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12/23/2019 4:44 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF EAGLE, a municipal corporation of the State of Idaho,

Plaintiff/Appellant,

vs.

TWO RIVERS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., an Idaho Corporation, KEVIN ZASIO, President,

Defendants/Respondents.

Docket No. 47193-2019

Ada County District Court
Case No. CV01-17-18705

RESPONDENTS' BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County
The Honorable Jonathan Medema, Presiding

Joseph W. Borton, ISB #5552
Borton-Lakey Law & Policy
141 E. Carlton Ave.
Meridian, Idaho 83642
joe@borton-lakey.com

Attorneys for Plaintiff/Appellant

Michael E. Kelly, ISB # 4351
Shannon Graham, ISB # 10092
Kelly Law, PLLC
137 E. 50th Street
Garden City, ID 83714
mek@kellylawidaho.com
smg@kellylawidaho.com

Attorneys for Defendants/Respondents

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I. STATEMENT OF THE CASE

A. Nature of the Case

This is a declaratory action in which Appellant sought a declaration that it had a legally enforceable interest for public parking access to land designated as "Lot 35" which is owned by Respondent Two Rivers Subdivision Homeowners Association. Respondents submit this response in opposition to Appellant's challenges to the Memorandum Decision and Order Granting Motion to Dismiss, R. at 86-98, and Order Re: Motion for Summary Judgment, R. at 265-293, of the District Court of the Fourth Judicial District, wherein the District Court granted Respondents' Motion to Dismiss in part, and awarded summary judgment to Respondents, respectively. The District Court dismissed Counts II and III of Appellant's Complaint for failure to state a claim upon which relief can be granted pursuant to Idaho Rule of Civil Procedure (hereinafter "I.R.C.P.") 8(a). The District Court awarded summary judgment to Respondents upon finding that no facts were in dispute and a common law dedication of Lot 35 was never effectuated. The District Court did not commit error and properly granted Respondents' Motion to Dismiss and properly awarded summary judgment to Respondents.

B. Statement of Facts and Course of Proceedings Below

The facts are undisputed in this matter. T.R. Company, LLC, ("T.R.") owned a parcel of land that it wished to develop into a subdivision within the limits of the City of Eagle ("City"). R. at 204-205. That parcel was eventually divided into "lots" designated by number. *See e.g.*, R. at 255-257. Lot 35 is the subject of the present dispute.

Prior to submitting a final plat and breaking ground, T.R. needed the City to approve use of T.R.'s land for development by giving T.R. a permit to use its land. R. at 208-218. In 1999, T.R. submitted a Planned Unit Development (hereinafter "PUD") preliminary development plan

to the City called the Quarter Circle Ranch PUD. R. at 215. In 2002, T.R. applied to the City to amend the Quarter Circle Ranch PUD. R. at 208-218.

On November 26, 2002, the City held a public hearing on T.R's amendments to its application, specifically regarding "private/gated streets." R. at 227, 154-165. During this hearing, which was transcribed, Appellant contends T.R. conveyed an easement over Lot 35 to the public via dedication for parking. App. Brief at 7. Though it is unclear who Appellant contends made the dedication on behalf of T.R., it contends the dedication was communicated orally at the November 26, 2002 city council meeting.

City ordinances required T.R. to submit a preliminary plat and, ultimately, a final plat along with its requests for zoning changes. E.C.C. § 9-2-3,4; R. at 249-250. The ordinances require the final plat to be approved by the city council and then filed with the office of the county recorder. *Id.*

In 2003, T.R. filed its final plat with the City recorder. R. at 101-102, 255-257. The final plat showed each "lot" in the parcel of land it owned including Lot 35. R. at 255-257. The Plat contained the following language conveying fee simple in Lot 35 to the Two Rivers Subdivision Home Owner's Association:

> All lots within this subdivision are single-family residential lots, except Lots 43 and 44, Block 20; Lots 22, 34, and 35, Block 24; Lot 1, Block 35; Lot 1, Block 36; Lot 1, Block 37; and Lot 1, Block 38; which are designated as common landscape and private recreation lots and will be owned and maintained by the Two Rivers Subdivision No. 8 Homeowners Association. Utility, drainage, and irrigation easement is reserved for all of the above-mentioned common lots.

Id. Conversely, the plat did not demonstrate that T.R. dedicated an easement to the public for parking on Lot 35. *Id.* As observed by the District Court, the record is devoid of any written dedication by T.R. to the public. R. at 269.

In 2016, Appellant and Respondents disputed who held a property interest in Lot 35. Appellant brought this declaratory action on October 10, 2017 asking the District Court to declare that it had a legally enforceable interest for public parking access to land designated as Lot 35 which is owned by Respondent Two Rivers Subdivision Homeowners Association. R. at 7-16. In its Complaint, Appellants sought injunctive relief based on three causes of action. *Id.* Respondents moved to dismiss Appellant's Complaint under Rule 12 for failing to state a claim upon which relief could be granted by the District Court. R. at 47-49, 50-65. The District Court granted Respondent's motion as to Counts II and III and allowed Appellants to amend their complaint with regard to Count I. R. at 86-98. Appellant filed an amended complaint on April 18, 2018 seeking the same declaration and injunctive relief by alleging that it was entitled to such a declaration because T.R. dedicated an easement to the public, via common law dedication, permitting the public use that land to park vehicles. R. at 99-110. Appellant moved for summary judgment on that claim. R. at 124-125. The District Court awarded summary judgment to Respondents finding that T.R. and Appellant did not effectuate a common law dedication with regard to Lot 35. R. at 265-293.

C. Standard of Review

When reviewing an order dismissing an action pursuant to I.R.C.P. 12(b)(6), this Court applies "the same standard of review [it] appl[ies] to a motion for summary judgment" in so far as all reasonable inferences will be drawn in favor of the non-moving party. *Losser v. Bradstreet*, 145 Idaho 670, 672-73, 183 P.3d 758, 760-61 (2008) (citation omitted). "A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated." *Hammer v. Ribi*, 162 Idaho 570, 573, 401 P.3d 148, 151 (2017) (citation omitted).

This Court reviews a district court's conclusions of law de novo. *Ponderosa Home Site Lot Owners v. Garfield Bay Resort, Inc. (Ponderosa I)*, 139 Idaho 699, 700, 85 P.3d 675, 676 (2004). Therefore, on summary judgment this Court affirms when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). District courts may grant summary judgment to a non-moving party because a "motion for summary judgment allows the court to rule on the issues placed before it as a matter of law; the moving party runs the risk that the court will find against it . . . ." *Harwood v. Talbert*, 136 Idaho 672, 677, 39 P.3d 612, 617 (2001). In such a case, this Court liberally construes the record in favor of the party who the trial court entered summary judgment against. *Id.* at 677-78, 39 P.3d at 617-18.

II. ADDITIONAL ISSUES PRESENTED ON APPEAL

In addition to the issues presented on appeal by the Appellant, Respondents assert that they are entitled to an award of attorney fees pursuant to Idaho Code §§ 12-117 and 12-121 for the Appellant's pursuit of this appeal which has been brought and pursued unreasonably and without foundation.

III. ARGUMENT

A. The District Court Properly Dismissed Counts II and III of Appellant's Complaint because Appellant Failed to State a Claim Upon Which Relief Could Be Granted Pursuant to the Idaho Rules of Civil Procedure.

The first argument Appellant raises on appeal is that the District Court improperly dismissed Counts II and III of Appellant's Complaint. App. Brief at 9. Under Counts II and III, Appellant sought a ruling that it could exercise its authority under statute or city code, respectively, to control, regulate, and/or remove encroachments to public access at Lot 35. R. at

12-14. The District Court dismissed Counts II and III of Appellant's Complaint pursuant to Respondents' 12(b)(6) Motion to Dismiss and I.R.C.P. 8(a)(2). R. at 86-98. Specifically, the District Court dismissed Counts II and III of Appellant's Complaint for failing to demonstrate that Appellant was entitled to relief under the same. *Id.*

A motion to dismiss under Rule 12(b)(6) for failure to state a claim must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief. . ." *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992); I.R.C.P. 8(a)(2). The issue is not whether the plaintiff will ultimately prevail, but whether the party may offer evidence to support the claims. *Taylor v. McNichols*, 149 Idaho 826, 832, 243 P.3d 642, 648 (2010). Thus, the question is whether the non-movant has alleged sufficient facts in support of his claim, which if true, would entitle him to relief. *Parkinson v. Bevis*, 448 P.3d 1027, 1032 (Idaho 2019).

It appears Appellant misinterprets the District Court's holding in arguing that the District Court erred in its application of I.R.C.P. 8(a)(2). Appellant contends its original complaint was sufficient under the notice pleading standard by simply restating the causes of action listed under Counts II and III and noting that such statements were short and plain. Appellants argument ignores the requirement, however, that the short and plain statements that makeup a claim must demonstrate that the pleader is entitled to relief that can be redressed by a favorable decision.

Under Counts II and III, Appellant simply sought a ruling that it could exercise its authority under statute and city code, respectively. As demonstrated in detail by the District Court, it is, at best, ambiguous as to what relief Appellants are entitled to under Counts II and III – the City asked the District Court to rule that it could exercise powers that it was already authorized, by statute and city code, to exercise, as alleged by Appellant itself.

Appellant's argument on appeal that the Counts II and III provided alternative bases for relief, as opposed to common law dedication, is illogical as the statute and code provisions cited under those causes of action do not confer property interests. The statute cited under Count II, Idaho Code § 50-314, provides cities with the power to "control and limit the traffic on streets, avenues and public places; regulate and control all encroachments upon and into all sidewalks, streets, avenues, and alleys in said city; remove all obstructions from the sidewalks, curbs, gutters and crosswalks at the expense of the person placing them there." The statute does not confer a property interest. Similarly, Eagle City Code §§ 8-2A-20 and 8-7-2, which set forth the standards for maintenance of property and require compliance with zoning permits, cited under Count III, also do not confer property interests like a common law dedication. Thus, regardless of the determination as to who held a property interest in Lot 35, Appellant's authority under the provisions listed in Counts II and III, including the power to proscribe penalties under its City Code would remain unchanged. Accordingly, Respondents respectfully request this Court to affirm the dismissal of Counts II and III of Appellants original Complaint.

B. The District Court Properly Concluded a Common Law Dedication Was Not Effectuated and Properly Awarded Summary Judgment to Respondents.

The second issue Appellant raises on appeal is that the District Court erred in granting summary judgment in favor of Respondent. The specific source of error, Appellant contends, is that the District Court concluded that a common law dedication was never effectuated between T.R. and the City.

As articulated by the District Court and Appellant, dedication is setting real property aside for the use or ownership of others. *Armand v. Opportunity Mgmt. Co.*, 141 Idaho 709, 714, 117 P.3d 123, 128 (2005). Land can either be dedicated to the public or to private persons. *Ponderosa Home Site Lot Owners v. Garfield Bay Resort, Inc. (Ponderosa I)*, 139 Idaho 699,

700, 85 P.3d 675, 676 (2004). Property may be dedicated to the public by the common law or by statute. *Id.* Appellant does not contend that T.R. made a dedication of an interest in Lot 35 by operation of statute, but via an oral common law dedication.

Common law dedications to the public must satisfy a two-part test. *See Sun Valley Land And Minerals, Inc.*, 138 Idaho 543, 548, 66 P.3d 798, 803 (2003). "The elements of a common law dedication are (1) an offer by the owner clearly and unequivocally indicating an intent to dedicate the land and (2) an acceptance of the offer." *Id.*; *Pullin v. Victor*, 103 Idaho 879, 881, 655 P.2d 86, 88 (Ct.App.1982).

1. An Offer Was Never Made with Clear and Unequivocal Intent to Dedicate Lot 35 to the Public.

The pleadings and materials on record are devoid of evidence that T.R. made an offer clearly and unequivocally indicating an intent to dedicate Lot 35 to the public. Interestingly, in its opening appellate brief, while claiming such an offer had been made, Appellant fails to identify what offer was made, by who, when, and where that information is located in the record. Because the November 26, 2002 city council meeting was recorded and transcribed, Appellant should be able to identify and articulate the specific offer made on behalf of T.R., but it has not. Such an omission is highly prejudicial to Respondents and provides this Court with no evidence nor documentation by which to consider Appellant's argument that an offer was made. I.A.R. 35(a)(6); *Woods v. Sanders*, 150 Idaho 53, 58, 244 P.3d 197, 202 (2010) (The Court may decline to review arguments that do not comply with the standard set for in I.A.R. 35(a)(6).).

Nevertheless, in its Memorandum in Support of Summary Judgment, Appellant stated that the record before the District Court showed "a clear verbal expression at a city council meeting of an express dedication of property for a parking lot to be available for public use. R. at 134. Noting "[t]his dedication is noted in the transcript of the public hearing, the official city

minutes, and the sworn affidavit of the landowner's authorized representative." *Id.* Still, Appellant pointed to no specific statement made by or on behalf of T.R. at the city council meeting offering to dedicate Lot 35 to the public. Rather, Appellant relied on the affidavit of a T.R. employee, Dan Torfin, to demonstrate that he had the requisite intent seventeen years prior when he spoke to the Eagle City Council. R. at 134-135. It should be noted that his deposition testimony, the Mr. Torfin testified that he did not recall if there were any discussions about a parking lot during the November 2002 public hearing. R. at 207. Reliance on such an affidavit fails to demonstrate an offer. Further, the intent to dedicate land must be clear and unequivocal at the time of the offer, not two decades after the offer was allegedly made. *See Sun Valley Land And Minerals, Inc.*, 138 Idaho 543, 548, 66 P.3d 798, 803 (2003).

When discussing the acceptance prong of a common law dedication in its Memorandum in Support of Summary Judgment, Appellant notes that a different representative of T.R., Dan Baker, stated "[w]e are providing additional public parking." R. at 139. This quote also fails to satisfy the offer prong of common law dedication. First, this is a quote from the minutes of the council meeting – not Mr. Baker himself. R. at 179. Second, such a statement does not provide clear and unequivocal intent that the representative meant to dedicate any land to the public. Even if it did, it is not clear and unequivocal what land the representative intended to dedicate. *Nesbitt v. Demasters*, 44 Idaho 143, 147, 255 P. 408, 410 (1927).

The description of the dedicated property interest must also be definite and certain. *Id.* In *Nesbitt*, the court explained the clarity requirement by posing the question: "Appellant claims a dedication by Walker, but dedication of what? To constitute a good common-law dedication, a definite and certain description of that which is proposed to be dedicated is necessary." *Id.* The Court similarly rejected an alleged plat dedication of "lake access" within a platted area adjacent

to a platted road because the alleged dedication language insufficiently described the property interest to be dedicated. *Ponderosa Homesite Lot Owners v. Garfield Bay Resort, Inc.* (*Ponderosa I*), 139 Idaho 699, 85 P.3d 675 (2004).

Despite Appellant's failure to identify the offer T.R. allegedly made to the City, the District Court attempted to find an offer at the city council meeting during which Appellant alleges such an offer was made. The District Court examined the following statement by Mr. Torfin at the November 2002 council meeting, recorded by transcript:

> We also presented information that the parking, there would be some – I'm going to call them nodules of parking that will be incorporated into the landscaping to provide guest parking. ***Or – or that we will – when we come in with the final plan, we'll have a plan that addresses the parking...*** We're proposing that this be a trailhead that provides some limited parking. There will also be parking on this collector road, which will be built to 36 feet back of curb, back of curb, out with meandering walks that run along here. But this will provide a point of access, a trailhead that will – that will lead people in this direction or to the river.
>
> With this concept, we are providing, in our minds, adequate access to those public spaces, which is the river and the public greenbelt. In addition, in a future phase, we do have the ability, when we get up to this pan where we interface with Mace Road to incorporate some additional parking at this end, and – for the public. And that's what this is for too is for the public as well, as well as on-street parking.

R. at 155; 287-288 (emphasis added). As noted by the District Court, there is simply no offer to dedicate land. At best, Mr. Torfin's statement indicates that T.R. was intending on addressing parking in a future plan. What he did offer was a few ideas as to what type of parking might be included in that future plan. Even if Mr. Torfin's statement was construed as an offer, it is not clear and unequivocal what land he intended to dedicate.

Because Appellant failed to articulate the verbal offer it alleged entitled the public to a property interest in Lot 35, the District Court went on to note that, in "March of 2003, Mr. Torfin submitted to the City, on behalf of T.R., a final design review application and a ***landscape plan*** that showed use of Lot 35, Block 24 as a parking lot, although nothing in the landscape plan

indicates it was intended for public use." R. at 288; *see also* R. at 147-149 (emphasis added). This demonstrates the Court drew the proper conclusions of law based on the facts presented as the record is devoid of any statement, much less offer, which describes potential public parking with any definiteness or certainty.

Thus, upon a thorough review of the evidence, and without Appellant's guidance, the Court properly concluded the first prong of a common law dedication was not met, as an offer with clear and unequivocal intent to dedicate Lot 35 to the City of Eagle for the public. As such, a common law dedication could not be effectuated and the District Court properly awarded summary judgment to Respondents.

2. The District Court Properly Considered the Recorded Plat.

In support of the fact that T.R. never made an offer to dedicate Lot 35 to Appellant, the final plat for Two Rivers Subdivision fails to record a dedication of Lot 35. R. at 255-257. The City Clerk signed the final plat for the Two Rivers Subdivision No. 8 on August 12, 2003. R. at 102. In addition to the absence of some kind of notation indicating a dedication of or easement on Lot 35, Note 9 on the plat states Lot 35 is designated as common landscape and private recreation lot that will be owned and maintained by the Two Rivers Subdivision No.8 Homeowners Association. R. 255-257.

Appellant appears to argue that the district improperly considered this plat when making its decision and that a recorded plat is not dispositive of a common law dedication. While Appellant is correct that a recorded plat is not necessarily dispositive when validating a conveyance, the recorded plat for Two Rivers Subdivision is here. "An owner's intent is clear and unequivocal where there are no conflicting statements or contradictory documents." *Rowley v. Ada Cty. Highway Dist.*, 156 Idaho 275, 281, 322 P.3d 1008, 1014 (2014).

Here, the final plat, which is required to depict all existing easements, Idaho Code §§ 50-1302, 50-1304(2), directly contradicts the unidentified and alleged verbal statement made by a representative of T.R. that Appellant contends offered to dedicate Lot 35 to the public. Accordingly, intent is not clear and unequivocal, if ever present, in this matter. Further, "when a written instrument is complete on its face and is unambiguous, extrinsic evidence of prior or contemporaneous representations or negotiations are inadmissible to contradict, vary, alter, add to, or detract from the instrument's terms." *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 211, 268 P.3d 1159, 1163 (2012) (internal quotation omitted).

In addition, following the November 26, 2006 city council meeting, the Eagle City Council issued its Findings of Fact and Conclusions of Law regarding T.R.'s proposed modification on December 17, 2002. R. at 227-254. That document does not contain any findings with regard to Lot 35, much less that a dedication was made regarding the same. *Id.* Accordingly, this document also contradicts the unidentified and alleged offer claimed by Appellant.

3. The District Court Properly Concluded That Common Law Dedication is Subject to the Statute of Frauds.

While the District Court discussed the interplay between the statute of frauds and common law dedication, it did not rely on the statute of frauds in awarding summary judgment to Respondents. Rather the District Court awarded summary judgment to the Respondents because it concluded that T.R. never made an offer that satisfied the first prong for common law dedication. Nonetheless, as a matter of law in order for an easement to survive it must comply with the recording statues. An easement is "the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner." *Tower Asset*

Sub Inc. v. Lawrence, 143 Idaho 710, 714, 152 P.3d 581, 585 (2007). Only a written instrument may create a valid express easement under the common-law and statute of frauds. *Id.*

C. The Respondents Are Entitled to an Award of Costs and an Award of Attorney Fees Under I.C. §§ 12-117 and 12-121.

Should Respondents prevail, they request an award of their costs, as provided by I.A.R. 40, and an award of attorney fees as allowed by I.A.R. 41, and as provided by I.C. §§ 12-117 and 12-121.

Idaho Code § 12-117 provides that in a civil matter involving a political subdivision and a person, as adverse parties, the court "shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law." I.C. § 12-117(1). For purposes of this statute, a city, such as Appellant, is a "political subdivision." I.C. § 12-117(4)(a). A corporation and an individual, such as Respondents, are a "person." I.C. § 12-117(c). This Court interpreted I.C. § 12-117 to require a fee award where a government entity acts without a reasonable factual or legal basis. *City of Osburn v. Randel*, 152 Idaho 906, 909, 277 P.3d 353, 356 (2012).

An award of attorney fees on appeal under I.C. § 12-121 is proper where the Court is left with the abiding belief that the appeal was brought or pursued frivolously, unreasonably, and without foundation. *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 828, 41 P.3d 242, 256 (2001). Where an appeal turns on a question of law, an award of attorney fees under I.C. § 12-121 is proper if the law is well-settled and the appellant has made no substantial showing that the District Court misapplied the law. *Id.* at 828. When the appeal disputes the trial court's factual findings, which are supported by substantial although conflicting evidence, the appeal is considered frivolous and an award of attorney fees is proper. *Id.*

Appellant's arguments on appeal are the same arguments it made to the District Court which generally lack a basis in fact. Appellant seeks a declaration that is has a property interest in Lot 35 via common law dedication but fails to offer any facts that demonstrate a common law dedication was possible. Specifically, Appellant fails to identify an offer. Because the Appellant failed to demonstrate facts that could support is claim, it also made no showing the District Court misapplied the law. Therefore, Respondents are entitled to an award of attorney fees on appeal under Idaho Code §§ 12-117 and 12-121.

IV. CONCLUSION

The decision and judgment of the District Court granting Respondents motion to dismiss and awarding summary judgment to Respondents should be affirmed. Respondents respectfully request the Court award attorney's fees and costs on appeal.

Respectfully submitted this 23rd day of December, 2019.

KELLY LAW, PLLC

By: /s./Michael E. Kelly
Michael E. Kelly, Of the Firm
Attorneys for Defendants/Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2019, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals, by the method indicated below, addressed as follows:

Joseph W. Borton
Borton-Lakey Law and Policy
141 E. Carlton Ave.
Meridian, ID 83642
Telephone: (208) 908-4415
Facsimile: (208) 493-4610
Attorney for Plaintiff/Appellant

✔ iCourt
joe@borton-lakey.com

/s./Tracy L. Siltman
Tracy L. Siltman