown heirs' intent supports the trial court's conclusion that they did not intend a public dedication of the park lots. No document of record creates a reasonable inference of such an intent. To the contrary, the private use restriction in the lot deeds creates a strong, if not overwhelming, inference to the contrary. Pernitz's contention that the commissioners created the deed restrictions without authority from or knowledge of the Brown heirs is merely speculation, because no evidence supports it. The only expressed limitation on the commissioners' authority was a directive that they not sell or convey the park lots. That restriction is not inconsistent with reserving them for the private use of purchasers of the other lots. Additionally, the powers of attorney expressly conveyed the right to create restrictions deemed in the heirs' best interest. Creation of lakeside recreational areas for the benefit of landlocked lot owners would have served the heirs' best interest by increasing the value of those lots.

¶10 Pernitz also contends that the intent to dedicate public parks must be inferred because WIS. STAT. § 236.09(1) (1933) required owners of platted lands to provide at least one public access to navigable waters per half mile of shoreline. However, the Greenridge Park plat did not occupy one-half mile of lake shoreline. Only when combined with an adjacent subdivision created before the one-half mile access requirement became law was there an arguable violation of the access statute. Pernitz provides no authority for the proposition that the statute required plat recorders to consider adjacent lakeshore subdivisions platted before there was any access requirement. He provides no evidence that the government agencies that approved the plat interpreted or enforced the statute in that manner.

Consequently, the existence of the statute is not evidence of an intent to provide public access.[3]

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2001-02)

[3] A contrary intent is further evidenced by the fact that the plat included three park lots on the shoreline, when application of WIS. STAT. § 236.09(1) (1933), as Pernitz construes it, would have required only one.