

DA 23-0384

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 176

SALLY JO BECK, VIVID PROPERTIES, LLC,
CURT and CARRIE BATES, GARY and
ANN LIBECAP, LIBECAP REVOCABLE
TRUST, DON and ANITA COURTNEY,
COURTNEY FAMILY TRUST, MARK
CARPENTER, KEVIN and MARGIE
HUGUET, DONALD and NANCY HALL,
PHILLIP and JANE HALL, and
SHALOM HOUSE, LLC,

Plaintiffs and Appellees,

v.

JOHN DIMAR, DIMAR FAMILY LLC,
a Kentucky Limited Liability Company, and
DIMAR FAMILY PARTNERSHIP, LTD,

Defendants and Appellants.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-22-234
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Colleen M. Dowdall, Dowdall Law, Missoula, Montana

Donald R. Murray, Hash, O'Brien, Biby and Murray, PLLP,
Kalispell, Montana

For Appellees:

Nicole L. Siefert, Matt Rossmiller, Siefert & Wagner, PLLC,
Missoula, Montana

Submitted on Briefs: June 12, 2024

Decided: August 13, 2024

Filed:



Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 This suit concerns a bridge constructed by John Dimar over the Clearwater River to allow better access to the subdivision where all parties reside. Dimar, et al., appeal the order of the Fourth Judicial District Court, Missoula County, granting Plaintiffs Sally Jo Beck and other lot owners summary judgment on their claim for declaratory relief to access the bridge and denying Dimar’s claim for construction costs. We consider the following issues on appeal:

- 1. Whether the District Court properly interpreted the 1994 Easement Agreement.*
- 2. Whether the District Court correctly applied the doctrine of collateral estoppel in granting the Plaintiffs summary judgment.*
- 3. Whether Plaintiffs have been unjustly enriched and have an obligation to share in the construction costs of the bridge.*

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The parties are neighboring lot owners in the six-lot Clearwater Cove subdivision, established in 1993 by a partnership of landowners.¹ The subdivision is on the west side of the Clearwater River and is inaccessible from Highway 83 without a bridge spanning the river. On the subdivision plat, the owners dedicated to Clearwater Cove property owners a one-sixth perpetual undivided interest in private road, access, and driveway easements. In 1994, Plum Creek Timber Company (“Plum Creek”) authored an Easement Agreement granting Eagle Nest Investments (“Eagle Nest”)—which owned the land on

¹ The parties’ lots were created from larger tracts that were formerly Plum Creek timberlands, Clearwater Cove, Eagle’s Nest at Salmon Lake, and Big Waters Ranch.

both sides of the river—the right to use the road that leaves Highway 83 and crosses the Clearwater River leading to the Clearwater Cove properties. Eagle Nest granted lot purchasers and their successors all easement rights when they purchased their properties.

¶3 The Dimars purchased their first two lots in the subdivision in the late 1990s. In 2009, Dimar began discussion with some of the lot owners about constructing a new bridge across the river to access the subdivision. Plum Creek previously had installed a bridge that was in use for about fifty years but was removed in 1981 for safety reasons. Dimar often alluded to the creation of a bridge owners’ association and how necessary the bridge was for the safety and well-being of the neighborhood.² Given the neighborhood’s relatively remote location, the Plaintiffs agreed that a bridge would be a beneficial addition. Dimar and Plaintiffs, however, never reached a formal, written agreement about sharing in the cost, ownership, and access to the bridge.

¶4 Before Dimar began construction of the new bridge, a group of landowners in the River Watch subdivision on the opposite side of the river objected. Dimar filed suit in the Fourth Judicial District Court, Missoula County, in 2012 to establish the legitimacy of the 1994 Easement Agreement. In December 2014, Judge Karen Townsend ruled that the easement was valid. Finding the language of the easement “clear and unambiguous,” she entered a declaratory judgment that the Dimar Trust “possesses a 60-foot wide express easement from the Highway 83 right of way through the River Watch property to the low water mark of the Clearwater River.”

² Up to that point, the parties accessed their properties by a less convenient route on the west side of the river.

¶5 Dimar proceeded to construct the bridge at his own expense, ultimately spending around \$700,000 in construction costs and \$100,000 in attorney's fees, both of which the District Court found reasonable. The new bridge was completed in 2016. Following its completion, Plaintiffs contended that Dimar placed locks on the gates at each end of the bridge and did not provide keys to the bridge to anyone holding a right under the 1994 Easement Agreement.

¶6 Plaintiffs filed a complaint in the District Court to obtain a declaration that, pursuant to the 1994 Easement Agreement, Dimar cannot deny them access to the bridge. They also sought a temporary restraining order and preliminary injunction to prevent Dimar from obstructing access to the bridge by requiring him to provide keys to all parties with rights under the 1994 Easement Agreement. The District Court denied Plaintiffs' request for a temporary restraining order, stating that it would allow a hearing on the matter after service of the complaint and Dimar's answer.

¶7 Dimar responded that "Plaintiffs' claims to an easement across the Clearwater are defeated by law." He claimed that, "[u]nder the laws of the state of Montana in place in 1994, Plum Creek did not own the land under the Clearwater River, so it did not have the power to grant Eagle Nest Investments an easement across the river. Consequently, there is a gap in [the] Easement [] at the river." Dimar filed a counterclaim under this theory seeking a declaratory judgment that "Plaintiffs' easement rights across the Clearwater River are void, voidable and unperfected." He further asserted that he is entitled to contribution for the costs of the bridge in return for the Plaintiffs' use of the bridge or, alternatively, payment by each landowner of the value of the enhancement to their property.

He claimed, “Use of the bridge without contribution from all landowners results in the unjust enrichment of the Plaintiffs”

¶8 The court granted the preliminary injunction and ordered Dimar to provide Plaintiffs and emergency responders keys to the bridge. It further ordered that Dimar “may reasonably limit access only for purposes of report, maintenance, or safety issues.” The court determined that Dimar’s claim for contribution of construction costs of the bridge is refuted by the clear language of paragraph six of the 1994 Easement Agreement.

¶9 Plaintiffs moved for summary judgment on their declaratory judgment claim that they have a right to use the bridge and are not responsible for reimbursing Dimar for the costs of construction of the bridge based on the plain language of the 1994 Easement Agreement. Dimar filed an opposing motion for summary judgment, asserting, “No lots in any of the subdivisions can claim an easement because Plum Creek could not grant easements across land it did not own.” Plaintiffs responded that Dimar was estopped from contesting the validity of the 1994 Easement Agreement because doing so is directly adverse to the position he advanced in the River Watch litigation.

¶10 The District Court denied Dimar’s motion for summary judgment and awarded summary judgment to the Plaintiffs. The court found Dimar’s argument for invalidity or insufficiency of the 1994 Easement Agreement contrary to his position in the River Watch litigation and at the preliminary injunction hearing. Dimar appeals. We include further discussion of facts pertinent to each issue below.

STANDARD OF REVIEW

¶11 We review a district court’s decision on a motion for summary judgment de novo, applying the same criteria as the district court under M. R. Civ. P. 56. *Stricker v. Blaine Cnty.*, 2023 MT 209, ¶ 15, 414 Mont. 30, 538 P.3d 394 (citation omitted). “Thus, we review the ruling to determine if genuine issues of material fact existed and whether the moving party was entitled to judgment as a matter of law.” *Stricker*, ¶ 15 (citation omitted). “We review for correctness a district court’s conclusions of law.” *Wiegele v. W. Dry Creek Ranch, LLC*, 2019 MT 254, ¶ 15, 397 Mont. 414, 450 P.3d 879 (citations omitted).

DISCUSSION

¶12 *1. Whether the District Court properly interpreted the 1994 Easement Agreement.*

¶13 An express easement is governed by the rules of contract interpretation. *Wiegele*, ¶ 18 (citations omitted) (“The existence of an express easement is governed by the rules of contract interpretation.”); *Whary v. Plum Creek Timberlands, L.P.*, 2014 MT 71, ¶ 10, 374 Mont. 266, 320 P.3d 973 (citing *Mattson v. Mont. Power Co.*, 2009 MT 286, ¶ 18, 352 Mont. 212, 215 P.3d 675) (“The rules of contract interpretation govern the construction of a writing granting an interest in real property.”). “When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible.” *Wiegele*, ¶ 18 (citing § 28-3-303, MCA). “The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.” *Mattson*, ¶ 18 (citing § 28-3-401, MCA).

¶14 Dimar contends that the District Court improperly interpreted the 1994 Easement Agreement for two reasons: first, provisions regarding the easement and road use should

be read separately; second, the court improperly interpreted paragraph six of the 1994 Easement Agreement. We address each argument in turn.

a. Whether the easement and road use provisions of the 1994 Easement Agreement should be read separately.

¶15 Although he acknowledges that the 1994 Easement Agreement is but one agreement, Dimar states that the 1994 Easement comprises two distinct components: the grant of the easement in part I and the “road users’ provisions” in part II. Dimar points to the language in the first part of the Agreement that grants easement rights to Eagle Nest’s “successors, and assigns, contractors, purchasers, and permittees,” whereas the language in part II of the Agreement uses the terms “successors, subsidiaries, and assigns.” Dimar contends that this difference in terms shows that Plum Creek and Eagle Nest intended that the rights granted by the easement provisions would pass to Eagle Nest’s “purchasers,” but the rights and obligations provided for in the road users’ provisions would bind only the parties’ successors in interests. Because the Plaintiffs here are not successors in interest to Eagle Nest or Plum Creek, but rather “purchasers” or “successors in title,” Dimar asserts, the road use provisions are not binding on the Plaintiffs.

¶16 “Particular clauses of a contract are subordinate to its general intent . . . and the 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.” *Wiegele*, ¶ 18 (quoting §§ 28-3-307, -202, MCA) (internal quotations omitted). As noted by the Plaintiffs, Dimar’s argument is not consistent with the language of the 1994 Easement Agreement as

a whole. The first part of the 1994 Easement Agreement contains the grant, using broad language:

Grantor, for and in consideration of \$1.00, and other valuable consideration received by Grantor, the receipt of which is hereby acknowledged, does hereby grant to Grantee and its successors, and assigns, contractors, purchasers, and permittees, subject to existing easements and valid rights, a permanent non exclusive easement and right-of way Sixty feet (60) [] in width, being Thirty feet (30) on each side of the centerline with such additional width as is required to accommodate needed cuts and fills for road purposes for a road to be constructed, reconstructed, improved, used, operated, patrolled and maintained, over, upon and across the following described lands in the County of Missoula, State of Montana

Part II of the 1994 Easement Agreement provides, “The parties hereto hereby agree that the rights hereinabove granted shall be subject to the following terms, provisions, and conditions applicable to Grantee, its successors, subsidiaries, and assigns” Paragraph one then identifies the “Purpose” of the Agreement: “This easement is conveyed for the purpose of construction, reconstruction, use and maintenance of roads for the purpose of ingress and egress to and from lands now owned or hereafter acquired by Grantee.”

¶17 This language makes plain that the easement is granted in the first part of the document and is subject to the conditions set forth in the second part. The “Purpose” section of the “road users’ provisions” largely repeats the grant of easement in terms encompassing the construction, reconstruction, use and maintenance of roads. Both the grant and the conditions use inclusive terms covering a broad range of easement uses by anyone who succeeds by ownership of title. If Plum Creek and Eagle Nest intended to render the “road users’ provisions” exclusive between themselves, there would be no

reason to include it in the 1994 Easement Agreement, and they would not have used language like “hereinabove” to tie the provisions together.

¶18 The only supporting authority Dimar cites for his proposition that Plaintiffs are not “successors in interest” is a dissenting opinion in *State Dept. of Highways v. Midland Materials Co.*, 204 Mont. 65, 662 P.2d 1322 (1983), that a transferee by deed from the owner is a successor in title and not a successor in interest. *Midland Materials*, 204 Mont. at 72-73, 662 P.2d at 1325-26 (Sheehy, J., dissenting). Black’s Law Dictionary defines “a successor in interest” as “[s]omeone who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance.” *Successor in interest*, Black’s Law Dictionary (11th ed. 2019). Dimar has not shown that Plum Creek and Eagle Nest intended another meaning.

¶19 Dimar’s argument runs contrary to the standard principles of easements. “An easement is a nonpossessory interest in land—a right which one person has to use the land of another for a specific purpose or a servitude imposed as a burden upon the land.” *Blazer v. Wall*, 2008 MT 145, ¶ 24, 343 Mont. 173, 183 P.3d 84 (citations omitted). An appurtenant easement benefits a particular parcel of land; it serves the owner of that land and passes with the title to that land. *Blazer*, ¶ 24. “The determination of whether an expressly created easement is appurtenant . . . necessarily depends on . . . the intention of the parties as ascertained from the language of the instrument and aided, if necessary, by the situation of the properties involved, the objective circumstances existing at the time of execution, and the purpose to be accomplished by the easement.” *Broadwater Dev., L.L.C. v. Nelson*, 2009 MT 317, ¶ 34, 352 Mont. 401, 219 P.3d 492 (citations omitted). “The fact

that the easement benefits the owner of a particular tract, adds to the enjoyment of another parcel, or is of no value unless used in connection with particular land suggests appurtenance.” *Broadwater Dev., L.L.C.*, ¶ 34 (citations omitted). Dimar does not suggest that the easement in question is not appurtenant to the lands of Dimars and of all the other lot owners.

¶20 We thus decline to read the two provisions in the 1994 Easement Agreement separately. The District Court correctly concluded that the 1994 Easement Agreement applies in full to all lot owners in the Clearwater Cove subdivision and allows the Plaintiffs the right to use the easement for access to and from their properties.

b. Whether the District Court properly interpreted paragraph six of the 1994 Easement Agreement.

¶21 Paragraph six of the 1994 Easement Agreement contains the following provision:

Construction and Improvement. Unless the parties hereto agree in writing to share the cost of improvements to said roads in advance of such improvements being made, said improvements shall be solely for the account of the improver.

Dimar contends that the District Court was wrong to conclude that this provision bars him from seeking contribution for construction costs of the bridge when the parties did not agree in writing in advance of his construction to share the costs. Dimar asserts that Eagle Nest and Plum Creek did not intend for the bridge to be treated as an “improvement” under paragraph six of the 1994 Easement Agreement. Dimar states that paragraph six applies to improvements to existing roads; it does not apply to new construction.

¶22 In construing the terms of a contract, a court may consider the circumstances under which it was made, but it may not use those circumstances to contradict the terms of the

contract. *Whary*, ¶ 10 (citing *Mattson*, ¶ 18). Dimar does not provide circumstances beyond mere speculation that the parties intended a narrow definition of “improvement.” There is no support for Dimar’s argument in the plain language of the 1994 Easement Agreement. The paragraph is entitled “Construction and Improvement,” and nothing in the text delimits between the two. Whether the bridge is viewed as an “improvement” or “construction,” a plain reading of this paragraph shows that Plum Creek and Eagle Nest intended for each party to bear its own construction or improvement costs unless the parties agreed in writing. Dimar does not dispute that there was no written agreement to share in the costs of the bridge construction, and he asserts no other basis on which this provision entitles him to relief. We affirm the District Court’s interpretation of the 1994 Easement Agreement.

¶23 2. *Whether the District Court correctly applied the doctrine of collateral estoppel in granting the Plaintiffs summary judgment.*

¶24 Dimar contends that the District Court erred in its determination that he is estopped from pursuing his claim that Plaintiffs do not possess a valid easement because it is inconsistent with his position in the River Watch litigation. Issue preclusion, otherwise known as collateral estoppel, bars a party from reopening an issue that was litigated and determined in a prior suit. *Stricker*, ¶ 20 (citing *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267). We examine four factors to determine whether re-litigation of an issue is barred:

- 1) Was the issue decided in the prior adjudication identical to the issue raised in the action in question?
- 2) Was there a final judgment on the merits in the prior adjudication?

- 3) Was the party against whom preclusion is asserted a party or in privity with a party to the prior adjudication?
- 4) Was the party against whom preclusion is asserted afforded a full and fair opportunity to litigate the issue that may be barred?

Stricker, ¶ 20 (citing *Rooney v. City of Cut Bank*, 2012 MT 149, ¶ 17, 365 Mont. 375, 286 P.3d 241; *McDaniel v. State*, 2009 MT 159, ¶ 28, 350 Mont. 422, 208 P.3d 817).

¶25 Dimar asserts that the first two elements of collateral estoppel are not met because the issue in the River Watch litigation was not the same as the issue here and therefore there was no final judgment on the merits. He references Judge Townsend’s conclusion in the River Watch litigation that the easement extends “from the Highway 83 right of way through the River Watch property to the low water mark of the Clearwater River.”

¶26 The issue here, according to Dimar, pertains to the riverbed and is another segment of the easement separate from what the court considered in the River Watch litigation. He points to § 70-1-202(1), MCA, which provides that the State is the owner of all land below the water of a navigable lake or stream. Dimar contends that the Clearwater River was considered “navigable” at the time the Easement Agreement was created in 1994, and therefore, the State owned the Clearwater River as a matter of law. Dimar therefore asserts that Plum Creek could not grant an easement across the river. He cites the District Court’s finding that “[u]nder the laws of the state of Montana in place in 1994, Plum Creek did not own the land under the Clearwater River, so it did not have the power to grant Eagle Nest Investments an easement across the river. Consequently, there is a gap in [the] Easement [] at the river.”

¶27 Dimar suggests that the Clearwater River became non-navigable following the Legislature’s enactment in 2011 of § 77-1-1110, MCA, subsection (3) of which provides that a “navigable river” means “a river adjudicated as navigable for title purposes by a court of competent jurisdiction.” Dimar thus contended in his summary judgment briefing that his ownership of the river now extends “into the middle of the stream.” The District Court agreed that the 2011 law redefined the Clearwater River as non-navigable. It found that “[s]ince 2011, Dimars land extends to the center of the Clearwater River in the location that the bridge crosses the river.” The court found further that “[t]he change in ownership of the bed and banks of the Clearwater River supports the status of the easement that is claimed by the Plaintiffs/Counter Defendants across the Clearwater River.”

¶28 Plaintiffs contend that Dimar is estopped from arguing the alleged “gap” because the validity of the 1994 Easement Agreement was directly at issue in the River Watch litigation and Dimar’s argument here is contradictory to his argument in that case. Regarding Dimar’s navigability argument, Plaintiffs contend that whether the State held ownership of the bed of the Clearwater River or still holds ownership is a claim held by the State, not by Dimar. Nor has the State, according to Plaintiffs, ever asserted such an interest. The District Court agreed with Plaintiffs’ position that the easement contained in the 1994 grant was previously determined and concluded that Plaintiffs are entitled to use the bridge across the Clearwater River “as part of their easement.” Dimar filed the River Watch litigation because—as Judge Townsend described in her order—“[Dimar] now seek[s] to build a new bridge in . . . place [of the Plum Creek bridge] to which [River Watch] objects.”

¶29 Dimar asserted in his summary judgment briefing that “[n]one of the easements grant access to anyone across the Clearwater River.” He reiterates on appeal that “the bridge is the ‘gap’ in [the] [P]laintiffs’ easement.” He does not reconcile this assertion with his claims in the River Watch litigation or explain how, if true, Dimar would still have a right to keep the bridge he built all the way across the River. Although Dimar contends that “consideration of the implications of the gap is essential,” he offers no argument about how the issue should be addressed or resolved. We are not obligated to develop arguments on behalf of parties to an appeal, nor are we to develop legal analysis that may lend support to a party’s position. *McCulley v. Am. Land Title Co.*, 2013 MT 89, ¶ 20, 369 Mont. 433, 300 P.3d 679 (citing M. R. App. P. 23) (other citations omitted). Because Dimar has not shown that the elements of collateral estoppel are not satisfied, he has failed to establish error in the District Court’s refusal to reexamine the validity of the easement.

¶30 3. *Whether Plaintiffs have been unjustly enriched and have an obligation to share in the construction costs of the bridge.*

¶31 “Unjust enrichment is an equitable claim for restitution to prevent or remedy inequitable gain by another.” *Associated Mgmt. Servs., Inc. v. Ruff*, 2018 MT 182, ¶ 64, 392 Mont. 139, 424 P.3d 571 (citing *N. Cheyenne Tribe v. Roman Catholic Church ex rel. Great Falls/Billings Dioceses*, 2013 MT 24, ¶¶ 36-39, 368 Mont. 330, 296 P.3d 450; Restatement (Third) of Restitution and Unjust Enrichment § 1 (2011)). To prevail on a claim of unjust enrichment, the aggrieved party must establish that: (1) a benefit was conferred upon the recipient by the claimant; (2) the recipient knew about or appreciated the benefit; and (3) the recipient accepted or retained the benefit under circumstances

rendering it inequitable for the recipient to do so without compensating the claimant for the value of the benefit. *Ruff*, ¶ 65 (citing *N. Cheyenne Tribe*, ¶¶ 33, 36).

¶32 “A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment.” *Ruff*, ¶ 67 (quoting Restatement (Third) of Restitution § 2(2)) (other citations omitted). “Consequently, unjust enrichment applies in the contract context only when a party renders a valuable performance or confers a benefit upon another under a contract that is invalid, voidable, or otherwise ineffective to regulate the parties’ obligations.” *Ruff*, ¶ 67 (quoting Restatement (Third) of Restitution § 2(2) cmt. c) (internal quotations and other citations omitted).

¶33 The 1994 Easement Agreement is a valid contract. As discussed above, paragraph six of the 1994 Easement Agreement defines the parties’ obligations regarding sharing costs of construction and improvement projects. It therefore displaces any inquiry into unjust enrichment. *Ruff*, ¶ 67 (quoting Restatement (Third) of Restitution § 2(2)); *Cordero v. Mont. State Univ.*, 2024 MT 167, ¶ 34, 417 Mont. 385, ___ P.3d. ___ Further, the contribution of maintenance costs is not before us in this appeal. Dimar states in his reply brief, “[I]t is not Dimars’ objective to impair the [P]laintiffs’ ability to access their properties from Highway 83 across the Clearwater River. In fact, Dimars built the bridge to make that access a reality for their neighbors.” And the Plaintiffs do not appear to dispute that they should share in the costs of maintaining the bridge. At a hearing, Plaintiffs represented through their counsel that they “all really want to use the bridge,” “do not want to use the bridge . . . for free,” and “are willing to pay an amount to use it.” Further, Plaintiffs state in their appellate brief that they “have no problem contributing for the

maintenance of the bridge. How that amount is to be determined is still being discussed” The issue on appeal being limited to construction costs, we conclude that the 1994 Easement Agreement forecloses any unjust enrichment inquiry. The District Court correctly granted summary judgment on Dimar’s unjust enrichment claim.

CONCLUSION

¶34 The 1994 Easement Agreement was a valid and enforceable contract comprehensively governing the parties’ respective rights and obligations regarding access to the bridge. Dimar has not shown on appeal that there are genuine issues of material fact or that the District Court committed errors of law. We affirm the District Court’s order granting summary judgment to the Plaintiffs and denying summary judgment to Dimar.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON

/S/ JIM RICE