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No. 3–10–0427

Order filed March 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

JAMES BLESSENT and DOLORES BLESSENT,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiffs-Appellants,)	Grundy County, Illinois,
)	
v.)	No. 04–CH–75
)	
WILLIAMSVILLE STATE BANK,)	Honorable
an Illinois Banking Corporation,)	Eugene P. Daugherty,
JOHN DONDANVILLE, F. JEAN)	Judge Presiding.
DONDANVILLE, MARY J. DONDANVILLE,)	
MARGARET D. EICHER, STEPHEN J.)	
DONDANVILLE, Individually and as Trustee of)	
the Walter Josef Dondanville Trust,)	
CHRISTOPHER C. DONDANVILLE, KAREN)	
E. WEATHERBEE, THOMAS H. EICHER, as)	
Trustee of the Mary Sue Dondanville Trust,)	
MARGARET D. EICHER, as Trustee of the)	
Stephen James Dondanville Trust, MARY J.)	
DONDANVILLE, as Trustee of the Margaret)	
Ellen Dondanville Trust, OMER C. HALPIN,)	
and THE COUNTY OF GRUNDY,)	
)	
Defendants-Appellees.)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices Schmidt and McDade concurred in the judgment.

ORDER

Held: The trial court did not err by denying plaintiffs' motion to compel the County of Grundy to install a culvert under Reddick Road pursuant to the terms of the parties' settlement agreement which terminated previous litigation. The order of the court denying plaintiffs' motion to compel is affirmed

On August 27, 2004, plaintiffs filed a complaint requesting the court to order defendants to remove any obstructions erected by defendants which interfered with the natural course of water drainage from plaintiffs' property to defendants' property. Ultimately, the parties entered into a settlement agreement resolving the issues raised in an amended complaint. The court approved the settlement agreement on July 24, 2008.

On December 15, 2008, plaintiffs filed a motion to compel defendants to comply with the terms of the settlement agreement by requesting the trial court to order the County of Grundy to install a drainage culvert under Reddick Road. The trial court denied plaintiffs' motion to compel. We affirm.

FACTS

On August 27, 2004, plaintiffs filed a complaint against defendants, Williamsville State Bank, John Dondanville, F. Jean Dondanville, Omer C. Halpin, and the County of Grundy claiming that the natural course of surface water flowed northerly across plaintiffs' property and through defendants' properties until reaching the Halpin Creek. Plaintiffs requested the court to enjoin defendants from obstructing the surface water flow from plaintiffs' property and to order defendants to restore the natural drainage course of surface water.

The trial court granted defendants' motions to dismiss plaintiffs' complaint on October 31, 2005. Plaintiffs appealed, and this court issued an order in *Blessent v. Williamsville State*

Bank, et al., No. 3–05–0843 (Dec. 6, 2006) (unpublished order under Supreme Court Rule 23), which reversed the trial court's order dismissing the complaint with prejudice. This court remanded the cause to the trial court for further proceedings.

Following remand, plaintiffs filed an amended complaint claiming that individually named defendants owned adjacent properties and Grundy County maintained the man-made ditches located on the north side and south side of Stonewall Road and the east side and west side of Lincoln Road, running adjacent to plaintiffs' property. Plaintiffs further claimed that the natural course of surface water drainage flowed northerly across plaintiffs' property, through Dondanville's property, then Halpin's property and into the Halpin creek. Plaintiffs asserted that defendants' actions obstructed the flow of water near the south and east lines of Dondanville's property near Stonewall Road and Lincoln Road and that the surface water now backed up on plaintiffs' property from time to time due to those obstructions. Plaintiffs sought a permanent injunction, a perpetual easement for the flow of surface water near Stonewall Road, money damages for sustained crop loss, and punitive damages.

During discovery proceedings, plaintiffs filed a response to demand for bill of particulars on April 10, 2008, which more specifically stated the basis of their amended complaint. Plaintiffs stated that in 1990, Grundy County took dirt from the north ditch of Stonewall Road, deepened the ditch and placed the removed dirt on the north edge of the north ditch of Stonewall Road. The farm tenant on the adjacent property smoothed out the dirt and filled in the area where the natural water drainage was located. In 1997, Grundy County installed five culverts under Stonewall Road and then placed gravel rip rap on the north wall of the north ditch to stop erosion. Plaintiffs stated that they had requested removal of the obstructions and that defendants

reestablish the natural drainage course of the surface water.

Also during discovery, plaintiffs proposed to defendants that the legal solution was “to have the natural drainage course restored running north and east across the Dondanville tract.” Plaintiffs alternatively proposed to take the drainage water easterly along the north drainage ditch of Stonewall Road and then run the water northerly along the west drainage ditch of Lincoln Road to the area where it crosses Lincoln Road and into the creek running through the Halpin property.

On July 24, 2008, the court entered an order approving and incorporating a settlement agreement which resolved the pending litigation. The agreement provided:

“that said Settlement Agreement is made with the understanding and agreement that the sole remedy of the parties hereto, their successors and/or Assigns, regarding future natural water course drainage matters, and adjustments to the man-made ditch on the north side of Stonewall Road north of the existing culverts, with respect to the parties hereto, their successors in interest and assigns, together with allegations of damages, shall be as provided for under the terms and conditions of this **Settlement Agreement.**”

(Emphasis in original).

The agreement included a statement that plaintiffs, Dondanvilles, Halpin and Grundy County were the named parties bound by the terms of agreement. The agreement also indicated the terms of settlement applied to plaintiffs’ property, Dondanvilles’ property, Halpin’s property and the real estate used for Stonewall Road and Lincoln road maintained by Grundy County,

including the culverts, ditches, and appurtenant structures thereto. The agreement established an elevation profile area which required Dondanvilles and Grundy County to contour or elevate a portion of the ditch along Stonewall Road maintained by Grundy County and a portion of the real estate owned by Dondanvilles to ensure the elevation of the land in the profile area did not exceed 592.8 feet. Further, the parties agreed on the amount of compensatory damages and punitive damages plaintiffs would receive.

The agreement provided that except as required by the agreement, the elevation and contours of plaintiffs' property and Dondanvilles' property would not be intentionally altered by plaintiffs or their successors in interest with respect to plaintiffs' property, with one exception. The agreement "provided that the installation of a culvert under Reddick Road shall be permitted so long as such installation does not change the direction, volume or flow of the surface water emanating from or flowing across the Blessent real estate located west of Reddick Road."

On December 15, 2008, plaintiffs filed a motion to compel defendants to comply with the terms of the settlement agreement by requesting the trial court to order the County of Grundy to install a drainage culvert under Reddick Road. On April 30, 2010, the trial court conducted a hearing on plaintiffs' pending motion to compel. Plaintiffs' counsel called Carter E. Sarver, a licensed civil engineer, who testified that plaintiffs owned the property south of Stonewall Road.

Sarver testified that plaintiffs contacted him about the possibility of putting culverts under Reddick Road. Sarver explained that natural drainage occurred before Reddick Road was built, and all the water from the 540-acre water shed naturally flowed in a shallow swale toward the area where it crossed at the culverts at Reddick Road.

Sarver testified that the installation of multiple, smaller culverts would minimize the flow

depth of water in the culverts because the natural state of water flows wider rather than deeper or higher. He explained that building multiple culverts would not “add more water to the water shed or to the area. We’re only trying to allow it to pass across where the road was built, you know, as it did naturally before the road was built.”

Sarver also considered the impact to water flow based on the assumption that only one culvert could be placed under Reddick Road. He said that “pretty much” the amount of water flow would also remain the same with one box culvert measuring 5 feet wide and 2 ½ feet high. He believed that Reddick Road blocked the natural drainage course of water and that the culvert would try to reestablish the natural drainage as “best we could.” When asked about the current drainage circumstances, Sarver said he knew that the water ponds in the area of the ditch but then flows north in the ditch adjacent to Reddick Road, underneath Reddick and then in the ditch adjacent to Stonewall Road.

The court then asked questions of Sarver. The court asked whether according to Sarver’s calculations, the single culvert, he contemplated and designed, would significantly increase the flow of water from plaintiffs’ property over Dondanville’s property. Sarver responded that “when you talk about increase, you have to increase from what.” The court responded, “Where it exists today.” Sarver then testified that “[i]f we’re talking about increase from natural drainage, I would say there’s no increase. If I’m talking about an increase from what’s happening today now that the road is built and so on, I would say, yes, there probably is an increase.” Sarver told the court that he based his opinion on pre-existing natural drainage and not “what it is today.” Sarver went on to say that “whether it’s significant, you know, that’s something else you can decide.”

Dondanvilles' attorney called James Blessant as an adverse witness. Blessant testified that he lived on Reddick Road for 73 years. When he began living at the location in question, Reddick Road already existed at its current location. However, he did not know when Reddick Road was built. Plaintiff stated that during the years, Reddick Road had been raised several times. He explained that gravel had been placed on the road to keep it from deteriorating and that Blessant believed the last improvement occurred at least 15 years earlier.

The County's attorney then called Steve Amann to testify. He explained that he worked as a licensed, consulting civil engineer, a certified flood plain manager and a municipal services technical coordinator. Amann said that he reviewed the calculations prepared by Sarver in this case at the request of Grundy County. After reviewing Sarver's information, he concluded that Sarver did not address an increase in the flow rate or volume resulting from the culvert installation and the loss of depressional storage. Amann said:

“construction and culvert across Reddick Road would have a big potential to change the volume, flow and direction of water at Reddick Road and then downstream at Stonewall Road onto the Dondanville property and there were no calculations showing what the flow across Reddick Road is right now under existing conditions and thus there's no way to measure what the impact would be of changing those conditions with a new culvert.”

Amann was concerned that Sarver did not prepare any calculations as to how the increase in water would affect the Stonewall Road culverts or the property beyond that location. Further, Sarver did not consider whether one culvert would fit under Reddick Road.

Following the conclusion of testimony, plaintiffs' attorney argued that the court must consider the settlement agreement in the context of the whole litigation. He stated:

“when this litigation was started, we were talking about reestablishing the natural drainage course. If we don't interpret this paragraph to mean the natural drainage course, it has no significance because the – any culvert under Reddick Road is going – we know will increase some flow of water from – and that's the purpose of it. To get some flow of water from the west 80 [acres] over to the east 80 [acres] and out in the natural drainage area.”

Plaintiffs' attorney stated the settlement agreement gave plaintiffs the right to put a culvert under Reddick Road. However, plaintiffs' attorney acknowledged that the settlement agreement:

“might not be artfully drawn but when you put this all into context, it's the only logical interpretation of this agreement that it goes back to the natural drainage course which would establish that flow and that the flow has to have some increase in volume over what it is today but back when it was originally the natural drainage course, we are not increasing it and that was the – what Mr. Sarver testified. So that's our position.”

Dondanvilles' attorney stated that:

“when this [settlement agreement] was drafted, the intent was that any water currently going under Reddick Road from the west side

of Stonewall Road could not be increased and if they wanted to have the water run down the east side of the ditch on Reddick Road, fine, as long as that didn't increase the volume."

Counsel said that Dondanvilles did not want any change from "where we were" at the time of the settlement agreement. According to Dondanvilles' attorney, "that was the basis of this agreement."

Before ruling, the court pointed out to the parties that:

"it didn't have anything at all to do with drafting this voluminous Settlement Agreement that the parties entered into which was about 17 pages long, and which at the time everybody presumed covered all of the outstanding issues that were out there including the payment of money. But this is the language and, as I said, this is what the court in this limited hearing and in this limited context is expected to be dealing with."

After making this observation regarding the language employed in the agreement, the court quoted the relevant language from the settlement agreement. The disputed provision of the agreement as recited by the court provided:

" 'except as provided for under the terms and conditions of this Settlement Agreement, the elevations and contours of the Blessant [*sic*] property, Tract 1, and the Dondanville property, Tract 2, shall not be intentionally altered by Blessants or their successors in interest with respect to the Blessant real estate; provided that the

installation of a culvert under Reddick Road shall be permitted so long as such installation does not change the direction, volume or flow of the surface water emanating from or flowing across the Blessant real estate located west of Reddick Road and thereafter acrossed [*sic*] the Dondanville real estate.’ ”

The court then stated:

“while there has been a long and storied history of this litigation, finds that the Settlement Agreement that was entered into by the parties and was drafted by them with the advice and the consent of their attorneys and through their counsel, was referring to at the paragraph the court just read, the existing conditions that were out there that were to be altered not going back to the days when Lewis and Clark went over this property and we had the natural flow of water.”

The court further stated that since Sarver’s testimony established that the existing situation would be altered by the installation of the culvert, the court would not order the installation of the culvert.

On May 6, 2010, the trial court entered a written order finding that the settlement agreement referred to the “ ‘existing conditions’ ” when “it posited there would be no change in the direction, volume, or flow of surface water.” Therefore, the court would not order the installation of a culvert under Reddick Road because expert testimony established the proposed culvert would increase the direction, volume or flow of the surface water. On May 26, 2010,

plaintiffs filed a notice of appeal.

ANALYSIS

On appeal, plaintiffs assert that the trial court erred by denying their motion to compel Grundy County to install a new culvert under Reddick Road. Defendants assert that the trial court correctly interpreted the unambiguous requirements of the settlement agreement and properly denied plaintiffs' motion to compel.

The parties agree that the settlement agreement executed by the parties and entered by the court on July 24, 2008, constituted a contract. The interpretation of a contract presents a question of law. *Diamond v. United Food and Commercial Workers Union Local 881*, 329 Ill. App. 3d 519, 524 (2002) (citing *Fitzwilliam v. 1220 Iroquois Venture*, 233 Ill. App. 3d 221, 237 (1992)). We review *de novo* a trial court's decision in such circumstances. *Diamond v. United Food and Commercial Workers Union Local 881*, 329 Ill. App. 3d at 524 (citing *Shaffer v. Liberty Life Assurance Co. of Boston*, 319 Ill. App. 3d 1048, 1051 (2001)).

The primary goal in construing a contract is to give effect to the intent of the parties. *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 164 (2002) (citing *Omnitrus Merging Corp. v. Illinois Tool Works, Inc.*, 256 Ill. App. 3d 31, 34 (1993)). "Though the term 'intent' is frequently used in this context, subjective intentions are irrelevant; rather, the pertinent inquiry focuses upon the objective manifestations of the parties, including the language they used in the contract." *Carey v. Richards Building Supply Co.*, 367 Ill. App. 3d 724, 727 (2006).

An unambiguous contract must be enforced as written. *Bank of America National Trust and Savings Ass'n v. Schulson*, 305 Ill. App. 3d 941, 945 (1999). When the only dispute concerns the meaning of a contract provision, a court must first address the threshold issue of

whether the contract is ambiguous. *Ford v. Dovenmuehle Mortgage, Inc.*, 273 Ill. App. 3d 240, 244 (1995).

Whether a contract is ambiguous is a question of law. *Groshek v. Frainey*, 274 Ill. App. 3d 566, 569 (1995). An agreement that is susceptible to more than one objectively, reasonable interpretation is considered ambiguous. *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d 326, 330 (2004). Mere disagreement between the parties does not make a term ambiguous. *Joseph v. Lake Michigan Mortgage Co.*, 106 Ill. App. 3d 988, 991 (1982). Further, a court will not imply factual conditions that the parties failed to express in a contract. *Fox v. Heimann*, 375 Ill. App. 3d 35, 44 (2007) (citing *Finch v. Illinois Community College Board.*, 315 Ill. App. 3d 831, 836 (2000); *Mitchell Buick & Oldsmobile Sales, Inc. v. McHenry Savings Bank*, 235 Ill. App. 3d 978, 985 (1992)).

A review of the record reveals that plaintiffs initiated a lawsuit in 2004 alleging that the flow of water from plaintiffs' property was obstructed near the south and east lines of Dondanville's adjoining property due to defendants' actions. A review of the record also shows that plaintiffs' amended complaint was based upon the fact that in 1990, Grundy County removed dirt from the north ditch of Stonewall Road, deepened the ditch and then placed the removed dirt on the north edge of the north ditch of Stonewall Road. Thereafter, the farm tenant on the adjacent property smoothed out the dirt and filled in the area where the natural water drainage was located. In 1997, Grundy County installed five culverts under Stonewall Road and then placed gravel rip rap on the north wall of the north ditch to stop erosion. Plaintiffs claimed that they had requested removal of the obstructions and that defendants reestablish the natural drainage course of the surface water.

During the pendency of the case, plaintiffs proposed to defendants that the legal solution was “to have the natural drainage course restored running north and east across the Dondanville tract.” Plaintiffs alternatively proposed to take the drainage water easterly along the north drainage ditch of Stonewall Road and then run the water northerly along the west drainage ditch of Lincoln Road to the area where it crosses Lincoln Road and into the creek running through the Halpin property.

Ultimately the parties reached a settlement agreement in 2008. Plaintiffs now seek to enforce the contractual terms of the settlement agreement drafted by the parties. As carefully pointed out by the court, “it didn’t have anything at all to do with drafting this voluminous Settlement Agreement that the parties entered into which was about 17 pages long” and that the “Settlement Agreement *** was drafted by them [the parties] with the advice and the consent of their attorneys.”

The language now disputed by the parties provided that plaintiffs’ property shall not be intentionally altered by plaintiffs or their successors with one exception. Specifically, this exception included:

“the installation of a culvert under Reddick Road shall be permitted so long as such installation does not change the direction, volume or flow of the surface water emanating from or flowing across the Blessent real estate located west of Reddick Road and thereafter across the Dondanville real estate.”

Plaintiffs’ amended complaint made reference to restoring the natural course of water. However, the written agreement, memorializing the parties’ resolution of plaintiffs’ amended

complaint which we are called upon to consider, did not mandate the removal of the roadways or culverts creating the drainage issues and did not require the restoration of natural drainage. Instead, all of the parties agreed to allow modifications that would improve the drainage problem on the property in light of existing conditions, such as ditches, culverts and roads, and provided for compensatory damages for past drainage damage.

The contract which plaintiff now claims is ambiguous makes reference to the existence of Reddick Road when outlining the conditions for the installation of a culvert. Other paragraphs in the agreement make reference to the condition of the properties as they existed at the time of the settlement agreement and in light of modern additions, such as culverts, ditches and roads. There is nothing in the paragraph in question or the settlement agreement, as a whole, which indicates that a comparison should be made to the natural flow of surface water as it existed before the construction of these land improvements.

Moreover, the disputed provision, set forth above, clearly describes the flow of water in detail as first “emanating from” or “flowing across” plaintiffs’ property and then “across” Dondanvilles’ boundaries. Based on the present tense of the language selected and employed in the settlement agreement along with the terms of the agreement as a whole, approved by the parties, we conclude that the language of the agreement, as written, unambiguously set forth the corrections which the parties agreed would improve the water drainage flow issues to their mutual satisfaction based on the contemporaneous condition of the properties at the time of the settlement agreement. Accordingly, we conclude the language selected by the parties, is not susceptible to more than one reasonably, objective interpretation. See *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d at 330. Since we conclude the settlement

agreement is unambiguous, it must be strictly construed as written. See *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952 (2004).

Plaintiffs' argument asks this court to insert additional, factual conditions into the terms of the agreement which the parties did not set forth in their written settlement agreement. Such interpretation contravenes the strict construction interpretation of a contract, along with the prohibition against implying factual terms not expressed by the parties. See *Fox v. Heimann*, 375 Ill. App. 3d at 44; *Erlenbush v. Largent*, 353 Ill. App. 3d at 952.

Finally, plaintiffs argue that if the trial court's decision is affirmed, the disputed paragraph becomes a nullity. It is well established that a court must not interpret a contract in a manner that would nullify any of the contract provisions or render them meaningless. *Atwood v. St. Paul Fire and Marine Insurance Co.*, 363 Ill. App. 3d 861, 864 (2006); *Smith v. Burkitt*, 342 Ill. App. 3d 365, 370 (2003); *First Bank & Trust Co. of Illinois v. Village of Orland Hills*, 338 Ill. App. 3d 35, 40 (2003).

First, we note the agreement clearly contemplates a single culvert. Next, we cannot ignore that plaintiffs presented only the testimony of Sarver regarding the size of the proposed culvert. Based on Sarver's testimony, the court concluded that the installation of a 5 foot by 2 ½ foot, single box culvert would increase the flow and volume of water emanating from plaintiffs' property and would not comply with the terms of the agreement. This is not to say that the court would reach the same conclusion if Sarver had proposed a smaller, single culvert. However, even though Sarver did not offer any testimony to the court regarding a single, smaller culvert, the County's attorney conceded during oral arguments, before this court, that a single, 24-inch culvert installed under Reddick Road would be permissible according to the County's

interpretation of the language incorporated into this settlement agreement.

Based upon our review of the contents of this record, we conclude that the trial court's decision does not result in a nullity of the contract provision or support plaintiffs' contention that no proposed culvert would satisfy the language of this agreement as construed by the court. We also conclude that the trial court correctly found that the comparison to be made regarding the volume, direction and flow of water is the volume and direction of water flow as it related to the existing conditions at the time of the agreement. This determination was entirely consistent with the language drafted by the parties into their settlement agreement in this case. Since plaintiffs do not challenge the trial court's findings that plaintiffs' proposed single box culvert with the dimensions of 5 feet wide and 2 ½ feet high would increase the volume or flow of water emanating from plaintiffs' property, based upon the evidence presented, we affirm the trial court's denial of plaintiffs' motion to compel.

CONCLUSION

The judgment of the circuit court of Grundy County is affirmed.

Affirmed.