COURT OF APPEALS
DECISION
DATED AND FILED

September 3, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 98-0845-FT

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

BRODHEAD TRAP CLUB, INC., A WISCONSIN CORPORATION,

PLAINTIFF-RESPONDENT,

V.

ROSE M. HEATH,

DEFENDANT-APPELLANT,

CLAIRE VESTERDAHL,

DEFENDANT.

APPEAL from a judgment of the circuit court for Green County: WILLIAM D. JOHNSTON, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM.[1] Rose Heath appeals a summary judgment which granted the Brodhead Trap Club, Inc. (Brodhead) an injunction requiring Heath to remove certain improvements from an area of her property and to refrain from placing additional improvements or personal property in the area, and from allowing persons or animals to be present within the area, pursuant to an easement which Brodhead has held since 1964. The easement, set forth in recorded warranty deeds, provides that landowners adjoining Brodhead's property grant Brodhead and its successors-in-interest the right "to enter upon, drop targets and shots, recover targets in a reasonable and expected distance in the area lying North and adjacent to all traps installed on the premises conveyed by the attached deed."

Heath purchased land north and west of Brodhead's property in 1997, and initiated a number of improvements in an area within range of the shots fired on Brodhead's property, including the construction of two residences, an animal barn and a driveway. After informal negotiations failed, Brodhead filed suit and the parties filed opposing motions for summary judgment. Heath claimed that Brodhead's easement was invalid under § 706.02(1)(b), STATS., because her deed did not describe the subservient estate with reasonable certainty. *See* ***Wiegand v. Gissal***, 28 Wis.2d 488, 492, 137 N.W.2d 412, 414 (1965). Alternatively, she disputed the easement's boundaries and argued that it did not prohibit the presence of people, animals or personal property within the area, but rather would require her to accept any risk of injury which her actions might entail. For the reasons discussed below, we disagree, and affirm the decision of the circuit court.

[1] This is an expedited appeal under RULE 809.17, STATS.

DISCUSSION

Standard of Review.

It is well established that this court applies the same summary judgment methodology as that employed by the circuit court. Section 802.08, STATS.; ***State v. Dunn***, 213 Wis.2d 363, 368, 570 N.W.2d 614, 616 (Ct. App. 1997). We first examine the complaint to determine whether it states a claim, and then review the answer to determine whether it joins issue. ***Id.*** If we conclude that the pleadings are sufficient to join an issue of law or fact, we examine the moving party's affidavits to determine whether they establish a *prima facie* case for summary judgment. ***Id.*** at 368, 570 N.W.2d at 616-17. If they do, we look to the opposing party's affidavits to determine whether there are any material facts in dispute which require a trial. ***Id.*** at 368, 570 N.W.2d at 617.

When the parties file cross-motions for summary judgment and agree that no material facts are in dispute, summary judgment on the legal significance of those facts is appropriate. ***Hussey v. Outagamie County***, 201 Wis.2d 14, 18, 548 N.W.2d 848, 850 (Ct. App. 1996). Here, Brodhead stated a proper claim for injunctive relief based on its easement, or, in the alternative, by prescription, and Heath raised proper objections to the validity of the easement or prescription. The parties then filed a joint stipulation of facts. The only issues before us, therefore, are whether the facts presented establish, as a matter of law, the location of the easement and the scope of its terms.

Certainty of the Description.

In order to be legally sufficient, the written instrument creating an easement must identify the land to which the easement applies.

Section 706.02(1)(b), STATS. The servient estate needs to be "described to a reasonable certainty" for the easement to be enforceable. ***Zapuchlak v. Hucal***, 82 Wis.2d 184, 191-92, 262 N.W.2d 514, 518 (1978). The common law establishes the maxim "[t]hat is certain which can be made certain." ***Stuesser v. Ebel***, 19 Wis.2d 591, 594, 120 N.W.2d 679, 681 (1963) (citation omitted). Reasonable certainty about the land subject to an easement may therefore be derived from extrinsic evidence when the written instrument refers to facts or circumstances known to the parties which make it possible to ascertain a specific boundary. ***Kuester v. Rowlands***, 250 Wis. 277, 279, 26 N.W.2d 639, 640 (1947).

The recorded deed at issue here refers to the "expected distance" in which shots and targets might drop. Brodhead presented extrinsic evidence delineating the expected drop area based upon the Amateur Trapshooting Association's (ATA) standards for determining distances and angles for the sport. The standards were in effect when the easement was created, and have remained uniform to the time of the present controversy. Heath presented no conflicting standards for determining the trap range, and in fact stipulated to the accuracy of Brodhead's expert's statement. She instead argued that the deed did not supply a sufficient link to ATA standards to allow reference to that extrinsic evidence. However, the materials presented by the plaintiff established that the ATA standards were known to the parties and formed the basis for the "expected distance" language. We therefore conclude that the use of extrinsic evidence was appropriate and that the ATA standards established the identity of the land subject to the easement with sufficient certainty to be enforceable.

Interference With Enjoyment.

The owner of a servient estate "may make all proper use of the land, including the right to make changes in or upon it, but … may not unreasonably interfere with the use of the easement holder." ***Figliuzzi v. Carcajou Shooting Club of Lake Koshkonong***, 184 Wis.2d 572, 588, 516 N.W.2d 410, 416 (1994). Rather, he or she must "protect the easement holder's right to use the easement for the purpose for which it was created." ***Id.*** at 588, 516 N.W.2d at 417.

Heath was informed of the easement before she purchased the land and began the construction of several improvements within the easement area. She contends that nothing in the language of the easement prohibited her activities, and complains that enjoining the presence of persons or animals within the trap zone would cut off her access to a large part of her land. We agree with the circuit court's conclusion, however, that the presence of people, animals and buildings within the trap zone would unreasonably interfere with Brodhead's right to use the easement for the purpose it was created. *See* ***Figliuzzi***, 184 Wis.2d at 590, 516 N.W.2d at 417 (citing the increased risk of inadvertently shooting a person in support of an injunction against building condominiums in an area subject to a hunting easement). Regardless of who would bear ultimate responsibility for any injury which might occur, it is disingenuous to suggest that a trap shooter could reasonably enjoy shooting into an inhabited area.

Because Heath's improvements unreasonably interfered with an easement of which she had notice, we conclude that the circuit court properly ordered her to remove the improvements and keep people and animals out of the area. In light of our decision, we need not address the circuit court's alternate conclusion that Brodhead had established an easement by prescription.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)5., STATS.