

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

PATSY RUTH TIMPERLEY (nka Patsy Ruth)
Shaw) in her personal capacity and as)
TRUSTEE of the SHAW TRUST dated March)
02, 2018,)
Plaintiff,)
vs.)
KENAI RIVER KEYS PROPERTY OWNERS)
ASSOCIATION, an Alaska Non-profit Corporation.)
Defendant.)

CASE NO. 3KN-19-00797 CI

SUMMARY JUDGMENT DECISION AND ORDER

The parties in the above-captioned case appeared before Judge Wells on June 9, 2020, June 11, 2020, August 26, 2020, September 30, 2020, and October 5, 2020. Mr. Robert Reges represents the plaintiff and Mr. Frank Turpin appears on behalf of the defendant as its Director. At issue is the defendant's January 21, 2020, Motion for Summary Judgment/Motion to Dismiss. Also pending - but not currently at issue - is the plaintiff's Cross Motion to Quiet Title. All hearings but the first were held telephonically due to pandemic-related safety concerns. Each party filed a written closing argument on October 15, 2020, so the matter is now ready for decision. The court heard from the following witnesses:

- Mr. Charles Akin, Jr. : Surveyor (called by plaintiff);
- Mr. Mark Aimonetti: Surveyor (called by plaintiff);
- Ms. Patsy Shaw: Property owner/plaintiff;
- Mr. William T. Bailey: Former and current president of Kenai River Keys Property Owners Association ("KRKPOA")(called by plaintiff);
- Mr. John Bennett: Surveyor (called by defendant).

Findings of Fact:

Although on March 12, 2020, the court set the case for oral argument on June 9, 2020, the

parties subsequently filed “statements” relating to the anticipated evidentiary hearing, which outlined issues and listed witnesses. Thus, although each log note is titled “oral argument,” the parties actually engaged in an extended evidentiary hearing on a summary judgment motion.

The focus of the summary judgment motion is relatively narrow: is the KRKPOA the proper defendant in the plaintiff’s search to quiet title and delineate easements relating to her property? At the heart of the issue is the parties’ conflicting interpretation of two plats: Plat 72-62¹ and Plat 74-85.² Specifically, in 1972, Ms. Shaw purchased Lot 11 in the Kenai River Keys Subdivision. Ms. Shaw believed that this lot fronted one of the subdivision’s man-made channels and provided floatplane access to the property. The 1972 plat, among other things, stated that “[t]he road easements shown may be dedicate to public use if the majority of lot owners so desire, this can be done by only the majority of the lot owners.”³ The property owners, on the “Certificate of Ownership and Dedication” further “request the approval of this plat showing such easements for public utilities, roadways, and channels for use by lot owners of this subd only, except Humpy Road which is dedicated to public use.”⁴ The 1972 plat contains a diagram of “Sockeye Lane Road Easement (Private)” which appears to share the eastern border of Lot 11.

The 1974 plat, entitled “Resubdivision of Tract A Kenai River Keys Subdivision” reflects the developers’ intention to subdivide Tract A – which had not been subdivided in 1972. Tract A borders Lot 11 on the north, and the only road easement to Tract A provided in the 1974 easement is depicted as the Sockeye Lane Road Easement (which no longer contains the word “private”). The 1974 plat’s “Legend and Notes” refer to the 1972 plat, and state that “[t]he 50’ road easement (Sockeye Lane) has been extended to Tract A.” Under “Covenants,” the 1974 plat states that “[t]he

¹ Plaintiff’s Exhibit 1.

² Defendant’s Exhibit D.

³ Exhibit 1, Covenants. (The language is directly quoted from the plat.)

⁴ Exhibit 1, Certificate of Ownership and Dedication. (The language is directly quoted from the plat.)

road easements shown may be dedicated to public use if the majority of the lot owners so desire. This can be done only by the majority of the lot owners.” Additionally, the “Certificate of Ownership and Dedication” states “[w]e hereby certify that Kenai Keys Development, Inc. is the owner of this property and request the approval of this plat showing such easements for public utilities, roadways and or streets dedicated by us for public use.” Ms. Shaw neither signed off on, nor challenged, the 1974 plat.

The Sockeye Lane road easement extension to Tract A was never developed but, over the years, subdivision property owners began using Ms. Shaw’s land, and/or a portion of the channel, to access Tract A, believing that the easement gave them this right. From Ms. Shaw’s perspective, people wrongfully used her driveway as a road to Tract A. In order to protect her property, Ms. Shaw put up a fence and sign. Neither the Kenai Peninsula Borough, nor the KRKPOA, have been willing to resolve the conflict. Ms. Shaw brought this suit against KRKPOA because it has the authority to enforce restrictive covenants over private road easements.

The defendant argues that the 1974 plat dedicated Sockeye Lane extension to the public, so only the Borough can help Ms. Shaw.

Ms. Shaw’s expert, Mr. Aimonetti, recognizes that the 1974 plat contains a dedication to public use, but does not believe that dedication is effective because it is not consistent with the developers’ intent. He testified that the certificate of ownership conflicts with the covenants and notes and that the plat is ambiguous. The defendant’s expert, Mr. Bennett, testified that the most logical way to understand the 1974 plat is to believe the certificate of ownership. The developers knew how to exempt roadways from public dedication, because they had done so in 1972. Because they chose different language in 1974, the roadway extension was dedicated to public use.

Conclusions of Law:

The court may enter summary judgment if the evidence in the record presents no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.⁵ All reasonable inferences of fact are drawn in favor of the party opposing the motion and against the moving party.⁶ The proponent of a summary judgment motion has the initial burden of establishing the absence of genuine issues of material fact and their right to judgment as a matter of law.⁷ Where the moving party has made a prima facie showing that they are entitled to judgment on the established facts as a matter of law, “the opposing party must demonstrate that a genuine issue of fact exists to be litigated by showing that it can produce admissible evidence reasonably tending to dispute the movant’s evidence.”⁸

The parties agree that KRKPOA does not own any portion of Lot 11 or Sockeye Lane.

Therefore, the summary judgment motion is granted to the defendant on this limited issue. The extensive litigation regarding whether there was an effective dedication to public use, however, suggests that summary judgment is inappropriate regarding whether KRKPOA should be dismissed from the case. If Sockeye Lane remains private, KRKPOA would have duties to enforce the covenants.

In *Estate of Smith v. Spinelli*⁹ the parties disagreed regarding the effect of a plat on a subdivision in Anchorage. The trial court denied the parties’ cross motions for summary judgment and proceeded to trial on the merits. The trial court ultimately found that the plat was ambiguous

⁵ *Yurioff v. American Honda Motor Co., Inc.*, 803 P.2d 386, 388 (Alaska 1990)(citing *Gudenau & Co. v. Sweeney Ins.*, 736 P.2d 763, 765 (Alaska 1987); Alaska R.Civ.P. 56(c)).

⁶ *Id.* (citing *Gudenau*, 736 P.2d at 765).

⁷ *Bauman v. State, Div. of Youth and Family Services*, 768 P.2d 1097, 1099. See also Alaska R. Civ. P. 56.

⁸ *French v. Jadon, Inc.*, 911 P.2d 20, 23 (Alaska 1996)(citing *Wassink v. Hawkins*, 763 P.2d 971, 973 (Alaska 1988)).


⁹ *Estate of Smith v. Spinelli*, 216 P.3rd 524 (Alaska 2009).

and reviewed the surrounding facts and circumstances to determine the parties' original intentions. Because the case went to trial, the Alaska Supreme Court found no error in the denial of summary judgment. Additionally, the Court agreed with the trial judge's assessment that the original plat was ambiguous, and approved the court's decision to examine the parties' original intentions.

In this case, the parties have presented conflicting testimony regarding how to interpret the 1972 and 1974 plats. In order to resolve this conflict, the court will have to weigh the evidence and make legal and factual determinations about whether the plats are ambiguous and whether to consider extraneous evidence regarding the parties' intentions. Therefore, the request to dismiss KRKPOA as a defendant is denied.

11-12-2020
Date


Superior Court Judge Jennifer K. Wells

I certify that a copy of the forgoing was
____ mailed to _____
____ placed in court box to _____
____ faxed to _____
 scanned to Beggs, Shaw, Kumar River
 _____ 11-12-20
Judicial Assistant Date