

Montana Water Court
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41G-0050-R-2020

July 6, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANT: BFR Family Limited Partnership LLLP

CASE 41G-0050-R-2020
41G 197220-00

NOTICE OF INTENT TO APPEAR: Sitz Angus Farms LP

ORDER AFFIRMING GRANT OF PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

This matter involves an objection to a Water Master's order granting partial summary judgment. Sitz Angus Farms LP filed a notice of intent to appear on BFR Family Limited Partnership LLLP's claim 41G 197220-00. BFR moved for partial summary judgment regarding interpretation of a deed executed in 1946. The Water Master ruled in favor of BFR and Sitz objected.

II. ISSUES

1. What water right did E. S. Adkins and Nellie Adkins own when they executed the 1946 deed to E. M. Brooke?
2. What water right did the 1946 deed convey?
3. Did the Master properly grant partial summary judgment as a matter of law?

III. SUMMARY JUDGMENT STANDARD

“Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.” *Watkins Trust v. Lacosta*, 2004 MT 144, ¶ 16, 321 Mont. 432, 92 P.3d 620 (citing Rule 56(c), M. R. Civ. P.). To determine whether genuine issues of material fact exist, courts look to the “pleadings, depositions, answers to interrogatories, admissions on file, and affidavits....” *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 24, 304 Mont. 356, 22 P.3d 631. All reasonable inferences that might be drawn from the offered evidence should be drawn in favor of the party opposing the summary judgment motion. *Lee*, ¶ 25.

The party seeking summary judgment has the burden of demonstrating an absence of genuine factual issues and entitlement to summary judgment as a matter of law. *Id.* “[P]roof is required to establish the absence of genuine issues of material fact; a party may not rely on the arguments of counsel.” *Montana Metal Bldgs., Inc. v. Shapiro*, 283 Mont. 471, 476, 942 P.2d 694, 697 (1997). Once the moving party has demonstrated that no genuine issues of material fact remain, the burden shifts to the party opposing the motion. *Lee*, ¶ 26. To raise a genuine issue of material fact, the opposing party must “present material and substantial evidence, rather than merely conclusory or speculative statements....” *Id.*

IV. ANALYSIS

1. What water right did E. S. Adkins and Nellie Adkins own when they executed the 1946 deed to E. M. Brooke?

In 1982, Cornelius Brooke filed claim 41G 197220-00 and attached two documents in support. The first document was a Notice of Appropriation filed by Eli S. Adkins in 1907 for 200 inches of water from North Willow Creek (the Adkins right). The second document was a May 1, 1946 deed in which E. S. Adkins and Nellie C. Adkins granted E. M. Brooke:

An undivided one-third interest in and to all of their right, title and interest in and to a certain water right, which is of record in the office of the County Clerk and Recorder of said Madison County in Book 17 of Water Rights at page 89.

Adkins recorded his Notice of Appropriation in Madison County at Book 17 of Water Rights, page 88.¹ E. M. Brooke, the grantee in the 1946 deed, was a predecessor of Cornelius Brooke.

Eli S. Adkins conveyed his water right to Mary Isdell via quitclaim deed in 1909. Mary Isdell acquired part of the place of use identified in the Adkins Notice of Appropriation in 1912. Soon after, Mary Isdell became involved in a lawsuit over North Willow Creek water rights titled *Tinsley v. Buttelman*. In that lawsuit, Mary Isdell claimed a right appropriated by Eli S. Adkins for water from North Willow Creek. Isdell asserted a priority date of September 14, 1907, and a flow rate of 200 miner's inches. The characteristics of the water right claimed by Isdell matched the information in the Adkins Notice of Appropriation.

The District Court granted Isdell a flow rate of 75 inches, rather than the 200 inches originally claimed by Adkins. The district court stated Isdell's predecessors:

...did divert and appropriate of the waters of said Willow Creek, the amount, at the date, and through the ditch, as follows, to wit: 75 inches, diverted and appropriated in the year 1907; and being diverted and used through the Adkins Ditch, which taps North Willow Creek on the north bank thereof....

BFR Motion for Partial Summary Judgment, Ex. E (*Tinsley v. Buttelman*, Findings of Fact and Conclusions of Law at 32) (Jan. 14, 2022).

The foregoing language described the Adkins right, but with a reduced flow rate.

After the decree, Eli S. Adkins acquired the Adkins right through a series of transactions. BFR Motion for Partial Summary Judgment at 4-6 (Jan. 14, 2022). E. S. Adkins and Nellie Adkins subsequently executed the deed to E. M. Brooke in 1946. E. S. Adkins and Nellie Adkins were the owners of the Adkins right decreed in *Tinsley v. Buttelman* at the time they executed the deed to E. M. Brooke.

¹ The recording information on the Notice of Appropriation and the deed are not the same. The Notice refers to Book 17 of Water Rights, page 88, while the deed refers to page 89. The parties have not registered a concern over this discrepancy, which appears to be a typographical error.

2. What water right did the 1946 deed convey?

The deed refers to the Adkins Notice of Appropriation rather than the *Tinsley v. Buttelman* decree. BFR contends the two rights are the same and the 1946 deed conveyed a portion of the Adkins right recognized in the decree.

Sitz asserts the parties to the deed intended to convey only the Adkins Notice right, which was terminated by the district court and replaced with a new right. On this basis, Sitz contends the 1946 deed conveyed nothing and BFR's claim 41G 197220-00 should be dismissed.

Analysis of the deed begins with review of its language.

Deeds are interpreted like contracts. Courts interpret contracts according to their plain and ordinary meaning, in such a way as to give effect to the mutual intention of the parties as it existed at the time of contracting. Section 28-3-301, MCA. "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible[.]" Section 28-3-303, MCA. The language of a contract governs its interpretation if the language is clear and unambiguous. Section 28-3-401, MCA. When a contract is ambiguous, a court may consider extrinsic evidence of the parties' intent. An ambiguity exists when the wording of the contract is reasonably subject to two different interpretations.

Little Big Warm Ranch, LLC v. Doll, 2020 MT 198, ¶ 30, 400 Mont. 536, 469 P.3d 689 (case citations omitted).

Applying the foregoing rules, the first step is to determine the mutual intention of the parties. The language of the deed answers this question without ambiguity. The grantor intended to convey a water right, and the grantee intended to receive it.

The second step is to determine what water right the parties intended to convey. Again, the deed answers that question. The deed refers to "a certain water right, which is of record in the office of the County Clerk and Recorder of said Madison County in Book 17 of water rights at page 89." The deed's reference to a specific recording location is unambiguous and was intended to identify the water right appropriated by Eli S. Adkins in 1907 for 200 inches of water from North Willow Creek.

Sitz contends the deed did not convey any part of the water right decreed in *Tinsley v. Buttelman*. This argument is contradicted by Mary Isdell's assertion of ownership of the Adkins right, and by the district court's recognition of that right in the decree. The district court affirmed Mary Isdell's ownership of the water right described in the Adkins Notice of Appropriation. The *Tinsley v. Buttelman* decree did not invalidate that right.

The Water Master concluded the 1946 deed was not ambiguous and conveyed an undivided 1/3 interest in the Adkins right defined in *Tinsley v. Buttelman*. The Master noted that Eli S. Adkins not only filed the original Notice of Appropriation for the Adkins right, but also signed pleadings for Mary Isdell as her agent in the *Tinsley v. Buttelman* litigation. Adkins knew the history of the right because he was the original appropriator, the agent for Isdell, and the grantor in the 1946 deed.

The Water Court reviews a Master's conclusions of law to determine whether they are correct. *Heavirland v. State*, 2013 MT 313, ¶ 14, 372 Mont. 300, 311 P.3d 813, (citing *Geil v. Missoula Irr. Dist.*, 2002 MT 269, ¶ 22, 312 Mont. 320, 59 P.3d 398). The Master properly applied the rules of deed construction, including the requirement that a deed must be interpreted in a way that makes it operative and capable of being carried into effect without violating the intention of the parties. § 28-3-201, MCA.

3. Did the Master properly grant partial summary judgment as a matter of law?

BFR moved for summary judgment on interpretation of the 1946 deed. The Water Master properly applied the standard for summary judgment motions and correctly analyzed the meaning of the 1946 deed. Sitz raised several issues in defense of BFR's motion, including factual questions regarding historical use of claim 41G 197220-00 by BFR and its predecessors. Questions of historical use raise a separate issue from interpretation of the deed and the Water Master properly declined to consider historical use in her analysis.

Sitz also raised issues such as BFR's failure to file a claim for a decreed right rather than a notice right, BFR's failure to file an objection or amendment to claim 41G

197220-00, and whether BFR's request was an improper collateral attack on claim 41G 196749-00, which is not in this case. Those issues do not directly bear on the narrow question presently before the Court.

V. CONCLUSION

1. The Water Master properly concluded E. S. Adkins and Nellie Adkins owned the Adkins water right recognized in *Tinsley v. Buttelman* when they executed the 1946 deed to E. M. Brooke.

2. The Water Master properly applied the rules applicable to interpretation of deeds and correctly determined that the 1946 deed conveyed the Adkins right recognized in *Tinsley v. Buttelman*.

3. The Water Master properly determined that the factual issues raised by Sitz were not material to interpretation of the 1946 deed and her decision to grant partial summary judgment as a matter of law was correct.

Russ McElyea
Chief Water Judge

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