COURT OF APPEALS
DECISION
DATED AND FILED

August 7, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1601 **Cir. Ct. No. 2010CV345**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MARY A. ROSENTHAL,

PLAINTIFF-RESPONDENT,

V.

JAMES K. MCGRAW AND JODI MCGRAW,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed*.

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 BLANCHARD, P.J. This case involves claims of adverse possession and a boundary line dispute involving adjoining parcels of land. Following a bench trial, the circuit court denied the adverse possession claims. The court also issued an order that in effect corrected or reformed the language in

warranty deeds created in 1918, so that the property descriptions now conform to the intentions of the parties who created the deeds. The court concluded that the parties intended in 1918 that the boundary line between the parcels would run down the middle of a driveway that the circuit court found has been used, in its present location, since before the 1918 deeds were created. Also included in the 1918 deeds are complementary, express right-of-way easements on either side of the boundary line, one easement for each set of property owners.

¶2 The owners of the more northern parcel, James and Jodi McGraw, appeal the order on a variety of grounds. These include an argument that there was "no evidentiary basis" for the court to establish the boundary line and its associated express easements where it has, and therefore that the corrected or reformed deeds improperly shift ownership of land to the owner of the southern parcel, Mary Rosenthal. For the following reasons, we affirm.

BACKGROUND

¶3 The two parcels of land at issue are used predominantly for farming. In 1982, Mary Rosenthal and her husband (now deceased) purchased one of the parcels, which is approximately 120 acres. Adjacent to the Rosenthal parcel, to its north and east, runs County Highway H. Mostly to the north and west of Rosenthal's parcel lies the McGraw dairy farm, purchased by McGraw family members in 1960. The McGraw parcel now consists of approximately 345 acres and is owned by James McGraw.

¶4 This litigation began when Rosenthal sued James and Jodi McGraw, alleging that the McGraws had claimed an interest in her property adverse to her title and were interfering with her interest in real estate. Included in the McGraws' counterclaims were two for adverse possession under WIS. STAT.

§ 893.25 (2011-12).[1] The McGraws' counterclaim alleged twenty years of actual continuous and uninterrupted possession of land by the McGraws' predecessors in interest, up to a fence that runs south and east of the driveway, including land owned by Rosenthal's predecessors in interest. We will call the fence at issue here the driveway area fence. The McGraws' counterclaim also alleged adverse possession of a separate section of land in the southwest corner of the Rosenthal parcel, also adjoining the McGraw parcel, referred to by the parties as the "green pillar." This counterclaim also involves a fence, which we will call the "green pillar" fence.

¶5 Turning to the facts established at trial, the parties presented evidence to the court regarding three types of lines: (1) the center-line of a driveway generally running between the properties; (2) the metes and bounds descriptions of the boundary between the properties, with associated express easements; and (3) the two sets of fences.

¶6 From the time the Rosenthals acquired their property, the Rosenthal and McGraw families both used a common driveway providing each parcel with its sole vehicle access to and from what is now Highway H. The McGraws acknowledge that this driveway has been in use since 1897, predating the 1918 deeds that created the two parcels, which we now discuss.

¶7 On the same day in 1918, two sets of parties conveyed to Elmer Conley, by warranty deeds, the same interests in real estate. These deeds created, out of one parcel, the two parcels at issue here. The 1918 deeds contain metes and

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

bounds descriptions of the real estate conveyed, as well as express easements, described as rights of way.

¶8 Under the express easements contained in the 1918 deeds, the grantors conveyed to Conley a right of way over the following area:

> *1 rod*[2] *wide on the Southeasterly side* of a line beginning 14 chains 68 links South from the center quarter post of [an identified township section number]; running thence North 82 degrees East 25 chains 50 links; thence North 36 degrees East 10 chains 73 links to the highway[, now Iowa County H].

(Emphasis added; numerals substituted for spelled out numbers.) This describes an easement, which would eventually belong to the McGraws, running generally south and west from what is now Highway H to a point well past the current location of the Rosenthal house.

¶9 In the same deeds, the grantors reserved for themselves a right of way, which would eventually belong to Rosenthal, that is "*1 rod wide on the Northwesterly side* of the line last above described." (Emphasis added.) As discussed further below, this last phrase, "the line last above described," created controversy at trial regarding the length of the easement eventually conveyed to the Rosenthals. The dispute is in how to interpret "the line last above described." Under the interpretation advanced by the McGraws, the easement ultimately conveyed to the Rosenthals runs over just a portion of the boundary between the properties. Under the interpretation effectively adopted by the court, the

[2] A rod is 16.5 feet.

Rosenthal easement is the same, longer length as the first easement, the one first conveyed to Conley and eventually to the McGraws.

¶10 Details are not disputed regarding the histories of conveyances that led from the 1918 deeds to the current ownership rights of Rosenthal and the McGraws. More specifically, it is not disputed that both the metes and bounds descriptions of land, and the express easements, contained in the 1918 deeds described above were repeated in all subsequent documents conveying property interests passing down, eventually, to the parties here. Thus, Conley obtained what would eventually become the McGraws' property, which was land in fee simple to the north and west, together with the one-rod-right-of-way easement on the southeasterly side of the line described in the 1918 deed. The Rosenthals would, in 1982, come to own the adjoining land in fee simple to the south and east, together with the reserved easement described above, namely, the one-rod-right-of-way easement on the northwesterly side of at least a portion of the same line. For ease of reference, we generally follow the shorthand used by the parties in referring to the current ownership interests of the parties as being under, or according to, the 1918 deeds, skipping over references to the subsequent conveyances that were operative during this litigation.

¶11 The mutual driveway we have already referenced features prominently in the arguments of the parties and challenged decisions of the circuit court. Trial evidence regarding the mutual driveway included the following. As referenced above, it begins at Highway H and runs to the southwest, appearing to divide the northwesterly McGraw and southeasterly Rosenthal properties. However, trial testimony from surveyors established that, in fact, the existing driveway at times ran completely on the McGraw property and at times completely on the Rosenthal property, as those properties are described in the

metes and bounds descriptions of the 1918 deeds. In other words, according to the property descriptions in the 1918 deeds, the driveway did not center on the McGraw-Rosenthal boundary, but instead the driveway wove its way, to various degrees, over portions of the metes and bounds descriptions of each of the two properties.

¶12 As referenced above in connection with a counterclaim made by the McGraws, there was also evidence and argument at trial regarding the two fences. The driveway area fence has run for many years to the south and east of the driveway described above. The driveway area fence does not follow the metes and bounds property line between the properties stated in the 1918 deeds. The McGraws argued in the circuit court that, from at least 1960 to 1980, their predecessors in interest had consistently farmed down to the driveway area fence in a manner and under circumstances that allowed the McGraws to acquire title by adverse possession in all land up to the fence.

¶13 The "green pillar" fence runs north-south along the west side of the Rosenthal property, as defined by the metes and bounds description, to the southwest corner of the Rosenthal property. However, a "jog" in the "green pillar" fence causes it to deviate from the property line, into the Rosenthal property, creating the "green pillar" area. The McGraws argued in the circuit court that their predecessors in interest acquired the "green pillar" area by adverse possession through fencing and use of the area for grazing cattle from at least 1960 to 1980.

¶14 Another topic of trial testimony involved alleged errors or irregularities in land descriptions by surveyors before or at around the time the 1918 deeds were created. There was evidence that no survey of record

accompanied the descriptions in the 1918 deeds. There was also evidence that the drafter or drafters of the 1918 deeds may have described the boundary line and express easements based on inaccurate surveys, partly due to equipment limitations and partly due to technical errors that were common or standard in that era.

¶15 Following the four-day bench trial and post-trial briefing, the circuit court issued an order on February 20, 2012, which the court intended at that time to be a final order ("the February 2012 findings"). The McGraws moved for reconsideration of the February 2012 findings. Following briefing and extensive argument at a hearing held on May 1, 2012 ("the reconsideration hearing"), the court issued a written order dated June 25, 2012 ("the June 2012 order"), which incorporated the February 2012 findings and conclusions but amended it.

¶16 As the court explained during the course of the reconsideration hearing and in the June 2012 order, the court's amendments to the February 2012 findings included findings and conclusions regarding the intentions of the parties to the 1918 deeds with respect to the boundary line and express easements in the deeds. The court summarized key findings and conclusions as follows during the reconsideration hearing, in a passage that the court quoted in whole or in part two times in the June 2012 written order:

> The driveway becomes the property line. The ownership is consistent with the driveway…. North side is McGraw. South side is Rosenthal. That is recognition of the use of that property as long as there is a history of two owners. It appears to be consistent with what has been the history of that as long as there has been an owner on [the north] side and an owner on the south side, …. [S]ince there was some testimony as to the origins of the division and the sale off of lands which … ultimately became [the] Rosenthals[' land], if that land was divided at the time an access point was put in there[,] I'm satisfied that it overrules any of the adverse possession claims, any claim at all. That driveway

> has been there. It was a grant. It doesn't require anything more than that, in my opinion. That's the decision. I believe it would withstand scrutiny because it was land divided from a common owner.

¶17 In part based on these findings and conclusions, we construe the circuit court to have made decisions, by the time of the June 2012 order, that included the following: (1) the current driveway that runs roughly between the McGraw and Rosenthal properties has existed in at least approximately its current location since before the 1918 deeds were created; (2) it was intention of the parties to the 1918 deeds that the two parcels were to be divided by the centerline of the driveway, but errors in the 1918 deeds (and subsequent deeds mirroring the same errors) failed to reflect this; and (3) as to the complementary, express easements in the 1918 deeds, it was the intention of the parties to the deeds that the respective owners of the two parcels would each receive a right-of-way easement over the one-rod distance from the center line of the driveway extending toward the other party's property, again contrary to erroneous descriptions in the deeds.

¶18 The June 2012 order was not a final order, because it directed the parties to retain a surveyor to prepare a metes and bounds description of the corrected or reformed boundary line described above, which was to be reflected in documents attached to a final order. As the circuit court anticipated in its June 2012 order, the court entered the final order in May 2013, incorporating the June 2012 order, and modifying the boundaries between the parcels to follow the existing driveway, with attached legal descriptions.

¶19 Turning briefly to the "green pillar" area, the circuit court determined that "[t]here has not been an exclusive pattern of use in the green pillar

area." On this basis, the court rejected the McGraws' adverse possession counterclaim regarding that area.

¶20 We address additional findings of the court and pertinent facts as necessary to our discussion of the specific arguments made by the parties on appeal.

DISCUSSION

¶21 The McGraws contend that: (1) the court erred in rejecting their counterclaim that, before the Rosenthals purchased their property in 1982, the McGraws had already acquired title by adverse possession to lands north and west of the driveway area fence that runs along the northern edge, as well as a portion of the western edge (the "green pillar"), of Rosenthal's property; (2) there was "no evidentiary basis or legal authority" for the court to "transfer title to McGraws' land to Rosenthal" by correcting or reforming the deeds; (3) there was "no evidence or law supporting the trial court's modifications to, and relocation of, Rosenthal's express easement" by correcting or reforming the deeds; and (4) in correcting or reforming the deeds, the court granted to Rosenthal a prescriptive easement to which she was not entitled. If the McGraws intend to challenge other aspects of the final order in this case, which incorporated the June 2012 order, they fail to present developed legal arguments supporting their positions. Rosenthal responds with numerous arguments, which we reference as needed for our discussion below.

¶22 The McGraws' adverse possession claims are independent of the parties' dispute over the property line. As to the adverse possession claim involving property over which the driveway runs or adjacent to the driveway, the disputed area overlaps with the express easement under either party's view of the

facts and law applicable to that easement. As to the other adverse possession claim, regarding the "green pillar" area, the disputed property is adjacent to a section of the original property line that is undisputed. Accordingly, we address the McGraws' adverse possession claims first.

I. ADVERSE POSSESSION

¶23 The McGraws argue that the court erred in rejecting their claim that, before the Rosenthals purchased their property in 1982, between 1960 and 1980, the McGraws had acquired title by adverse possession to two separate areas of the Rosenthal property: (1) land that lies north of the driveway area fence, which as we have explained, generally ran south of the driveway; and (2) the "green pillar" area, west of the "green pillar" fence in the southwest corner of the Rosenthal property. However, we conclude that the McGraws fail to demonstrate that the circuit court committed error in failing to identify clear and positive evidence that a reasonably diligent landowner and the public would have been apprised that the McGraws claimed either disputed area as their own.

¶24 "In reviewing a circuit court's determination of adverse possession, we accept the circuit court's factual findings unless they are clearly erroneous. We review de novo whether those facts fulfill the legal standard for adverse possession." ***Steuck Living Trust v. Easley***, 2010 WI App 74, ¶11, 325 Wis. 2d 455, 785 N.W.2d 631 (citations omitted).

¶25 Real estate is possessed adversely only if "the person possessing it, in connection with his or her predecessors in interest, is in actual continued occupation under claim of title, exclusive of any other right," and "[o]nly to the extent that it is actually occupied." WIS. STAT. § 893.25(2)(a), (b). The property must be "protected by a substantial enclosure" or "usually cultivated or

improved." Sec. 893.25(2)(b). The adverse possession must be uninterrupted for twenty years. Sec. 893.25(1).

¶26 We explained the substantive standard and the burdens that a party making an adverse possession claim must carry in order to prevail in ***Steuck Living Trust*** as follows, with our emphasis now on an aspect of the law that we conclude is particularly pertinent here:

> In order to constitute adverse possession, "the use of the land must be open, notorious, visible, exclusive, hostile and continuous, such as would apprise a reasonably diligent landowner and the public that the possessor claims the land as his own." "Hostile" in this context does not mean a deliberate and unfriendly animus; rather, the law presumes the element of hostile intent if the other requirements of open, notorious, continuous, and exclusive use are satisfied. "Both ... the fact of possession and its real adverse character" must be sufficiently open and obvious to "apprize the true owner ... in the exercise of reasonable diligence of the fact and of an intention to usurp the possession of that which in law is his own...." *The size and nature of the disputed area are relevant in deciding if the use is sufficient to apprise the true owner of an adverse claim.*
>
> The party seeking to claim title by adverse possession bears the burden of proving the elements by clear and positive evidence. The evidence must be strictly construed against the claimant and all reasonable presumptions must be made in favor of the true owner.

Steuck Living Trust, 325 Wis. 2d 455, ¶¶14-15 (emphasis added) (citations omitted).

¶27 We first address the claim related to the driveway area fence. The area at issue is on the Rosenthal side of the driveway, north and west of the driveway area fence, which runs close to and at least roughly parallel to the driveway. The McGraws argue that the evidence at trial established that, beginning no later than 1960 and ending no earlier than 1980, their predecessors in

interest made "open, notorious, visible, hostile, exclusive and continuous use" of this area. Because the driveway area fence was located south and east of the driveway, the McGraws contend, the driveway and any land between the driveway and the fence became the McGraws' property when the fence became the property line between the parcels in 1980. This is because there was twenty years of adverse possession, regardless of the terms of the 1918 deeds.

¶28 Among her counter arguments, Rosenthal contends that the nature of the McGraw family's 1960-1980 use of the area just north and west of the driveway area fence cannot be construed as having been exclusive, because throughout the 1960s and 1970s the McGraws had an express easement running through this same area (whether the easement tracks the McGraws', or instead Rosenthal's, property-line argument), dating from the 1918 deeds. In making this argument, Rosenthal relies in part on the following principle of law contained in an Indiana appellate case: "An easement may not ripen into fee simple ownership, even after years of use." *See* ***Naderman v. Smith***, 512 N.E.2d 425, 431 (Ind. Ct. App. 1987). In other words, since the McGraws had an easement over at least some of this property, their use of it "could hardly be construed as hostile or adverse since they [had] the owner's consent to use through the grant of a permissive easement which runs with the land." *See* ***id.*** In reply, the McGraws do not attempt to refute this legal proposition. Instead, the McGraws contend that the rule does not apply here because they "are not arguing adverse possession based upon their [predecessors'] use of the express easement" for travel over the driveway, but instead based on the predecessors' farming activities.

¶29 We do not express a view on whether what may be a per se rule in Indiana, under authority that includes ***Naderman***, is or should be a per se rule under Wisconsin law. Instead, we affirm the circuit court based on its findings,

not undermined by the McGraws, under the formulation from ***Steuck Living Trust*** quoted above.

¶30 We begin by observing that, while we do not apply what appears to be a per se rule in ***Naderman***, it is highly pertinent to the adverse possession analysis that the predecessors in interest to both the McGraws and Rosenthal had express easements in the area over which the McGraws now claim adverse possession. The McGraws acknowledge that "parts of the driveway lie within the express easement." Moreover, there is no reasonable dispute that the record contained sufficient evidence to support the circuit court's implicit findings that the driveway, which the McGraws acknowledge dates from at least 1897, has existed in roughly its current location since 1918 and that is has long been used by owners on both sides of the driveway.[3] Thus, the "size and nature of the disputed area" was that of a shared use driveway and its shoulder that overlapped with express easements. *See* ***Steuck Living Trust***, 325 Wis. 2d 455, ¶14. This directly undermines the McGraws' assertion that there is "no evidence" to support Rosenthal's argument that their use of the driveway area lacked an "adverse character."

¶31 Separate from the McGraws' express easement over portions of the driveway, evidence in the record supports the circuit court's determination that the

[3] For example, surveyor engineer Keith Dalsing testified in part at trial that he reviewed an aerial photograph of the area taken in 1937, which shows a driveway generally separating what would become the Rosenthal and McGraw properties. This 1937 driveway was "relatively close" to the location of the current driveway. Visible on this 1937 photograph "is a possibility of two structures on [what would become] the Rosenthal property." In the same vein, farmer Jim Watkins testified that he has been familiar with the properties since he was growing up in the area, in the 1960's and '70's, and he has not noticed a change in the location of the driveway throughout that time.

use of the area north of the driveway area fence between 1960 and 1980 was not exclusive. In particular, James McGraw made concessions that undermine his adverse possession claim. Born in 1960, McGraw grew up on the McGraw farm and now holds title to it. McGraw testified in part that, "during the '60s and '70s," the owners of the property that was eventually purchased by the Rosenthals would "come up our driveway" to access their property in order to "put the hay up in the summer" and because "they had some cattle down there." Watkins testified that farmers in the early 1970s were "making hay" on the future Rosenthal property "probably a dozen times" per season. Together, the testimony of McGraw and Watkins provided a basis to conclude that, during the period for which the McGraws claim adverse possession, the driveway was frequently used on behalf of the Rosenthal's predecessors in interest and the McGraws failed to make exclusive use of it.

¶32 In addition, the circuit court found that

> the use of the area located north of the north fence line of the Rosenthal property and south of the driveway has been non-exclusive, both parties having utilized this area, and this factor of use by the legal or true owner during the requisite period of time defeats either parties' claim of adverse possession.

More specifically, the court found that the pasturing of cattle "on the existing portion and the shoulders of the driveway" over the years by farmers owning the McGraw parcel was only sporadic. This last finding would support a conclusion that the McGraws' predecessors in interest did not, as adverse possessors must, "usually cultivate[] and improve[]" the property. *See* WIS. STAT. § 893.25(2)(b).

¶33 In a similar vein, as noted above, the court made the determination that "as long as there has been an owner on [the north] side and an owner on the

south side" of the driveway, namely, since at least 1918, the south side owner used property on the south side of the driveway. The court said that this history "overrules any of the adverse possession claims, any claim at all. That driveway has been there."

¶34 As Rosenthal points out, the facts found by the circuit court here resemble in important respects the facts of ***Allie v. Russo***, 88 Wis. 2d 334, 276 N.W.2d 730 (1979). In ***Allie***, our supreme court reversed a circuit court determination in favor of the party claiming adverse possession of an area between her property and her neighbor's fence, which included a paved walkway that straddled the boundary line. ***Id.*** at 336-42. The requirement of exclusive use was defeated in part by shared use of the walkway. ***Id.*** at 347-49.

¶35 In sum, as to the claim related to the driveway area fence, there was evidence from which the circuit court could conclude that, beginning no later than 1918 and continuing through the period for which the McGraws claim adverse possession, the driveway was regularly used by the owners of both adjoining properties and ran over the same land or very close to the same land as express easements benefitting the adjoining properties. Putting aside the question of whether the easement held by the McGraws' predecessors in interest should, as a matter of law, prohibit an adverse possession claim under the rule stated in ***Naderman***, the McGraws fail to demonstrate clear error by the circuit court in its factual findings. Moreover, the McGraws fail to show that the court misapplied those findings in concluding that the McGraws did not present clear and positive evidence that the use of the property by the McGraws' predecessors in interest was exclusive, in light of the history of uses of the driveway and the associated properties found by the circuit court and the two express easements running through this area.

¶36 Having addressed the circuit court's rejection of the McGraws' adverse possession claims regarding the land north of the driveway area fence, we turn to their claim regarding the "green pillar" area. The McGraws' argument regarding this section of land is difficult to discern from their briefing. Although they define the term "green pillar" in the facts section of their principal brief, the McGraws inexplicably fail to refer to the "green pillar" by that term at *any* point in their arguments. Instead, the McGraws make brief reference to the "west boundary of the Rosenthal property" in apparently arguing that the circuit court failed to recognize that the only evidence before the court was that they used this portion of the Rosenthal property openly, notoriously, and exclusively from 1960 to at least 1980. Moreover, the McGraws' reply brief does not develop the issue further.

¶37 In addition to being difficult to discern and very thinly developed, the McGraws make only minimal references to their use of the "green pillar" area during the relevant time period. The McGraws explain that James McGraw testified

> that the fence along the west boundary of the Rosenthal property made a jog around a ditch on the Rosenthal property, that the fence had always made that jog, and that the McGraws pastured cattle in that area of their property every fall after crops were harvested, and that the cattle would graze and eat acorns in the ditch area.

However, the McGraws do not address and refute the circuit court's finding that "[t]here has not been an exclusive pattern of use in the green pillar area."

¶38 We acknowledge that the "green pillar" adverse possession issue may present a close issue. However, in the end we apply the rule that the circuit court's finding of non-exclusive use "must stand" unless it is "against the great

weight and clear preponderance of the evidence." *See* ***Allie***, 88 Wis. 2d 334, 347. The McGraws fail to explain in clear terms how the court's finding is against the great weight and clear preponderance of the evidence. The issue all but disappears in the briefing.

II. BASIS FOR CORRECTION OR REFORMATION OF DEEDS

¶39 The McGraws assert that the circuit court lacked either "legal authority" or an "evidentiary basis" to "move the north boundary of [Rosenthal's] lands to the center of" the driveway.

¶40 Rosenthal responds that the court had a sufficient factual basis to establish the property boundary along the middle of the driveway, with the express easements running parallel to it, pursuant to WIS. STAT. § 847.07, which allows courts to correct descriptions in land conveyances. Further, Rosenthal points to an additional, equitable, source of authority for the court's action. Rosenthal argues that, given ambiguity in the wording of the 1918 deeds as compared with the history of the property proven at trial, the decision correcting the 1918 deeds is further supported by the court's equitable authority to reform a description in a conveyance, supplemental to the court's statutory authority to correct a deed.

¶41 For the reasons that follow, we resolve this issue in favor of Rosenthal.

¶42 A court "may make an order correcting the description in [a] conveyance" where "[t]he description is ambiguous and does not clearly or fully describe the premises intended to be conveyed." WIS. STAT. § 847.07(1)(b).[4]

[4] WISCONSIN STAT. § 847.07 provides in pertinent part:

(continued)

Further, this court has used the following terms to describe a circuit court's authority of equitable reformation, as well as our standard of review:

> When the location of an easement is not defined, the court has the inherent power to affirmatively and specifically determine its location, after considering the rights and interests of both parties. We review equitable remedies for erroneous exercise of discretion. The circuit court properly exercises its discretion if it applies the appropriate law and the record shows there is a reasonable factual basis for its decision.

Spencer v. Kosir, 2007 WI App 135, ¶13, 301 Wis. 2d 521, 733 N.W.2d 921 (citations omitted). We take Rosenthal to argue that the court effectively concluded that the express easements were "ambiguous" under § 847.07(1)(b) or "not defined," as that term is used in ***Spencer***, in the sense that the easements were ambiguously expressed in light of the court's findings regarding the history of the driveway and the properties.

> **(1)** The circuit court of any county in which a conveyance of real estate has been recorded may make an order correcting the description in the conveyance on proof being made to the satisfaction of the court that any of the following applies:
>
> (a) The conveyance contains an erroneous description, not intended by the parties to the conveyance.
>
> (b) The description is ambiguous and does not clearly or fully describe the premises intended to be conveyed.
>
> ….
>
> **(2)** This section does not prevent an action for the reformation of any conveyance, and if in any doubt the court shall direct the action to be brought.

¶43 We pause to acknowledge that the circuit court did not explicitly refer to its statutory authority to correct deeds, nor to its equitable authority to reform them, in its February 2012 findings, during the course of the reconsideration hearing, in its June 2012 order, or in its final order. However, either remedy matches what the court stated during the reconsideration hearing, in its June 2012 order, and in its final order. And, the McGraws do not provide us with another reasonable way to construe the most pertinent of the court's statements in the reconsideration hearing, the June 2012 order, and its final order. As summarized above, the court explained that the center of the driveway was the intended property line dividing the McGraw and Rosenthal's parcels, because the property line was created as part of "a grant" made at the time when "land [was] divided from a common owner," meaning in 1918. The court stated that its remedy produces a result "consistent with what has been the history of that as long as there has been an owner on [the north] side and an owner on the south side," again, since 1918.

¶44 With that clarification, we first address the McGraws' assertion that the court lacked "legal authority" to correct or reform the deeds. This argument is not well developed. It appears to involve the fact, to which we have just referred, that during the proceedings below there was apparently no explicit discussion by the parties or the court of WIS. STAT. § 847.07 or the equitable authority to reform deeds. However, whatever the McGraws precisely intend to argue along these lines, they fail to explain why we should not apply the well-established rule that we may affirm a correct circuit court decision for reasons other than those explicitly relied upon by the circuit court. *See* ***Farmers Auto. Ins. Ass'n v. Union Pac. Ry. Co.***, 2008 WI App 116, ¶34, 313 Wis. 2d 93, 756 N.W.2d 461.

¶45 If the McGraws mean to argue that they lacked sufficient notice and opportunity to be heard on all pertinent legal and factual issues, throughout the pretrial, trial, and post-trial proceedings, they do not support such an argument. Our own review of the record suggests that the court provided ample opportunities for the parties to be heard and present evidence on all issues either party sought to raise at any point. Moreover, in their reply brief on appeal, the McGraws advance only a substantive legal argument on this issue, which we address immediately below. The McGraws do not point to any factual or legal topic that they argue they would have developed differently in the circuit court if the court had expressly referred to correction and reformation as potential remedies. In sum, the argument the McGraws intend to make regarding "legal authority" is unclear, but in any case they fail to support their assertion that the court could not use a remedy of this type based on the evidence presented and arguments made by the parties.

¶46 Turning to the McGraws' argument that the court failed to provide a legally sufficient factual basis for its decision to correct or reform the deeds, the McGraws rely on ***Chandelle Enterprises, LLC v. XLNT Dairy Farm, Inc.***, 2005 WI App 110, 282 Wis. 2d 806, 699 N.W.2d 241. However, that case is entirely distinguishable from this case on its facts.

¶47 In ***Chandelle***, this court held that the circuit court erred in declaring that a fence line formed the boundary between adjoining parcels when a survey demonstrated that the fence line did not follow the boundary set by an unambiguous metes and bounds description reflected in a deed. ***Id.***, ¶¶1-3, 5-6, 11-12, 21. In ***Chandelle***, the deed's metes and bounds description was not "'uncertain and doubtful,'" and therefore extrinsic evidence was "'not competent'" to show an intent contrary to that stated, or to show the parties' acquiescence "'in a wrong boundary.'" *See* ***id.***, ¶¶11-12 (quoted sources omitted).

¶48 Here, in contrast to the facts of ***Chandelle***, the circuit court credited testimony supporting the inference that the deeds' descriptions were uncertain and doubtful and that the parties to the 1918 deed intended to make a different instrument. This testimony included that of surveyor Dalsing, who explained that surveyors customarily use the location of a driveway as "an indication of where" the parties to a deed "may have intended the easement to go." That is, surveyors might look to the existence of a driveway to resolve ambiguity regarding the scope of an easement expressed in a deed.

¶49 The court also heard testimony and saw documentary evidence regarding the existence of a bridge, which forms a part of the driveway, that spans a creek. There was testimony that this bridge is "quite old." The existence of the old bridge supported the court's finding that there had been, since 1918, a fixed, shared-use boundary with complementary easements, along the path of the driveway, and not, as the McGraws' would have it, a boundary line that wove from one side of the driveway to the other. Given this testimony, the only authority cited by the McGraws on this issue does not apply here.

¶50 We observe that correction or reformation of the deeds may not have been the only path the circuit court could have reasonably followed in resolving the competing factual and legal arguments presented by the parties. However, the court was presented with apparently flawed metes and bounds descriptions of complementary, express easements, along the boundary line between the parcels, where the easements do not, in their detail, follow the physical driveway to which the parties intended to tie the easements in 1918. In response, the court fashioned a resolution that made use of the evidence presented by the parties, based on a reasonable interpretation of the intentions of the parties in 1918. The court

appropriately exercised its discretion, because it reached this decision based on the facts adduced on the record and in accordance with its lawful authority.

III. BASIS FOR MODIFICATIONS OR RELOCATION OF ROSENTHAL'S EXPRESS EASEMENT

¶51 In an argument closely related to the last, the McGraws contend that the testimony at trial established that Rosenthal has an express easement over lands generally lying north of the fence and south of the driveway, and "[t]here was no evidence or law supporting the trial court's modifications to, and relocation, of Rosenthal's express easement" to run along the north side of the driveway.

¶52 It is not clear from the briefing, but this argument appears to be largely premised on the inaccurate notion that the court in some sense "enlarged the express easement for Rosenthal." As explained above, this is not the effect of the court's June 2012 order, as incorporated into its final May 2013 order. Instead of creating an enlarged or new easement for each party, the court made a determination that the complementary, express easements created in 1918, expressed in the same language in subsequent conveyances, ran along each side of the driveway, along the same paths that the driveway has followed since before 1918.

¶53 The McGraws challenge the circuit court's implied finding that the easement ultimately conveyed to the Rosenthals was ambiguously expressed in the 1918 deeds. This argument involves the phrase "the line last above described" used in the 1918 deed, a topic referenced above. Under the approach taken by the court, Rosenthal's express easement could be read as being the same length as the easement conveyed to Conley that ended up belonging to the McGraws. The

McGraws primarily point to the opinions of two surveyors to the effect that, by the conventions used by surveyors, the language in the 1918 deeds to describe Rosenthal's easement defined an easement that ends just past the bridge over the stream, and does not travel the same length as the easement eventually conveyed to the McGraws.

¶54 However, the McGraws fail to persuade us that the circuit court, which specifically directed the parties' attention to this issue, misunderstood the evidence or misapplied the law in determining the intent of the parties in 1918—not the reading of two surveyors today—regarding the Rosenthal easement location as compared with the language used in the 1918 deeds. During the course of trial, the court advised the parties that it would be "listening" for evidence on the following topic:

> At the time that the properties were divided[, through the 1918 deeds,] was there a right-of-way or easement or some right of passage reserved, or was that created later as a use compatible with what the parcel was being used for? … When was this [set of easements] created? What was the purpose of its creation? Was there anything said or done at the time of the division of the properties?

The court ultimately concluded that the purpose of the easements was to provide right-of-way access of the owners on both sides of the pre-existing driveway, the center of which would divide the properties.

¶55 Shortly after the court posed these questions, surveyor Dalsing gave testimony referenced above, in which he acknowledged that deeds typically do not reference driveways as such, but the appearance of a driveway can be "an indication of where someone may have intended the easement to go."

¶56 Moreover, the McGraws do not present a developed, persuasive argument that, as a matter of law, the only way for the parties to have reasonably read the language used in the 1918 deeds to describe the Rosenthal easement is the way the McGraws read it. As summarized above, the sellers reserved the right of way on the northwest side of "the line last above described." One reading of the deeds, the one the McGraws advocate, is that "the line last above described" must be a shorter segment toward the north end of the boundary line. However, the McGraws fail to explain why the deeds could not also have been reasonably interpreted by the parties to mean that "the line last above described" was the longer segment from the highway to the western end of the boundary line.

IV. PRESCRIPTIVE EASEMENT

¶57 The McGraws argue that the court erred in granting to Rosenthal a prescriptive easement amounting to "full legal title up to the center of the driveway." It is true that portions of the February 2012 findings spoke in terms of prescriptive easement. However, as explained above, we interpret the final May 2013 order, which incorporated the June 2012 order, to grant Rosenthal, in the McGraws' phrase, "full legal title up to the center of the driveway," based on the correction or reformation of the 1918 deeds, not through prescriptive easement. Therefore, these arguments of the McGraws referencing prescriptive easement aim at the wrong target. If the McGraws intend to challenge other aspects of the final order as being based on a flawed finding of prescriptive easement, their argument is entirely unclear. For this reason we do not further address these references in the briefing. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

CONCLUSION

¶58 For these reasons, we affirm the order of the circuit court.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.