

## Deed Interpretation - Ambiguity

### McCarrey v. Kaylor – March 29, 2013

We have adopted a three-step analysis for interpretation of deeds. <sup>FN4</sup> “The proper first step in deed construction is to look at the four corners of the document to see if it unambiguously presents the parties' intent.” <sup>FN5</sup> “Whether a deed is ambiguous is a question of law.” <sup>FN6</sup> If a deed is ambiguous, the next step is to consider “the facts and circumstances surrounding the conveyance” to discern the parties' intent. <sup>FN7</sup> In the event that the parties' intent cannot be determined, we rely on rules of construction. <sup>FN8</sup>

FN4. *Estate of Smith v. Spinelli*, 216 P.3d 524, 529 (Alaska 2009) (quoting *Ashley v. Baker*, 867 P.2d 792, 794 (Alaska 1994)).

FN5. *Id.* (quoting *Norken Corp. v. McGahan*, 823 P.2d 622, 626 (Alaska 1991)) (internal quotation marks and punctuation omitted).

FN6. *Id.* (quoting *Norken*, 823 P.2d at 626).

FN7. *Id.* (quoting *Norken*, 823 P.2d at 626).

FN8. *Id.*

### Dias v. State DOT – September 17, 2010

#### B. Three-Step Analysis

When interpreting deeds, we attempt to give effect to the intentions of the parties using a three-step analysis. <sup>FN5</sup> The first step “is to look to the four corners of the document to see if it unambiguously presents the parties' intent.” <sup>FN6</sup> The analysis ends here if the deed, taken as a whole, is only open to one reasonable interpretation. <sup>FN7</sup>

FN5. *Id.* (internal citations omitted).

FN6. *Id.* (quoting *Norken Corp. v. McGahan*, 823 P.2d 622, 626 (Alaska 1991)).

FN7. *Id.* (internal citations omitted).

If we determine that the deed is ambiguous, the next step in determining the parties' intent is “a consideration of the facts and circumstances surrounding the conveyance.” <sup>FN8</sup> If the parties' intent is still not discernable after examining extrinsic evidence, then we resort to rules of construction. <sup>FN9</sup>

FN8. *Id.* (quoting *Norken*, 823 P.2d at 626).

FN9. *Id.* (internal citations omitted).

### Smith v. Spinnelli – September 18, 2009

#### A. Our Three-Step Approach to Deed Interpretation

“[T]he touchstone of deed interpretation is the intent of the parties,” <sup>FN13</sup> and “where possible, ... the intentions of the parties [will be] given effect.” <sup>FN14</sup> We have instructed that “a three-step analysis should be employed in interpreting a deed.” <sup>FN15</sup>

FN13. *Norken*, 823 P.2d at 625.

FN14. *Shilts v. Young*, 567 P.2d 769, 773 (Alaska 1977).

FN15. *Ashley v. Baker*, 867 P.2d 792, 794 (Alaska 1994).

“The proper first step in deed construction is to look to the four corners of the document to see if it unambiguously presents the parties' intent...” <sup>FN16</sup> If a deed when “taken as a whole” is open to only one reasonable interpretation, the interpreting court “need go no further.” <sup>FN17</sup> “Whether a deed is ambiguous is a question of law.” <sup>FN18</sup>

[FN16. \*Norken\*, 823 P.2d at 626.](#)

[FN17. \*Id.\*](#)

[FN18. \*Id.\*](#)

Once a court determines that a deed is ambiguous, "the next step in determining the parties' intent is a consideration of the facts and circumstances surrounding the conveyance."<sup>FN19</sup> We have noted that "this inquiry can be broad, looking at 'all of the facts and circumstances of the transaction in which the deed was executed, in connection with the conduct of the parties after its execution.'<sup>FN20</sup> "Conclusions about the parties' intent drawn by the trial court after sifting and weighing such extrinsic evidence are conclusions of fact," which we review for clear error.<sup>FN21</sup>

[FN19. \*Id.\*](#)

[FN20. \*Id.\* at 629](#) (quoting *Rizo v. MacBeth*, 398 P.2d 209, 211-12 (Alaska 1965)).

[FN21. \*Id.\* at 626.](#)

Finally, only if the parties' intent cannot be discerned after an examination of the deed itself and the extrinsic evidence surrounding its creation should a court resort to rules of construction.<sup>FN22</sup> "The purpose of rules of construction ... 'is not to ascertain the intent of the parties to the transaction. Rather, it is to resolve a dispute when it is otherwise impossible to ascertain the parties' intent.'<sup>FN23</sup>

[FN22. \*Id.\*](#)

[FN23. \*Id.\* at 625](#) (quoting 6A R. POWELL & P. ROHAN, POWELL ON REAL PROPERTY ¶ 899[3], at 81A-108 (1991) ).