

NOTICE

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2011 IL App (5th) 100358-U
NO. 5-10-0358
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST STATE BANK OF RED BUD,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Monroe County.
)	
v.)	No. 09-MR-55
)	
KEITH A. TELLOR and LORI E. TELLOR,)	Honorable
)	Brian A. Babka,
Defendants-Appellants.)	Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Where there was no genuine issue of material fact regarding the intent of the developers, Eagle Lake Development, Inc., to add phases to a subdivision and thereby allow the ingress and egress easement to benefit property owners beyond those lots contained within the original plat, summary judgment was correct.

¶ 2 **FACTS**

¶ 3 The trial court entered summary judgment in favor of the First State Bank of Red Bud (Bank) on the issue of an ingress and egress easement located on real estate owned by Keith and Lori Tellor. The judgment allowed the Bank to utilize that easement to gain access to and from its real estate.

¶ 4 The Bank owns real property in fee simple in Monroe County. The realty is located in a subdivision called Eagle Lake 1st Addition. The realty at issue was formerly divided into three separate lots—Lots 37, 38, 39, but the former owner had the lot lines and the cul-de-sac on the lots vacated so that subdivision assessments would be for only one lot—rather than

all three. A vacation plat removed these lot lines in 2002.

¶ 5 The fee simple owners of Lot 16 of Eagle Lake Estates located on Eagle Lake Drive are Keith and Lori Tellor. The Bank property is adjacent to the Tellor property—to the south and to the east. The Bank property has no access to roads.

¶ 6 The recorded plat of Eagle Lake Estates contains a 50-foot easement that runs over the eastern portion of the Tellors' Lot 16 to provide ingress and egress to the property south and east—the property owned by the Bank. The Tellors take the position that because the Bank's and the Tellors' properties are located in separately developed subdivisions, the ingress and egress easement was only intended to benefit property owners within their subdivision—Eagle Lake Estates—not within Eagle Lake 1st Addition.

¶ 7 The dispute at issue is about the ingress and egress easement located on the Tellors' property. The Tellors claimed that the Bank could not use the easement for ingress and egress. To resolve the dispute, the Bank filed a complaint on October 5, 2009, seeking injunctive and declaratory relief—that the easement over the Tellors' land was validly created and enforceable. In answer to the complaint, the Tellors acknowledged the easement but denied that the scope of the easement applied to ingress and egress for properties outside of their subdivision as the Bank property was.

¶ 8 A motion for summary judgment was filed by the Bank in early 2010 and was granted by the trial court on March 5, 2010. The judgment order declared that the easement was validly created by the recorded amended plat on January 20, 1988, that the easement remained an enforceable permanent right that runs with the land, and that the easement was binding on the Tellors and any subsequent grantees of the Tellors' property. The court determined that the Bank or any subsequent owner is entitled to use and improve the easement for purposes of ingress and egress and that any nonnatural obstruction on that land must be removed by the Tellors. The trial court also granted injunctive relief determining

that if the Bank was not able to use the easement for access to the property, irrevocable harm would result, and it enjoined and restrained the Tellors from "hindering, interfering with, or preventing (1) use of the Easement for purposes of ingress and egress to the Bank Property from Eagle Lake Drive and (2) the maintenance and repair of the Easement by First State Bank of Red Bud or any subsequent owner of the Bank Property."

¶ 9 The Tellors' motion to reconsider was denied on June 30, 2010. The Tellors appeal, arguing that there was a material issue of genuine fact regarding the scope of the easement.

¶ 10 **LAW AND ANALYSIS**

¶ 11 On appeal, courts review summary judgment orders *de novo*. *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 72, 587 N.E.2d 494, 497 (1992). In determining the appropriateness of a summary judgment, the trial court strictly construes all evidence in the record against the movant and liberally in favor of the opponent. *Purtill v. Hess*, 111 Ill. 2d 220, 240, 489 N.E.2d 867, 871 (1986). The court must consider all pleadings, depositions, admissions, and affidavits on file to decide if there is any issue of material fact. *Myers*, 225 Ill. App. 3d at 72, 587 N.E.2d at 497. The use of summary judgment is considered to be a drastic method of concluding litigation and should only be granted if the rights of the party seeking judgment are without doubt. *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 272, 586 N.E.2d 1211, 1215 (1992).

¶ 12 There is no dispute that the Tellors' property carries with it a 50-foot ingress and egress easement. The Tellors dispute application of the easement to property owners not located within the same subdivision—Eagle Lake Estates. We must determine if the easement benefits lots contained within Eagle Lake 1st Addition or only lots within Eagle Lake Estates. Alternatively, the Tellors argue that the vacation of plat involving the lot lines between what used to be three lots in Eagle Lake 1st Addition effectively removed the Bank property from the subdivision.

¶ 13 From a review of the documents contained within the record and available to the trial judge who granted summary judgment, the recorded amended plat for Eagle Lake Estates was filed on January 20, 1988. Lot 16 is clearly labeled and contains the 50-foot-wide easement running along the east side of the lot extending to the southernmost part of the lot. The owner and subdivider of Eagle Lake Estates is listed as Eagle Lake Development, Inc.

¶ 14 The trial court also had access to a recorded indenture of trust and restrictions, initially recorded in Monroe County on February 9, 1987, and rerecorded on September 16, 1987. The provisions of the subdivision restrictions consistently reference the contemplation of future and/or additional plats—indicating that the property was to be developed in phases. ¶

15 The plat for Eagle Lake 1st Addition was recorded on February 8, 1991. This recorded plat contains the statement, "By execution hereof, Eagle Lake Development, Inc., subjects this plat to indenture of trust and restrictions of Eagle Lake Estates recorded ***." On this plat, the ingress and egress easement that is part of Lot 16 is depicted and is physically adjacent to the former Lot 39—the northernmost of the three original lots owned by the Bank. The recorded restrictions for Eagle Lake 1st Addition executed by the original developer of Eagle Lake Estates—Eagle Lake Development, Inc.—provide that the Eagle Lake Estates restrictions are adopted for the 1st Addition.

¶ 16 From these documents, the Bank argued that the original developer executed all necessary documents to impose the benefits and burdens of the Eagle Lake Estate plat and Eagle Lake restrictions upon the owners of lots in Eagle Lake 1st Addition—to include the ingress and egress easement over the Tellors' property for the benefit of the Bank.

¶ 17 An easement is a right or privilege in land of another. *Seymour v. Harris Trust & Savings Bank of Chicago*, 264 Ill. App. 3d 583, 594, 636 N.E.2d 985, 993 (1994). There are two tenements involved in an easement—the dominant (to which the right belongs) and the servient (where the obligation lies). *Id.* (quoting *Chicago Title & Trust Co. v. Wabash-*

Randolph Corp., 384 Ill. 78, 84, 51 N.E.2d 132, 135-36 (1943)). Generally, a document by which an easement is created is construed with reference to the intention of the drafters. *River's Edge Homeowners' Ass'n v. City of Naperville*, 353 Ill. App. 3d 874, 878, 819 N.E.2d 806, 809 (2004); *Seymour*, 264 Ill. App. 3d at 594, 636 N.E.2d at 993. If the document is unambiguous, no parol evidence shall be considered. *River's Edge Homeowners' Ass'n*, 353 Ill. App. 3d at 878, 819 N.E.2d at 809. An easement can be created by the making and recording of a plat or subdivision that expressly references and reflects the existence of that easement. *Swedish Evangelist Lutheran Church v. Jackson*, 229 Ill. 506, 510-11, 82 N.E. 348, 350 (1907); *Wooded Shores Property Owners Ass'n v. Mathews*, 37 Ill. App. 3d 334, 341, 345 N.E.2d 186, 192 (1976).

¶ 18 Unless another agreement is in place, " 'the owner of the easement has not only the right but the duty to keep the easement in repair while the owner of the servient tenement has no duty to either put or keep the easement in repair. [Citation.] The owner of the dominant estate is entitled to the necessary use of the easement. Necessary use has been defined as such use as is reasonably necessary for the full enjoyment of the premises. [Citation.]' " *Seymour*, 264 Ill. App. 3d at 595, 636 N.E.2d at 994 (quoting *Flower v. Valentine*, 135 Ill. App. 3d 1034, 1039, 482 N.E.2d 682, 687 (1985)).

¶ 19 The Tellors argue in opposition to the judgment entered in favor of the Bank that as owners of land in reference to a plat, they have a private right that cannot be abridged or destroyed by the author of the plat. *Ruble v. Sturhahn*, 348 Ill. App. 3d 667, 675, 810 N.E.2d 278, 285 (2004). They argue that as owners of the property subject to the easement burden, they are allowed to prevent any increase in that burden. *River's Edge Homeowners' Ass'n*, 353 Ill. App. 3d at 881, 819 N.E.2d at 811-12.

¶ 20 The Tellors are not disputing the existence of a 50-foot-wide easement across their lot but claim that the Bank's efforts to utilize that easement would amount to an increase in

the burden of that easement because the intent of the plat drafters was to limit that easement to access by other owners within Eagle Lake Estates—and not to any other stages of the subdivision later developed.

¶ 21 Having reviewed the documents available to the trial court when considering the Bank's summary judgment motion, we agree with the trial court's conclusions. The clear intent of the developers—Eagle Lake Development, Inc.—was beyond the initial phase of development in which the Tellors' land is located—Eagle Lake Estates. The express wording of the documents reflects that intent. The January 1988 recorded amended plat for Eagle Lake Estates clearly and unequivocally establishes the ingress and egress easement on Lot 16—the lot ultimately owned by the Tellors. The drafters of the subdivision trusts and restrictions document consistently used verbiage in contemplation of development of the subdivision in phases. The 1991 recorded plat for Eagle Lake 1st Addition was also executed by Eagle Lake Development, Inc., and ties the development within that plat to be bound by the trust and restrictions previously recorded relative to Eagle Lake Estates. This new plat for Eagle Lake 1st Addition clearly reflects the ingress and egress easement on Lot 16 that is part of the adjacent Eagle Lake Estates.

¶ 22 While the language used on the plat does not expressly state that the ingress and egress easement is for use by owners of land in the Eagle Lake 1st Addition, which was not yet in existence, neither does the language state that the ingress and egress easement is solely for use by owners of land in the Eagle Lake Estates. Consequently, the trial court's judgment centered upon the intent of the drafters of the relevant documents. We concur in the trial court's conclusion that the intent was to allow usage of the easement by all phases of the subdivision development. There is no material issue of fact regarding whether the ingress and egress easement was intended to benefit more than the homeowners of the Eagle Lake Estates.

¶ 23 Alternatively, the Tellors argue that the recorded vacation plat destroyed the effect of the plat for Eagle Lake 1st Addition—including any easement rights. We have reviewed the vacation plat at issue and find that the document only contemplates and intends the vacation of the lot lines between Lots 37 and 38 and between Lots 38 and 39. This vacation plat is in compliance with section 7 of the Illinois Plat Act, which provides, "Any part of a plat may be vacated ***." 765 ILCS 205/7 (West 2008). The clear and express meaning of the vacation plat is that it is only in reference to the lines dividing Lots 37, 38, and 39. Nothing about the vacation plat denotes an intent to vacate the entirety of the plat relative to Eagle Lake 1st Addition. Nothing about the vacation plat denotes an intent to separate the Bank property from Eagle Lake 1st Addition. Expressly indicated on the vacation plat relative to the border between what was Lot 39 and Lot 16 is that the "Existing 50' Wide Access Easement (Private to Remain)." The effect of the vacation plat was simply to transform three lots into one large lot within Eagle Lake 1st Addition. Accordingly, this argument does not raise a genuine issue of material fact, and summary judgment was proper.

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Monroe County is hereby affirmed.

¶ 26 Affirmed.