COURT OF APPEALS
DECISION
DATED AND FILED

July 18, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3226

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

SUSAN K. KAMPINEN,

PLAINTIFF-RESPONDENT,

v.

DONALD C. BIERMAN AND BONNIE MAE BIERMAN,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Vilas County: JAMES B. MOHR, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Donald and Bonnie Mae Bierman appeal a summary judgment declaring that an easement encumbers their property in favor of the adjacent landowner, Susan Kampinen. The Biermans argue that the trial

court erred because the easement is inadequately described in Kampinen's deed and does not appear in their chain of title. We agree and reverse the judgment.

¶2 The facts are undisputed.[1] Maria Kangas died in 1968 and left an undivided one-quarter interest in her real estate to the following heirs: Marie Rotter, Violet Marshall, Donald Kangas and Katherine Kampinen. These four individuals partitioned the land into eight lots by exchanging quitclaim deeds. Each received a lake lot and a back lot.

¶3 Susan Kampinen subsequently obtained a quitclaim deed to a back lot and a lake lot that included the following language:

> Together with an easement for access purposes from State Highway 17 southerly over the existing driveway located on the back lot partitioned and conveyed to Marie Rotter and said easement to extend easterly over the N. 20 feet of the frontage lot partitioned and conveyed to Marie Rotter to the front lot above described of grantee.

This language, apparently first appearing in Kampinen's deed, purports to grant her an easement across the back of Rotter's lake lot.

¶4 The quitclaim deed conveying Rotter her two lots makes no mention of any reservation of the easement. Rotter, through her guardian, conveyed without warranty her two lots to the Biermans. The deed to the Biermans did not mention the easement, and the Biermans had no actual notice of any claimed easement.

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[1] The briefs' statements of fact and record citations are sketchy at best. *See* WIS. STAT. RULE § 809.19(1). Nonetheless, propositions in briefs are taken as confessed if unrefuted by the opposing party. *See* ***Charolais Breeding Ranches v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶5 Kampinen initiated this action, contending that the Biermans wrongfully interfered with the use of her easement by blocking a driveway and depriving her of the use of her land. It is undisputed that the Biermans' property contained no visual clues to alert them to Kampinen's claimed easement, which would pass through undeveloped lowlands. Kampinen maintained that the easement was described in her deed and therefore was within the chain of title as defined in WIS. STAT. § 706.09(4). The trial court agreed and entered summary judgment in her favor. This appeal followed.

¶6 On review of a summary judgment, we independently apply the methodology set forth in WIS. STAT. § 802.08(2). *See* ***Wegner v. Heritage Mut. Ins. Co.***, 173 Wis. 2d 118, 123, 496 N.W.2d 140 (Ct. App. 1992). Summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* ***id.*** Because the issues here involve the application of statutes to undisputed facts, all are questions of law subject to de novo review. *See* ***Rock Lake Estates Unit Owners Ass'n v. Lake Mills***, 195 Wis. 2d 348, 355, 536 N.W.2d 415 (Ct. App. 1995).

¶7 The Biermans argue that Kampinen's deed, purporting to convey an easement across their lake lot, was invalid because it failed to adequately describe the easement as required by WIS. STAT. § 706.02(1), the statute of frauds. We agree. An easement is an interest in real estate and is subject to the statute of frauds. *See* ***Rock Lake***, 195 Wis. 2d at 373 n.15. The statute of frauds provides that a real estate transaction is not valid unless evidenced by a written instrument that identifies the parties, the land and the interest conveyed. *See* WIS. STAT. § 706.02(1).

¶8 To comply with the statute of frauds, a deed must identify the land conveyed with "reasonable certainty." *See* ***Zapuchlak v. Hucal***, 82 Wis. 2d 184, 191, 262 N.W.2d 514 (1978). Extrinsic evidence used to identify land must be appropriately referenced. *See* ***Wadsworth v. Moe,*** 53 Wis. 2d 620, 624, 193 N.W.2d 645 (1972). For example, in ***Stuesser v. Ebel***, 19 Wis. 2d 591, 594, 120 N.W.2d 679 (1963), our supreme court held that the following description is "per se" indefinite: "the real estate owned by the Sellers and located in the Town of Oak Grove, now known as the 'Dobie Inn' and used in the business of the Sellers." The court recognized that such descriptions "have been construed to be sufficient when it is shown that the seller owned all the property and no other property" in the locality described. ***Id.*** Because only a part of two of the seller's lots was to be sold, the court deemed the description inadequate. *See* ***id.*** at 595.

¶9 Here, the legal description referenced lots partitioned and conveyed to Marie Rotter. The record discloses that Rotter was initially deeded a one-quarter undivided interest in a larger parcel and that two lots were later partitioned and conveyed to Rotter. We conclude that the reference to Rotter's deed and the terms "back lot" and "frontage lot" were not sufficiently definite to adequately describe the location of the easement. The description assumes that the only deed to Rotter was a partition deed and the lot that bordered the lake was a "frontage" lot. The deed itself provides no basis for these assumptions. Accordingly, the description is inadequate to comply with WIS. STAT. § 706.02(1).

¶10 In any event, the Biermans were purchasers for value without notice under WIS. STAT. § 706.09(4)[2] and thereby took title free of Kampinen's claim.

[2] WISCONSIN STAT. § 706.09, entitled "Notice of conveyance from the record," provides:

(continued)

(1) WHEN CONVEYANCE IS FREE OF PRIOR ADVERSE CLAIM. A purchaser for a valuable consideration, without notice as defined in sub. (2), and the purchaser's successors in interest, shall take and hold the estate or interest purported to be conveyed to such purchaser free of any claim adverse to or inconsistent with such estate or interest, if such adverse claim is dependent for its validity or priority upon:

….

(b) Conveyance outside chain of title not identified by definite reference. Any conveyance, transaction or event not appearing of record in the chain of title to the real estate affected, unless such conveyance, transaction or event is identified by definite reference in an instrument of record in such chain. No reference shall be definite which fails to specify, by direct reference to a particular place in the public land record, or, by positive statement, the nature and scope of the prior outstanding interest created or affected by such conveyance, transaction or event, the identity of the original or subsequent owner or holder of such interest, the real estate affected, and the approximate date of such conveyance, transaction or event.

….

(2) NOTICE OF PRIOR CLAIM. A purchaser has notice of a prior outstanding claim or interest, within the meaning of this section wherever, at the time such purchaser's interest arises in law or equity:

(a) *Affirmative notice*. Such purchaser has affirmative notice apart from the record of the existence of such prior outstanding claim, including notice, actual or constructive, arising from use or occupancy of the real estate by any person at the time such purchaser's interest therein arises, whether or not such use or occupancy is exclusive; but no constructive notice shall be deemed to arise from use or occupancy unless due and diligent inquiry of persons using or occupying such real estate would, under the circumstances, reasonably have disclosed such prior outstanding interest; nor unless such use or occupancy is actual, visible, open and notorious; or

(b) *Notice of record within 30 years*. There appears of record in the chain of title of the real estate affected, within 30 years and prior to the time at which the interest of such purchaser arises in law or equity, an instrument affording affirmative and express notice of such prior outstanding interest conforming to the requirements of definiteness of sub. (1) (b); or

….

(4) CHAIN OF TITLE: DEFINITION. The term "chain of title" as used in this section includes instruments, actions and proceedings discoverable by reasonable search of the public records and indices affecting real estate in the offices of the register of deeds and in probate and of clerks of courts of the counties in which the real estate is located; a tract index shall be deemed an index where the same is publicly maintained.

Under WIS. STAT. § 706.09(1)(b), a purchaser for value without notice takes title free of an adverse claim dependant on any conveyance not appearing of record in the chain of title, "unless such conveyance, transaction or event is identified by definite reference in an instrument of record in such chain." We are satisfied that Kampinen's deed is outside the Biermans' chain of title, because the Biermans did not take title from Kampinen and mention of the easement was not made in the Biermans' deed from Rotter or in earlier deeds to Rotter or previous grantors.

¶11 Also, Kampinen's deed does not constitute a definite reference.

> No reference shall be definite which fails to specify, by direct reference to a particular place in the public land record, or, by positive statement, the nature and scope of the prior outstanding interest created … the identity of the original or subsequent owner or holder of such interest, the real estate affected, and the approximate date of such conveyance, transaction or event.

WIS. STAT. § 706.09(1)(b). Kampinen's deed failed to make a direct reference to sufficient particulars, such as the location in the public land record or the date of Rotter's deed, to amount to a definite reference within the meaning of § 706.09(1)(b). As a result, we conclude that the easement is not "identified by definite reference in an instrument of record in such chain." ***Id.***

¶12 Accordingly, we conclude that Kampinen's deed's reference to Rotter's deed is not sufficiently definite to allow the easement to be "discoverable by reasonable search of the public records and indices affecting real estate in the offices of the register of deeds …." *See* WIS. STAT. § 706.09(4). Because the legal description was inadequate, Kampinen's deed did not afford "affirmative and express notice" of her claimed interest. *See* WIS. STAT. § 706.09(2)(b). Also, it is undisputed that there was no actual or visible use of the easement. *See* WIS. STAT.

§ 706.09(2)(a). Accordingly, the Biermans are purchasers for value without notice and take title free of Kampinen's adverse claim based on her deed.[3]

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[3] Because the parties do not raise other potential bases for granting an easement, we do not address them.