COURT OF APPEALS
DECISION
DATED AND FILED

May 1, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2016AP2182 **Cir. Ct. No. 2014CV190**

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

BRYAN C. ELLERBROCK AND LILA M. ELLERBROCK,

PLAINTIFFS-RESPONDENTS,

V.

JUSTIN M. VEESER AND JANEL M. VEESER,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Door County: D. T. EHLERS, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. The parties dispute whether Justin and Janel Veeser are entitled to use certain platted roads in Door County for access to a

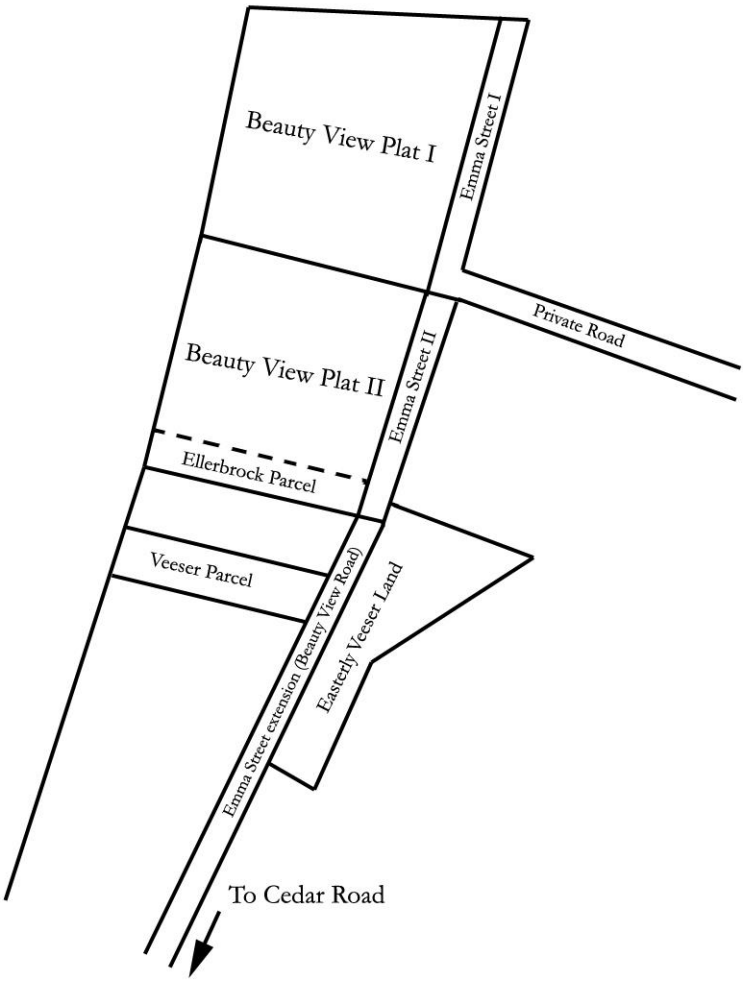
portion of their property located outside the plat. We agree with the circuit court's conclusion that neither a decades-old court judgment resolving a property dispute involving the Veesers' predecessors in interest nor relevant plat documents establish the Veesers' right to use the platted roads to access their parcel. Accordingly, we affirm.

BACKGROUND

¶2 The Veesers own real property in Door County, Wisconsin. One portion of their property lies along Green Bay's shoreline; this portion is known as the "Veeser Shoreline Land." Another, larger portion lies to the east, across Beauty View Road; this portion is known as the "Easterly Veeser Land."[1] The plaintiffs in this case, Bryan and Lila Ellerbrock, own a life estate in the shoreline property three lots to the north of the Veeser Shoreline Land. The northwest corner of the Easterly Veeser Land lies across Beauty View Road, directly opposite the Ellerbrocks' parcel, as shown below:[2]

[1] The Veeser Shoreline Land and the Easterly Veeser Land were combined in 2002 to form one parcel for zoning and tax purposes. This combination has no impact on our present analysis. The Veesers' ingress and egress rights concerning the Veeser Shoreline Land are not at issue in this appeal.

[2] The illustration was prepared by this court and is based on an exhibit in the appellate record. It is intended as a reference aid for purposes of this opinion only.



¶3 The original Beauty View plat ("Beauty View Plat I") to the north of the Ellerbrocks' property was recorded in 1931. The plat map establishes a "private road" running west from State Highway 57. The private road terminates and becomes "Emma Street," which runs north along the eastern edge of several platted lots. The Beauty View Plat I map states the private road and Emma Street are together a "private road for use of property owners." Similarly, the Owners' Certificate for Beauty View Plat I "dedicate[s] to the use of 'Property Owners' for street purposes the 40 foot strip leading from State Highway # 57 and the 40 foot strip designated as 'Emma Street' on the plat."

¶4 The second Beauty View plat ("Beauty View Plat II") was recorded in 1932. The plat established lots directly to the south of those established by Beauty View Plat I. It extended Emma Street to the south of Beauty View Plat I, abutting the eastern boundaries of the new lots. The Owners' Certificate for Beauty View Plat II "dedicate[s] to the use of Property Owners for street purposes the 40 foot strip designated as 'Emma Street' on the map," but the map of the plat does not include any notation that Emma Street is a private road. The private road established by Beauty View Plat I is also present on the map and labeled as "private road." The Ellerbrocks' property is the southernmost lot in Beauty View Plat II.

¶5 In subsequent years, Emma Street was extended further south, eventually intersecting Cedar Road, which ran in an east-west direction. Other lots were established outside Beauty View Plats I and II, including the property the Veesers now own. Today, all of the roads (the private road, Emma Street, and Cedar Road) are all known as Beauty View Road. The parties refer to those roads within Beauty View Plats I and II as "platted Beauty View Road," and those roads outside the plats as "unplatted Beauty View Road." We will use the parties' nomenclature.

¶6 In 2014, the Ellerbrocks filed a complaint alleging the Veesers had been using platted Beauty View Road to access the Easterly Veeser Land. They alleged the Veesers had no right to enter the Beauty View plats and sought to bar the Veesers from using the platted roads therein.

¶7 The Veesers counterclaimed, seeking a declaration of their right to use platted Beauty View Road as a means of ingress to and egress from the Easterly Veeser Land. The Veesers observed their warranty deed conveyed a

"non-exclusive easement for ingress and egress over a private roadway known as Beauty View Road and formerly known as Emma Street as awarded in a court case recorded in Vol. 71 Records, Page 579 as Doc. No. 262157 and conveyed in Vol. 236 Records, Page 397 as Doc. No. 360677."[3] The court document referenced in the deed is a judgment dated April 6, 1949, entered by the Door County Circuit Court in the case of ***Fabry v. Devisme*** and subsequently recorded with the Door County Register of Deeds.[4]

¶8 The 1949 judgment granted to the Devismes and their successors in title

> free and unobstructed use of the tract or strip of land [within a specified range] extending from Beauty View Plat No. 2 road southerly to the Town Road, the east and west boundaries of said road being an extension of the east and west boundaries of the Beauty View Plat No. 2 road, for the purpose of ingress and egress to and from their property [as subsequently described].

It is undisputed that the Devismes are the Veesers' predecessors in interest with respect to the Easterly Veeser Land. It is also undisputed that the Easterly Veeser Land benefits from the ingress and egress rights granted by the 1949 judgment.

¶9 However, the Veesers and the Ellerbrocks disagreed about the legal effects of the 1949 judgment. The Veesers, tracing the history of the ***Fabry***

[3] Document number 360677 is a warranty deed dated June 9, 1972, involving only the conveyance of the Veeser Shoreline Land between the Veesers' predecessors in interest. The Veesers do not argue document number 360677 has any significance for purposes of this appeal.

[4] The 1949 judgment is identified in the Veesers' summary judgment submissions as document number 262155. The parties do not explain this discrepancy as contrasted with the document number in the Veesers' deed. Because the volume and page numbers are consistent between the judgment and the Veesers' deed, we presume the deed merely contains a typographical error.

litigation, asserted the 1949 judgment entitled them "to free and unobstructed use of platted Beauty View Road from the Easterly Veeser Land." The Ellerbrocks, by contrast, asserted the judgment allowed the Veesers only the right to access unplatted Beauty View Road, and it did not establish their right to use any roads within the plats. Under the Ellerbrocks' interpretation of the 1949 judgment, the Veesers' usage rights began at the edge of Beauty View Plat II and permitted them to travel only over the unplatted road to the south.[5]

¶10 The Veesers and the Ellerbrocks also disagreed about the meaning of "property owners" within the Owners' Certificate for Beauty View Plat II. The Veesers asserted that phrase was "not expressly limited to owners of lots in Beauty View Plat II," and it included owners who, like the Veesers, owned property adjacent to the platted lands. The Ellerbrocks, on the other hand, asserted that Beauty View Plats I and II, taken together, clearly demonstrated that the extension of Emma Street in Beauty View Plat II was meant to be private and for use only by platted property owners, just as Emma Street I in Beauty View Plat I was.

¶11 The circuit court decided this case on cross-motions for summary judgment. The court, relying on dictionary definitions, reasoned that "extending from" in the 1949 judgment meant "a starting point … a place something comes out of." As such, the court concluded the Veesers' usage rights commenced at the edge of Beauty View Plat II and extended over only unplatted Beauty View Road. The court also rejected the Veesers' proposed interpretation of "property owners" within the Beauty View Plat II documents. The court remarked the plat "is

[5] It is undisputed this route permits the Veesers to access the Easterly Veeser Land from public roads.

concerned with the property owners in the plat," and it found the Veesers' proposed interpretation of the phrase unreasonable. To adopt the Veesers' interpretation, the court stated it would

> have to do two things: I have to take it to property owners outside the plat, and then I have to limit it, because I'm certainly not going to read … that it meant any property owners anywhere. … [T]here's no indication or anything that would suggest why it should be then limited to only those that are adjacent to the road.

The Veesers now appeal.

DISCUSSION

¶12 We independently review a grant of summary judgment, using the same methodology as the circuit court. ***Hardy v. Hoefferle***, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. We need not restate that well-established methodology here. *See* ***Tews v. NHI, LLC***, 2010 WI 137, ¶41, 330 Wis. 2d 389, 793 N.W.2d 860. Suffice it to say that a party is entitled to summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2015-16). All material facts appear to be undisputed.

¶13 The Veesers first argue the circuit court erred by concluding that the 1949 judgment in the ***Fabry*** case granted them a right of way only over unplatted Beauty View Road. We interpret a judgment in the same manner as other written instruments. ***Jacobson v. Jacobson***, 177 Wis. 2d 539, 546, 502 N.W.2d 869 (Ct. App. 1993). The language within a judgment is generally given its plain and ordinary meaning. ***North Gate Corp. v. National Food Stores, Inc.***, 30 Wis. 2d 317, 321, 140 N.W.2d 744 (1966). If a judgment is unambiguous, we apply its

language as written. ***Jacobson***, 177 Wis. 2d at 547. Whether the judgment is ambiguous is a question of law we decide de novo. ***Id.***

¶14 The Veesers argue the circuit court erroneously interpreted the phrase "extending from" in the 1949 judgment. They rely on a definition of the infinitive verb "to extend," asserting it means "to enlarge the area or scope of." However, as the Ellerbrocks point out, focusing on the verb "extend" in isolation ignores the principle that we must interpret language within the context of the document as a whole. *See* ***MS Real Estate Holdings, LLC v. Donald P. Fox Family Tr.***, 2015 WI 49, ¶43, 362 Wis. 2d 258, 864 N.W.2d 83; *see also Extend*, BLACK'S LAW DICTIONARY (5th ed. 1979) ("Term lends itself to great variety of meanings, which must in each case be gathered from context.").

¶15 The 1949 judgment does not use the phrase "to extend." Rather, it permits use of the tract or strip of land "*extending from* Beauty View Plat No. 2 road southerly to the Town Road." (Emphasis added.) We agree with the circuit court's interpretation: this provision unambiguously states that the "tract or strip of land" referenced commences at the boundary of Beauty View Plat II and proceeds southerly over unplatted Beauty View Road. *See From*, BLACK'S LAW DICTIONARY (5th ed. 1979) ("As used as a function word, implies a starting point, whether it be of time, place, or condition."). Contrary to the Veesers' assertion, this is a plain-meaning interpretation of the judgment's language.

¶16 The Veesers respond that the judgment, when compared to the pleadings and other documents in the ***Fabry*** court record, "demonstrates that the Devismes were granted a right of way that included [p]latted Beauty View Road." However, having concluded that the judgment is unambiguous, we shall not resort to these documents to ascertain the judgment's meaning. "Only when judgments

are ambiguous is construction permitted, allowing the court to consider the whole record—including pleadings, findings of fact and conclusions of law—to determine the intent of the parties."[6] ***Jacobson***, 177 Wis. 2d at 547.

¶17 The Veesers next argue they are entitled to use platted Beauty View Road because they are "property owners" within the meaning of the Beauty View Plat II documents. They assert the phrase "property owners" fails to clearly limit platted Beauty View Road's use to owners of lots within the plat. In the Veesers'

[6] Although our conclusion that the 1949 judgment is unambiguous functions as a rejection of the Veesers' argument that we must look to extrinsic evidence of the circuit court's intent, we briefly address two other court documents associated with the ***Fabry*** case that the Veesers urge us to consider. The first is a memorandum verdict that stated the "claim of the defendants that the 40 foot strip, or 30 foot strip, or whatever it may be, be beyond question a continuation of the public road as found in the recorded plat of Beauty View Plat, was clearly the intention of the parties." Whatever this document may mean, it was signed only by the Door County Clerk of Courts, not the circuit court judge; was not titled as a "judgment" or "order;" and was not recorded. Moreover, the Veesers are incorrect that their warranty deed refers to the entire ***Fabry*** record; it directs the reader only to the specific recorded 1949 judgment.

The circuit court in the ***Fabry*** case entered a separate document that contained its findings of fact and conclusions of law. One of the court's conclusions of law stated that the Veesers' predecessors in interest are "entitled to a right of way or road extending from the Beauty View Plat No. 2 road south to the Town Road *and lying between the east and west lines of the Beauty View Plat No. 2*." (Emphasis added.)

The Veesers argue that the circuit court's interpretation of the 1949 judgment "completely eliminate[s] the italicized language above." To the contrary, we do not perceive a clear inconsistency between the judgment and the court's conclusion of law. At most, there may be some arguable ambiguity in the conclusion of law on which the Veesers focus. However, elsewhere in the document, the circuit court wrote that the boundaries of the access road were "an *extension* of the east and west boundaries of the Beauty View Plat No. 2 road"—a factual finding that echoes the language of the judgment.

In any event, any arguable ambiguity in the court's findings of fact and conclusions of law is of no moment, because there is no ambiguity in the 1949 judgment. The Veesers, while observing that the recorded judgment lacks the judge's signature (the judge's name is instead typewritten at the bottom), have not argued that the judgment is invalid or void, nor have they mounted any sort of collateral attack on the judgment. For all these reasons, we decline to give the court's findings of fact and conclusions of law any dispositive weight contrary to the unambiguous judgment that was entered.

opinion, interpreting the phrase "property owners" to mean only those persons with ownership interests in land within the plat would "effectively land-lock the lots of Beauty View Plat II," apparently because the language in the Beauty View Plat I documents would have to be interpreted similarly, and that language would preclude Beauty View Plat II owners from using the roads established in Beauty View Plat I.

¶18 We find this a convoluted and rather tortured interpretation of the plat documents in this case. The interpretation of a plat is a question of law. *See* ***Schimmels v. Noordover***, 2006 WI App 7, ¶10, 288 Wis. 2d 790, 709 N.W.2d 466; ***Yurmanovich v. Johnston***, 19 Wis. 2d 494, 502, 120 N.W.2d 707 (1963). Beauty View Plats I and II were recorded within a one-year time frame, and Beauty View Plat II clearly references the roads that were dedicated to "property owners" in Beauty View Plat I. A reasonable interpretation of these documents is that the platted Beauty View Roads were dedicated for use by the owners of property within the plats. This interpretation is consistent with the longstanding rule that "[o]ne who buys lots with reference to a plat which shows certain streets, ways and places in common, is entitled *with all other lot owners in the platted area or subdivision* to the use with them of the streets, ways and places in common." ***Schimmels***, 288 Wis. 2d 790, ¶11 (quoting ***Threedy v. Brennan***, 131 F.2d 488, 490 (7th Cir. 1942)) (emphasis added).

¶19 Ultimately, the Veesers must demonstrate that the Beauty View Plat II documents allow for an interpretation that gives landowners adjacent to the

plat usage rights over private platted roads.[7] The phrase "property owners" in and of itself does not accomplish this result. As the circuit court recognized, in the broadest sense, that phrase could mean anyone holding an ownership interest in property anywhere—clearly an untenable interpretation.

¶20 The circuit court correctly recognized that, to achieve the result the Veesers desire, one has to expand the definition of "property owners" beyond its ordinary meaning while simultaneously limiting the reach of the phrase to "adjacent" land owners. But the Veesers never truly grapple with the dilemma created by their interpretation—limiting "property owners" to encompass only "adjacent" owners is inherently arbitrary and unsupported by any plat documentation. The map of Beauty View Plat II does not even suggest there were adjacent landowners to consider, at least not outside of the Beauty View plats themselves. We see no reason why the drafters of Beauty View Plat II would have given "adjacent" land owners usage rights while barring other nearby land owners from use simply because their land did not directly abut the plat. We conclude Beauty View Plat II is unambiguous and the phrase "property owners" refers only to those owning property within the plat.

[7] The Veesers' arguments regarding the "public" versus "private" nature of platted Beauty View Road appear inconsistent. On the one hand, they assert it is "irrelevant" whether platted Beauty View Road was public or private. Indeed, the Veesers made quite clear before the circuit court that they were not asking the circuit court to declare platted Beauty View Road a public thoroughfare. On the other hand, the Veesers assert that it is somehow "critical" that Beauty View Plat II does not specifically describe Emma Street as a private road. Yet, because the Veesers have not developed any cogent argument that platted Beauty View Road is anything other than a private road, and because they went so far as to disclaim any such argument before the circuit court, for purposes of this opinion we treat the road as private (i.e., not lawfully accessible to the general public). The relevant question is how "private" the road is and to whose benefit.

¶21 Finally, the Veesers assert that a dedication to "property owners" is akin to a restrictive covenant. They desire this characterization because they believe the phrase "property owners" is ambiguous, and courts "will not enforce restrictions on the free use of land when they are ambiguous." ***Solowicz v. Forward Geneva Nat.***, 2009 WI App 9, ¶41, 316 Wis. 2d 211, 763 N.W.2d 828, *aff'd sub nom.* ***Solowicz v. Forward Geneva Nat'l, LLC***, 2010 WI 20, 323 Wis. 2d 556, 780 N.W.2d 111. It is true that, as a result of the dedication of the platted Beauty View Road for use only by property owners within the plat, the Veesers are denied a right of use. However, such a dedication is no more a restrictive covenant as to the Veesers than the right of any property owner to exclude them from his or her land—"one of the most essential sticks in the bundle of rights that are commonly characterized as property." *See* ***Dolan v. City of Tigard***, 512 U.S. 374, 384 (1994) (quoting ***Kaiser Aetna v. United States***, 444 U.S. 164, 176 (1979)). And even if such a dedication could be viewed as akin to a restrictive covenant, the dedication here is unambiguous and must be enforced as written.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).