2014 IL App (5th) 130037-U

NO. 5-13-0037

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DAVID L. WARD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Johnson County.
	)	
v.	)	No. 12-SC-69
	)	
SOUTHERN ILLINOIS POWER COOPERATIVE,	)	
	)	Honorable
	)	Charles C. Cavaness,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Welch and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in entering a judgment for the defendant where the defendant failed to pay the agreed compensation, and thereby breached a material provision in the easement agreement. Judgment vacated; cause remanded with instructions.

¶ 2 The plaintiff, David L. Ward, filed an action against the defendant, Southern Illinois Power Cooperative, in the small claims division of the circuit court of Johnson County, and alleged that the defendant breached a material provision in the easement agreement. Following an informal hearing, the trial court entered a judgment for the defendant. On appeal, the plaintiff contends that the trial court erred in entering a

judgment for the defendant where the defendant repudiated the agreement and failed to pay the agreed compensation after the plaintiff had fully performed in accordance with the agreement. The plaintiff further contends that the trial court erred in considering extrinsic evidence beyond the four corners of the contract and hearsay to determine the intent of the parties. For reasons to follow, we hereby vacate the judgment entered in favor of the defendant and remand the case to the trial court with instructions to enter a judgment for the plaintiff in the amount of $10,000, plus costs.

¶ 3 In January 2012, the defendant reached an agreement with the plaintiff to secure a right-of-way easement in property located in Johnson County and owned by the plaintiff. The defendant drafted a right-of-way agreement and a supplemental agreement. The supplemental agreement provided more specific information about the defendant's obligations under the agreement. The initial agreement was signed by both parties on January 9, 2012. The plaintiff signed the supplemental agreement on January 9, 2012, and the defendant signed it on January 11, 2012.

¶ 4 According to the initial agreement, the plaintiff, in consideration of one dollar ($1), and further consideration of $1,000 per pole and $500 per anchor, granted to the defendant a right-of-way easement in a designated strip of the plaintiff's property. The plaintiff also granted to the defendant "the right to survey, construct, reconstruct, relocate, renew, remove, operate and maintain" one transmission line and/or an under built line including poles, anchors, ancillary fixtures, and appurtenances, as necessary over, upon, and within the easement, and the right to clear and cut down or trim all trees and bushes growing upon the right-of-way. The defendant, for its part, agreed to control

the growth of trees and bushes within the right-of-way, and to pay or cause to be repaired in a timely manner at no expense to the plaintiff, any actual damage to trees and vegetation beyond the easement. The initial agreement also included the following provision: "Non exercise by Grantee, its successors and assigns of the rights herein granted will not constitute a waiver of or be grounds for a forfeiture of the rights herein granted, or be construed as an abandonment of the stated rights."

¶ 5 The supplemental agreement included two provisions regarding the compensation to be paid to the plaintiff. One provision stated that the plaintiff would be compensated for a minimum of five power poles, and the other stated that the plaintiff would be compensated $5,700 for property damage.

¶ 6 The defendant recorded the easement agreement in Johnson County on January 18, 2012. On February 15, 2012, the defendant unilaterally executed a quitclaim deed, and thereby conveyed its easement interest back to the plaintiff.

¶ 7 In July 2012, the plaintiff filed a small claims action against the defendant. The plaintiff alleged that the defendant failed to pay the agreed consideration, and thereby breached a material term of the easement agreement. He prayed for the jurisdictional limit of $10,000 in damages, plus costs. See Ill. S. Ct. R. 281 (eff. Jan. 1, 2006).

¶ 8 In October 2012, the trial court conducted an informal hearing, pursuant to Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992). The plaintiff appeared *pro se* and the defendant appeared by its attorney. During the hearing, the parties argued about the meaning of the two provisions in the supplemental agreement addressing compensation. The defendant claimed that it was the intention of the parties that any additional

compensation would be based on the number of poles and anchors actually placed in the right-of-way strip and the number of trees actually removed from the property. The defendant argued that it owed no compensation to the plaintiff because it had been unable to reach an agreement with an adjoining landowner and therefore had to reroute its transmission line. The defendant noted that it deeded its easement interest back to the plaintiff within a few weeks after acquiring that interest, and it had never stepped foot onto the plaintiff's property. The plaintiff claimed that he had fully performed his obligations under the agreement, and that in accordance with the plain language in the supplemental agreement, he was to be paid, at a minimum, the sum of $10,700 as compensation for the grant of the easement rights. The plaintiff noted that the defendant neither negotiated for nor included any contingency provisions in the supplemental agreement. The plaintiff further noted that the defendant willingly signed the supplemental agreement, and that the defendant recorded its easement interest shortly after the agreement was executed.

¶ 9 The trial court took the case under submission. In a written ruling issued a few weeks later, the court noted that the agreement and the supplemental agreement contained language regarding the payment of compensation to the plaintiff for the use of his land. The court concluded that the parties had contemplated that compensation would be paid for the defendant's "actual use" of the property. The court found that the defendant had never actually used the property and that it quitclaimed its interest in the property back to the plaintiff within a few weeks of acquiring it. The court entered a judgment for the defendant. The plaintiff's motion to reconsider was denied, and this appeal followed.

¶ 10 In this case, the parties agree that there is a valid contract. They are at issue over the meaning of the two provisions in the supplemental agreement addressing compensation.

¶ 11 When parties dispute the meaning of a contract provision, the initial question is whether the contract is ambiguous. *Hillenbrand v. Meyer Medical Group, S.C.*, 288 Ill. App. 3d 871, 875-76, 682 N.E.2d 101, 104 (1997). The mere fact that the parties disagree on the meaning of some provision of the contract does not render the provision ambiguous. *Johnstowne Centre Partnership v. Chin*, 99 Ill. 2d 284, 288, 458 N.E.2d 480, 481 (1983); *Hillenbrand*, 288 Ill. App. 3d at 876, 682 N.E.2d at 104. An ambiguity exists if the contract contains language that is susceptible to more than one reasonable interpretation. *Hillenbrand*, 288 Ill. App. 3d at 876, 682 N.E.2d at 104. If the court finds that the contract is ambiguous, it may look to extrinsic evidence to ascertain the intent of the parties. *Hillenbrand*, 288 Ill. App. 3d at 876, 682 N.E.2d at 104. If there is no ambiguity, parol evidence is not permitted to alter the contract. *Johnstowne Centre Partnership*, 99 Ill. 2d at 288, 458 N.E.2d at 481; *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 349, 736 N.E.2d 145, 150 (2000). In addition, when a contract purports to be a complete expression of the entire agreement, it is presumed that the parties included every material term, and parol evidence cannot be admitted to add provisions even if those provisions would make the contract more equitable. *J.M. Beals Enterprises, Inc. v. Industrial Hard Chrome, Ltd.*, 194 Ill. App. 3d 744, 748, 551 N.E.2d 340, 342 (1990).

¶ 12 The same rules that apply to deeds and other written agreements apply to grants of easements. *Bjork v. Draper*, 381 Ill. App. 3d 528, 538, 886 N.E.2d 563, 571 (2008); *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 101, 807 N.E.2d 1054, 1062 (2004). The conveyance of an easement by a contractual agreement should be supported by consideration, and its terms should be unequivocal. *McMahon v. Hines*, 298 Ill. App. 3d 231, 236, 697 N.E.2d 1199, 1204 (1998). When an easement is conveyed by an express grant and the language of the grant is clear and free from doubt, the plain language controls, and no resort to extrinsic facts and circumstances may be made to modify the clear terms of the grant. *Duresa*, 348 Ill. App. 3d at 101, 807 N.E.2d at 1062. If the language is facially unambiguous, the intention with which it was executed must be determined from the language used in the agreement without resort to extrinsic evidence. *Duresa*, 38 Ill. App. 3d at 101, 807 N.E.2d at 1062. Our review of the language of an easement is *de novo*. *Bjork*, 381 Ill. App. 3d at 538, 886 N.E.2d at 572.

¶ 13 Mindful of these principles, we have reviewed the initial easement agreement and the supplemental agreement, and we find no ambiguity regarding the payment of consideration in exchange for the rights granted under the easement. As such, the intention of the parties must be determined from the plain language used in the agreement without resort to extrinsic evidence. The initial agreement states that consideration will be paid at the rate of $1,000 per pole and $500 per anchor. The supplemental agreement states that the plaintiff will be compensated for a minimum of five poles. The supplemental agreement does not condition the payment of compensation on the defendant's "actual" use of the property. It does not condition the payment of

compensation on the defendant's success in completing the project or obtaining easement rights in the adjacent property or any other property necessary to the installation of the proposed transmission line. The plain language states that the plaintiff will be paid for a minimum of five poles without regard for whether the defendant places any poles or anchors on the property. Likewise, the plain language of the supplemental agreement states that the plaintiff will be compensated $5,700 for property damage. It does not condition the payment on physical damage to the property. According to the unambiguous language used in the agreement, the parties intended that the plaintiff was to be paid a minimum of $10,700 as compensation for granting to the defendant certain rights to use a designated strip of his property. The defendant's right to use the property included a right to enter the property in order to survey the ground, to construct, relocate, and remove transmission lines, and to clear any trees or growth necessary for the placement of transmission lines. The right to use the plaintiff's property for these purposes, even for one month's time, clouded the plaintiff's title. The plaintiff successfully negotiated for an unconditional, minimum sum to be paid as compensation for the cloud on the title and the corresponding depreciation in value of the land. The defendant is not relieved of its obligation to pay the agreed compensation merely because it decided to refrain from exercising its bargained-for rights and to relinquish the easement within 30 days after first obtaining and recording it.

¶ 14 After reviewing the language in the agreement and supplemental agreement, we conclude that the plaintiff was entitled to a judgment in his favor and that the trial court erred in entering a judgment for the defendant. Accordingly, the judgment in favor of the

defendant is hereby vacated and the cause is remanded to the trial court with instructions to enter a judgment in favor of the plaintiff for the jurisdictional limit of $10,000, plus costs.

¶ 15 Judgment vacated; cause remanded with instructions.