

DA 19-0160

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 254

STEPHEN AND SHARON WIEGELE,

Plaintiffs, Appellees, and Cross-Appellants,

v.

WEST DRY CREEK RANCH, LLC,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DV-15-51
Honorable Robert G. Olson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Bruce M. Jacobs, Law Offices of Bruce M. Jacobs, LLC, Bozeman,
Montana


For Appellees:

J. Troy Redmon, Keeley McKay, Redmon Law Firm, PC, Bozeman,
Montana

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Decided: October 22, 2019

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

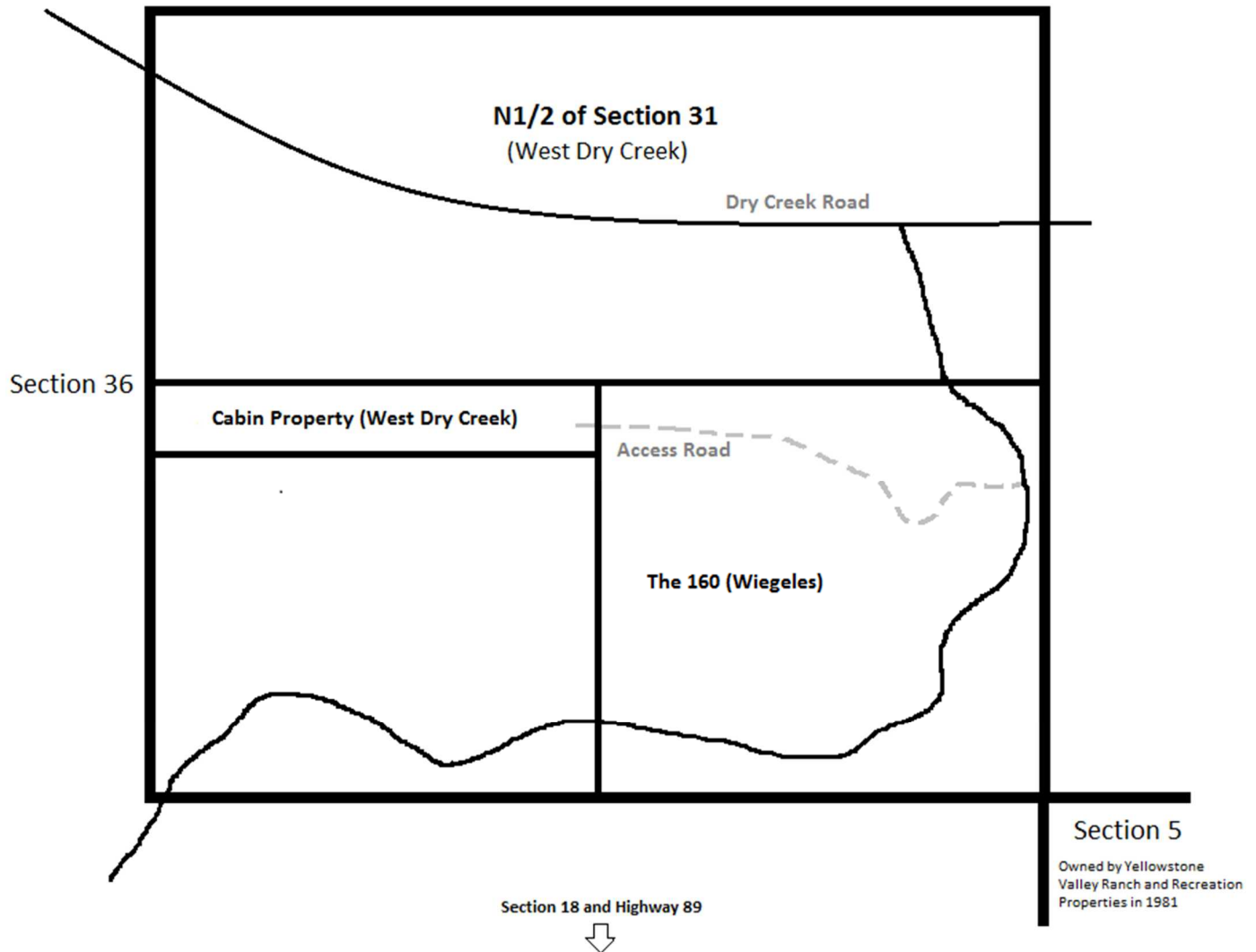
¶1 West Dry Creek Ranch, LLC, and Stephen and Sharon Wiegele own adjacent properties in Park County, Montana. Both assert an express easement over one another's property, and both deny that their properties are burdened by the other's claimed easement. The Sixth Judicial District Court concluded that each holds an express easement over the other's property based on their predecessor's easement agreement and that agreement's subsequent incorporation into later conveyances. Both parties appeal. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶2 Stephen¹ and Sharon Wiegele (the "Wiegeles") are residents of Minnesota who own property in Section 31 of Township 5 South, Range 7 East, M.P.M., Park County, Montana. West Dry Creek Ranch, LLC, ("West Dry Creek") is a Wyoming limited liability company whose members are Michael Surak and Philip Nichols. West Dry Creek owns property in the same section. Forest Service lands in Park and Gallatin counties surround Section 31. The Wiegeles own, among other parcels, the SE1/4 of Section 31 (known by the parties as "the 160"). West Dry Creek owns, among other parcels, the N1/2 of Section 31 as well as the N1/2N1/2N1/2SW1/4 of Section 31 (known as the "Cabin Property"). Diagram 1 shows the general layout of Section 31.

¹ Stephen Wiegele passed away while this appeal was pending. In accordance with counsel's notice, the Court determines that it is unnecessary to substitute parties under M. R. App. P. 25(1).

DIAGRAM 1²



¶3 West Dry Creek accesses its Cabin Property via the road that crosses the Wiegeles' 160. The Wiegeles access public lands over the road that crosses West Dry Creek's N1/2 of Section 31.

² Diagram 1 contained in this Opinion is not included in the record, but it does represent the layout of the parcels and roads according to the maps and descriptions in the record, adding other section designations from the Montana Cadastral online mapping application, available at <https://perma.cc/N45C-5BRS>. The solid roads on this diagram represent the roads highlighted as "Exhibit A" in the 1981 Easement Agreement.

¶4 In 1980, Stanley “Stan” Clark acquired the entirety of Section 31. In 1981, he and Yellowstone Valley Ranch and Recreation Properties, the then-owners of property in Section 5, created an express easement agreement titled Easement and Right-of-Way Agreement (“1981 Easement Agreement”) addressing access rights with respect to their respective properties.

¶5 On October 1, 1982, Clark conveyed the S1/2 of Section 31, excepting the Cabin Property, to Roger Dauner. The conveyance incorporated the 1981 Easement Agreement by reference. The Wiegeles purchased the 160 from Dauner in 2003.

¶6 West Dry Creek’s predecessor, Dry Creek Partnership,³ purchased the Cabin Property from Clark in 2000 and later conveyed it to West Dry Creek.

¶7 In 2005, West Dry Creek improved the road in preparation for construction of a cabin on the Cabin Property. Testimony at trial established that on the day West Dry Creek began work on the road, Phillip Nichols (a member of West Dry Creek) and Stephen Wiegele had a conversation about the work being done, including the access road to the Cabin Property. Mr. Nichols and Mr. Wiegele specifically discussed the construction of the cabin on the Cabin Property at the end of the road. During this conversation, Mr. Nichols represented to Mr. Wiegele that West Dry Creek possessed an easement for the purpose of accessing the Cabin Property over the 160. Mr. Wiegele did not challenge this representation until 2013, bringing suit in 2015.

³ Dry Creek Partnership was the original entity formed to purchase parcels in Section 31. When it was incorporated in Wyoming, the entity’s name changed to West Dry Creek.

¶8 Both parties testified to using Dry Creek Road in the N1/2 of Section 31 for recreational access to the public lands in Section 36. According to the Wiegeles, West Dry Creek constructed a gate across Dry Creek Road in 2013, preventing the Wiegeles from accessing the public lands.

¶9 In 2015, the Wiegeles brought this action in the District Court seeking a declaration of an express easement for ingress and egress over the N1/2 of Section 31 and an injunction requiring West Dry Creek to remove all obstructions interfering with their use of the easement. The Wiegeles also sought damages for intentional and continuing trespass and negligence, and an injunction requiring West Dry Creek to cease use of the Cabin Property's access road over the 160.

¶10 In response, West Dry Creek denied that the easement over the N1/2 exists and asserted that it had an easement over the 160.

¶11 The action proceeded to a bench trial at which the District Court considered: (1) whether West Dry Creek had an easement over the 160 to access the Cabin Property, and (2) whether the Wiegeles had an easement over the N1/2 of Section 31 to access public lands. The District Court conducted a site visit the day after trial.

¶12 The court entered its findings of fact and conclusions of law on November 2, 2018. It held that West Dry Creek had an express easement over the Cabin Property access road over the 160 and that the Wiegeles had an express easement for use of the roads in the N1/2 of Section 31.

¶13 After the District Court entered judgment, West Dry Creek filed a motion to amend the judgment pursuant to M. R. Civ. P. 59(e) to clarify the location of the Wiegeles'

easement over the N1/2 of Section 31. The Wiegeles did not oppose the motion, and the District Court entered an order amending the judgment, declaring that the Wiegeles have an express easement over the N1/2 of Section 31 as set forth in the 1981 Easement Agreement.

STANDARDS OF REVIEW

¶14 We review a trial court's findings of fact to determine whether they are clearly erroneous. *Ganoung v. Stiles*, 2017 MT 176, ¶ 13, 388 Mont. 152, 398 P.3d 282 (citing *Clark v. Pennock*, 2010 MT 192, ¶ 21, 357 Mont. 338, 239 P.3d 922). A finding is clearly erroneous if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if our review of the record convinces us that a mistake has been made. *Clark*, ¶ 21. "Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion, even if the evidence is weak or conflicting." *Skelton Ranch, Inc. v. Pondera Cty. Canal & Reservoir Co.*, 2014 MT 167, ¶ 27, 375 Mont. 327, 328 P.3d 644.

¶15 We review for correctness a district court's conclusions of law. *Pub. Lands Access Ass'n v. Bd. of Cty. Comm'rs*, 2014 MT 10, ¶ 14, 373 Mont. 277, 321 P.3d 38 (citing *Boyne USA, Inc. v. Spanish Peaks Dev., LLC*, 2013 MT 1, ¶ 28, 368 Mont. 143, 292 P.3d 432). Whether an express easement has been created is a question of law. *Reichle v. Anderson*, 284 Mont. 384, 387, 943 P.2d 1324, 1326 (1997).

DISCUSSION

¶16 An easement is a nonpossessory interest in the land of another. *Taylor v. Mont. Power Co.*, 2002 MT 247, ¶ 11, 312 Mont. 134, 58 P.3d 162; *see Woods v. Shannon*,

2015 MT 76, ¶ 10, 378 Mont. 365, 344 P.3d 413. “By definition, an easement involves the right to use property owned by another.” *Pub. Land/Water Access Ass’n, Inc. v. Jones*, 2013 MT 31, ¶ 11, 368 Mont. 390, 300 P.3d 675.

¶17 An express easement may be granted by using appropriate language in an instrument of conveyance. *Broadwater Dev. L.L.C. v. Nelson*, 2009 MT 317, ¶ 12, 352 Mont. 401, 219 P.3d 492. An express grant must be in writing. Section 70-20-101, MCA. A grantor may expressly reserve an easement over granted land in favor of retained land by using appropriate language in the conveyance instrument. *Blazer v. Wall*, 2008 MT 145, ¶ 27, 343 Mont. 173, 183 P.3d 84; *see also* 25 Am. Jur. 2d Easements and Licenses § 16 (2004) (“An express easement by reservation arises when a property owner conveys part of his or her property to another but includes language in the conveyance reserving the right to use some part of the transferred land as a right-of-way.”).

¶18 The existence of an express easement is governed by the rules of contract interpretation. *Broadwater Dev. L.L.C.*, ¶ 19 (citing *Van Hook v. Jennings*, 1999 MT 198, ¶¶ 10–12, 295 Mont. 409, 983 P.2d 995; *accord Mary J. Baker Revocable Trust v. Cenex Harvest States Coops.*, 2007 MT 159, ¶ 18, 338 Mont. 41, 164 P.3d 851; § 70-1-513, MCA). These rules are designed to give effect to the mutual intention of the parties as it existed at the time of contracting. *Broadwater Dev. L.L.C.*, ¶ 19 (citing § 28-3-301, MCA). When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible. Section 28-3-303, MCA. “Particular clauses of a contract are subordinate to its general intent[,]” § 28-3-307, MCA, and

“[t]he whole of a contract is to be taken together as to give effect to every part if reasonably practicable, each clause helping to interpret the other.” Section 28-3-202, MCA.

¶19 Contracts are not created in a vacuum, and courts may consider the circumstances under which the agreement was made or the matter to which it relates. *Broadwater Dev. L.L.C.*, ¶ 20. See § 28-3-402, MCA (“A contract’s intention may be explained by reference to the circumstances under which it was made and the matter to which it relates.”). See also §§ 28-2-905(2) and 70-20-202(2), MCA. When interpreting a writing granting an interest in real property, such as an easement, the court may hear evidence of the surrounding circumstances, including the situation of the property and the context of the parties’ agreement, so the court is placed in the position of those whose language the court is to interpret. *Broadwater Dev. L.L.C.*, ¶ 22 (citing § 1-4-102, MCA (“For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and the parties to it, may also be shown so that the judge is placed in the position of those whose language the judge is to interpret.”)).

The 1981 Easement Agreement

¶20 The 1981 Easement Agreement explained: “[a]ll parties desire to specify and exchange easements and rights-of-way in order that each party may have more effective use of real property owned by each, or in which each may have an interest”

¶21 The 1981 Easement Agreement granted Yellowstone Valley Ranch and Recreation Properties an “easement and right-of-way, nonexclusive in nature, over and across Section 31, Township 5 South, Range 7 East, M.P.M., as specified on the attached Exhibit ‘A’

Said Easement and Right-of-way shall be for ingress and egress . . . and shall be along the roads or lands now established in said Section 31.” It described the easement as appurtenant to other real property owned by Yellowstone Valley Ranch and Recreation Properties in Section 1. Exhibit A, attached to the 1981 Easement Agreement, is a copy of a 1955 U.S. Geologic Survey map of Fridley Peak, Montana. It is represented in Diagram 1.

¶22 The 1981 Easement Agreement also granted Stan Clark, owner of Section 31, “an easement and right-of-way over and across Section 5, Township 6 South, Range 7 East, M.P.M.” The Agreement stated that the easement “shall be nonexclusive in nature, located along what is commonly known as the ‘Dry Creek Road’, as it crosses the said Section 5, as specified on the attached Exhibit ‘A’ The Eas[e]ment and Right-of-Way shall be . . . along the road or lane now established in said Section 5.”

¶23 *1. Does West Dry Creek hold an express easement to access the Cabin Property over the 160?*

¶24 The 1982 Clark-to-Dauner conveyance was “together with and subject to” the terms of the 1981 Easement Agreement. Clark also reserved an easement for himself for ingress and egress over the portion of the roadway described in the 1981 Easement Agreement.

¶25 The Wiegeles obtained the SE1/4 of Section 31, the 160, via warranty deed from Dauner on January 16, 2003. The deed reserved to Dauner an easement for ingress and egress over the existing roadway in the 160 to access Dauner’s other lands. The 2003 deed conveyed the property “together with” all easements of the grantor. It was “subject to,” among other things: (1) “Easements obvious by a visual inspection; easements, or claims

of easements, not shown by the public records,” and (2) the October 1, 1982⁴ deed from Clark to Dauner, reserving the ingress and egress rights over the roads specified in the 1981 Easement Agreement.

¶26 The 2000 Clark-to-Dry Creek Partnership transfer of the Cabin Property was made “together with” all right, title, and interest, in and to any easement and right-of-way, including any granted under the October 1, 1982 warranty deed between Clark and Dauner granting Dauner the S1/2 of Section 31, and the 1981 Easement Agreement. Clark reserved an easement for ingress and egress over the shortest existing road accessing Clark’s remaining property in the NE1/4 of Section 31, and further reserved an easement for ingress and egress for Clark and his family to access national forest lands. This conveyance was made “subject to” easements, rights-of-way, or possessory interests of record or which could be ascertained by “physical inspection of the property.”

¶27 Appealing the District Court’s determination that West Dry Creek holds an express easement across the 160, the Wiegeles argue that the court erred when it: (1) declared an express easement under the plain language of the 2003 Dauner-to-Wiegele deed for the 160; (2) found that the road was obvious by visual inspection in 2003; and (3) held that

⁴ The 2003 Dauner-to-Wiegele warranty deed refers to the “Warranty Deed between Stan Clark as Grantor, and Roger Donald Dauner, a Grantee, dated October 1, 1981, and recorded April 28, 1993, in Roll 92, page 1112, in the records of Park County, Montana.” (Emphasis added.) However, the record contains a warranty deed dated October 1, 1982, between Clark and Dauner, with the identical recording of April 28, 1993, and recorded in Roll 92, page 1112. The 2003 deed appears to misdate the year of the Clark-to-Dauner deed. We assume for the purposes of this Opinion that the 2003 Dauner-to-Wiegele warranty deed incorporates by reference the October 1, 1982 warranty deed transferring the 160 from Clark to Dauner.

Clark had title to the 160 at the time of burdening it. The Wiegeles also argue that if there is an easement, West Dry Creek improperly expanded its scope.

Express easement

¶28 The Wiegeles argue that the easement was not provided for by the 1981 Easement Agreement. They argue the 1981 Easement Agreement explicitly referenced the road as it existed in 1981 (“shall be along the roads or lanes now established in Section 31”), and further narrowed the grant by defining the easement “*as specified on the attached Exhibit ‘A’*” (emphasis added). The access road to the Cabin Property is not explicitly identified on Exhibit A. West Dry Creek argues the 1981 Easement Agreement language clearly applies to all roads or lanes “now established” in Section 31 at the time, and the access road was so established.

¶29 Intent of the parties at the time of contracting is a question of fact. *See Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, ¶ 24, 364 Mont. 455, 276 P.3d 922; *In re Marriage of Mease*, 2004 MT 59, ¶ 30, 320 Mont. 229, 92 P.3d 1148; *Watters v. City of Billings*, 2017 MT 211, ¶ 16, 388 Mont. 376, 404 P.3d 379. Both parties agree that contract interpretation must give effect to the mutual intent of the parties as it existed at the time of contracting, and a contract’s intent may be explained by the surrounding circumstances under which it was made. *Broadwater Dev. L.L.C.*, ¶ 19 (citing § 28-3-301, MCA); *see* § 28-3-402, MCA; *Mary J. Baker Revocable Trust*, ¶ 21.

¶30 Standing alone, the 1981 Easement Agreement would not have created an express easement for the Cabin Property access road. But its incorporation into the 1982 deed, together with other language in that deed and the surrounding circumstances, properly

informed the District Court's conclusions. In the 1982 deed, Clark not only incorporated the 1981 Easement Agreement, but reserved easements visible by physical inspection.

¶31 Although there was a dispute in the evidence as to whether, in 1982, the road extended to the Cabin Property, the parties did not dispute that the road was the closest point of access to the Cabin Property. The District Court found that the road over the 160 reached the Cabin Property by 1990, and there was no access to the Cabin Property from the north (Clark's other lands). Thus, when he conveyed the 160 to Dauner in the 1982 deed, Clark intended to reserve an easement for ingress and egress to the Cabin Property over the roads established in the 1981 Easement Agreement, which would be the roads then-established in Section 31, not only the roads highlighted in Exhibit A.

¶32 The District Court found that the stated intent of the 1981 Easement Agreement was to preserve access over the roads existing in Section 31 at the time of the agreement and that the 1982 deed clearly incorporated those terms by reference. Clark's incorporation of the 1981 Easement Agreement demonstrated his intent when transferring the S1/2 that he reserve access to his remaining Section 31 properties via "roads now established." The District Court appropriately considered the surrounding circumstances regarding both the 1981 Easement Agreement and the 1982 Clark-to-Dauner conveyance of the 160. Finding the intent of the parties was to preserve access to the Cabin Property, the District Court did not err in concluding that the conveyance documents established an express easement for access to the Cabin Property over the 160.

Easement obvious by visual inspection

¶33 The Wiegeles also argue that under their 2003 deed for the 160, they were not under any duty to assume there may be rights in the access road over the 160 because it did not reach the Cabin Property and was no different from other hunting trails on the 160. We first note that their 2003 deed clearly incorporated the 1981 Easement Agreement's terms regarding roads. In fact, as we explain below, that is the reason the Wiegeles have an easement over the N1/2 of Section 31. As noted, the Wiegeles purchased the 160 property "subject to" easements obvious by visual inspection. Although "subject to" language in a deed does not, by itself, create an easement, *Yorlum Props. v. Lincoln County*, 2013 MT 298, ¶ 15, 372 Mont. 159, 311 P.3d 748, the 1982 conveyance from Clark to Dauner for the S1/2 of Section 31 already had expressly created the easement in question prior to the Wiegeles' purchase of the 160.

¶34 The District Court evaluated the testimony and evidence regarding the access road to the Cabin Property and made findings that the road did provide access to the Cabin Property obvious by visual inspection when the Wiegeles purchased the 160. The Wiegeles have not demonstrated clear error in the District Court's finding that the access road was visible upon inspection.

Expansion

¶35 The Wiegeles next argue that even if West Dry Creek had an easement to the Cabin Property over the 160, easements are limited to their historical location and size, and West Dry Creek did not have a right to extend the road to fully reach the Cabin Property. They argue that prior to July 2005, the road terminated approximately 250 feet short of the

Cabin Property, until West Dry Creek constructed a driveway extending and improving the “skid trail” to access the Cabin Property.

¶36 The District Court found that the road across the 160 had been used to access the Cabin Property since at least 1990. This Court reviews findings of fact for clear error. West Dry Creek presented credible evidence at trial that the road had been used to access the Cabin Property at least as early as the 1990s. The District Court is in the best position to evaluate the witnesses’ testimony and evidence presented at trial. The Wiegeles did not establish clear error in the District Court’s factual finding that the road over the 160 had been used to access the Cabin Property.

“Bare” legal title

¶37 Finally, the Wiegeles argue that Clark could not grant or reserve any access over the 160 during periods of contracts for deed for the Cabin Property because he held “bare” legal title in trust for the purchaser under memoranda of contracts for deed.

¶38 There were several potential transfers of the Cabin Property between 1982 and 1999. After conveying the S1/2 of Section 31, excluding the Cabin Property, to Dauner in October 1982, Clark conveyed the Cabin Property to Ronald Burgess pursuant to a Memorandum of Contract for Deed on December 24, 1982.⁵ This transfer was made “along with an easement for ingress, egress, and utilities along existing roads” in Section 31 and “along the existing road along Dry Creek” from Section 31 southeast to the intersection with Highway 89 in Section 18. On December 10, 1986, Burgess conveyed the property

⁵ We note that an actual deed for this conveyance does not appear in the record.

via quitclaim deed to Mountain Valley Properties, “along with an easement for ingress, egress, and utilities along the existing roads” in Section 31 and “along the existing road along Dry Creek” from Section 31 southeast to the intersection with Highway 89 in Section 18, and “subject to” all visible and recorded reservations and exceptions. On June 17, 1993, Burgess conveyed the Cabin Property via quitclaim deed back to Clark, “together with” all appurtenances, including rights, title, and interest, belonging to Burgess. On August 20, 1996, Mountain Valley Properties conveyed the Cabin Property to Clark via a quitclaim deed, “together with” all appurtenances. It appears from the record that by August 1996, Clark again owned the Cabin Property, “together with” all appurtenances from the prior transfers.

¶39 When Clark conveyed the 160 to Dauner in October of 1982, excepting the Cabin Property, the deed reserved an easement for ingress and egress over “that portion of the roadway described in the [1981 Easement Agreement].” The 1982 deed is the controlling document for the easements benefiting and burdening the 160, and the subsequent memoranda are not at issue. When Clark conveyed the Cabin Property to Burgess two months later, he incorporated the previously reserved express easement over the 160 by conveying the property “along with an easement . . . along existing roads in said Section Thirty-one (31) and along the existing road along Dry Creek from said Section Thirty-one (31).” The District Court did not err when it concluded that the 1982 conveyance created an express easement that remained intact during later conveyances.

¶40 2. *Did the District Court err in granting an express easement for the Wiegeles over Dry Creek Road in the N1/2 of Section 31?*

¶41 West Dry Creek argues the District Court erred in granting the Wiegeles an express easement over the N1/2 of Section 31. It argues that the express language of the 1981 Easement Agreement specifically identified the grantee of rights over the property in Section 31 as Yellowstone Valley Ranch and Recreation Properties alone, and was thereby limited to benefit Section 5, not Section 31, and there were no rights created for holders of property in Section 31 as to roads within Section 31.

¶42 The Wiegeles assert that the District Court correctly interpreted the terms of the 1981 Easement Agreement to recognize their express easement to traverse the road in the N1/2 of Section 31.⁶ They emphasize the plain language of the 1981 Easement Agreement, which provides a stated intent of the easements to grant the parties “more effective use of real property owned by each, or in which each may have an interest.” They argue that the 1981 Easement Agreement clearly incorporates the parties’ mutual understanding that subsequent property owners in Section 31 should benefit from the easement rights it created.

⁶ The Wiegeles first argue that West Dry Creek waived its right to appeal the District Court’s determination regarding the express easement over the N1/2 of Section 31 when West Dry Creek filed a Rule 59(e) motion to amend the judgment. West Dry Creek’s stated intent by filing the Rule 59(e) motion to amend the judgment was to clarify the location of the easement the District Court found across West Dry Creek’s property. Seeking clarification of the scope of the easement in the judgment did not waive the opportunity to appeal the court’s declaration of the easement. *See Idaho Asphalt Supply v. State*, 1999 MT 291, ¶ 23, 297 Mont. 66, 991 P.2d 434 (waiver is mainly a question of intent and must be manifested in some unequivocal manner). For similar reasons, West Dry Creek’s post-judgment motion was not a judicial admission. *See Bilesky v. Shopko Stores Operating Co.*, 2014 MT 300, ¶ 12, 377 Mont. 58, 338 P.3d 76 (establishing that a judicial admission is an express waiver conceding the truth of an alleged fact).

¶43 The Wiegeles argue that if the court found the language ambiguous, then intent of the parties at the time of contracting is a mandatory consideration. The District Court did not expressly determine that the 1981 Easement Agreement was ambiguous; it ascertained intent through the language of the 1981 Easement Agreement and through later conveyance documents.

¶44 Based on the 1981 Easement Agreement’s statement that “all parties desire . . . that each party may have more effective use of real property owned by each, or in which they have an interest,” the District Court concluded that the original parties intended that future owners of property in Section 31 likewise should have ingress and egress rights over the specified Section 31 roads. The District Court emphasized the expressed intent in the 1981 Easement—“to have more effective use of real property owned by each.” Considering both its language and the circumstances under which the agreement was made—the parties were then using the roads for access to the surrounding public lands—the District Court found that the mutual intent of the parties was to create access rights for future Section 31 property owners to utilize the Section 31 and Section 5 roads. The District Court thus concluded that future landowners in Section 31 were intended to share in the express easement for the use of roads in Section 31.

¶45 The District Court further observed that Clark expressly incorporated the 1981 Easement Agreement language into the 1982 conveyance of the 160, less the Cabin Property, as well as into other later conveyances. When Clark later conveyed the S1/2 of Section 31 to Dauner, Clark made the conveyance “together with and subject to” the terms of the 1981 Easement. Clark also reserved an easement for himself for ingress

and egress over the roads described in the 1981 Easement Agreement. Clark's reservation clarified his intent that the access granted in the 1981 Easement Agreement benefits Section 31 property owners. The District Court found substantial evidence that Clark intended to provide Dauner access rights over the roads described in the 1981 Easement Agreement, demonstrated by specifically incorporating the 1981 Easement Agreement into the conveyance.

¶46 The Wiegeles obtained the 160 from Dauner in 2003. The warranty deed conveyed it "together with" all easements of the grantor (Dauner). Dauner had an easement from the 1982 conveyance, which was "together with and subject to" the 1981 Easement Agreement. When the Wiegeles obtained the 160 from Dauner, the easement access rights over the roads described in the 1981 Easement Agreement also transferred to the Wiegeles.

¶47 The 1981 Easement Agreement on its face does not grant an express easement for the Wiegeles. It is between Section 31 and Section 5 property owners. But the District Court found that its incorporation into later conveyances, and the circumstances surrounding those incorporations in the later conveyances, demonstrated a mutual intent by the parties to ensure access over existing roads described in the 1981 Easement Agreement to the public lands in Section 36.

¶48 We will affirm a district court's findings of fact unless those findings are clearly erroneous. From the record before us, we cannot find clear error in the District Court's findings that the mutual intention of the parties to the Section 31 conveyances was to preserve access over Section 31 roads. The September 2000 Clark-to-Dry Creek Partnership deed not only incorporated the 1981 Easement Agreement and easements

granted in the 1982 Clark-to-Dauner deed, but also expressly reserved to Clark an easement over the shortest existing road to Clark's other Section 31 property. The District Court was correct when it concluded that, taken together, the conveyance documents established an express easement for the Wiegeles over the N1/2 of Section 31 as set forth in the 1981 Easement Agreement.

CONCLUSION

¶49 We affirm the District Court's conclusions that the Wiegeles have an express easement over the N1/2 of Section 31 as set forth in the 1981 Easement Agreement and that West Dry Creek has an express easement over the 160 to the Cabin Property.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ LAURIE McKINNON