

FILED
United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,)

Plaintiff-Appellee,)

v.)

No. 91-1088

GOODRICH FARMS PARTNERSHIP,)

Defendant-Appellant.)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(D.C. No. 90-C-710)

Submitted on the briefs:

Hans W. Johnson and Scott C. Brown of Johnson, Oldham & Angell,
P.C., Denver, Colorado, for Defendant-Appellant.

Barry M. Hartman, Acting Assistant Attorney General; Michael J.
Norton, United States Attorney, and Chalk S. Mitchell, Assistant
U.S. Attorney for the District of Colorado; Jacques B. Gelin and
Robert L. Klarquist, Attorneys, Department of Justice, Environment
& Natural Resources Division, Washington, D.C., for Plaintiff-
Appellee.

Before MCKAY, Chief Judge, SEYMOUR and EBEL, Circuit Judges.

PER CURIAM.

After examining the briefs and appellate record, this panel
has determined unanimously that oral argument would not materially

assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

The United States brought an action for declaratory relief to quiet title to certain Colorado lands. The defendant brought a cross-complaint requesting that title be quieted in it. On cross-motions for summary judgment, the trial court granted the United States' demand for quiet title. The essence of the dispute is whether a ditch running through the property was conveyed to the United States' predecessor-in-interest to the center of the ditch or only to the bank of the ditch.

The undisputed facts as recited by the trial court in its memorandum opinion and order are as follows:

Prior to July 17, 1962, three brothers, James L. Cook, George E. Cook and George S. Cook as joint tenants, owned a parcel of land in Morgan County, Colorado. Located on the property is a ditch, referred to by the parties as the "Jackson Lake Inlet Ditch." The brothers decided to divide the property, and on July 17, 1962, they executed two deeds, one conveying the northern portion to James Cook and George S. Cook, and the other conveying the southern portion to George E. Cook. In pertinent part, the July 17, 1962 deeds described the property as:

"That part of the North Half (N1/2), the Southeast Quarter (SE1/4) and the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4) of Section Thirty-three (33), and the South Half (S1/2) of Section Twenty-eight (28), Township Five (5) North, Range Sixty (60) West of the Sixth (6th) Principal Meridian, Lying south of the Jackson Lake Inlet Ditch"

and

"All that part lying north of the Jackson Lake Inlet Ditch." (Emphasis added).

The meaning of the underlined words constitutes the issue in this litigation.

On April 15, 1975, James Cook and George S. Cook conveyed their interest in the northern portion to Kenneth V. Dixon Jr., W. Morgan Oakes and Paul R. Thayer. On June 11, 1975, Dixon, Morgan and Thayer conveyed their interest to the defendant. George E. Cook conveyed his interest in the southern half of the property to the United States on February 4, 1977. To describe the respective properties being conveyed, each conveyance used language similar to that quoted above.

Memorandum Opinion and Order, Jan. 9, 1991, at 1-2.

Put simply, the dispute is whether the language of the deed conveys the parcels to the thread of the stream or to the bank only. It has been the settled law of Colorado (whose law governs the decision in this case) since 1897 that if a nonnavigable stream, such as a ditch, is described as the boundary or a monument in a deed conveying land bordered by that non-navigable stream, the conveyance includes the stream's bed to its center. More v. Johnson, 568 P.2d 437, 439 (D. Colo. 1977); Hanlon v. Hobson, 51 P. 433 (Colo. 1897). Under Colorado law, "the intention of the parties to a conveyance is open to interpretation only when the words used are ambiguous." Radke v. Union Pac. R.R., 334 P.2d 1077, 1088 (Colo. 1959); More, 568 P.2d at 439; Hudgeons v. Tenneco Oil Co., 796 P.2d 21, 22 (Colo. Ct. App. 1990). Here, the deed unambiguously uses the ditch as a boundary and therefore, under applicable Colorado law, unambiguously conveyed land to the center of the stream. Accordingly, Colorado

law precludes the use of extrinsic evidence to determine the parties' intent.

The trial court corrected granted summary judgment.

AFFIRMED.