

IN THE SUPREME COURT, STATE OF WYOMING

2002 WY 139

APRIL TERM, A.D. 2002

September 23, 2002

DAN HUISH,)
)
) *Appellant*)
) *(Defendant),*)
)
 v.)
)
 GRACE E. SULENTA and)
 JOHN A. SULENTA,)
)
) *Appellees*)
) *(Plaintiffs).*)

No. 02-7

Appeal from the District Court of Sublette County
The Honorable Nancy J. Guthrie, Judge

Representing Appellant:

Mark W. Gifford, Casper, Wyoming; and Elizabeth Greenwood, Pinedale, Wyoming

Representing Appellees:

Gerald R. Mason and Douglas J. Mason of Mason & Mason, P.C., Pinedale, Wyoming

Before HILL, C.J., and GOLDEN, LEHMAN,* KITE, and VOIGT, JJ.

*Chief Justice at time of oral argument

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KITE, Justice.

[¶1] In 1978, the owner of servient property granted a temporary easement to neighboring landowners John M. and Grace E. Sulenta, which they used for more than twenty years to access their property. In 1999, Dan Huish acquired the servient property and obstructed the temporary easement, thereby cutting off the Sulentas' access. Mrs. Sulenta filed suit seeking a determination that the temporary easement had become permanent or, in the alternative, an order requiring Mr. Huish to provide a reasonable permanent substitute easement. Just prior to trial, Mr. Huish filed a partial confession of judgment admitting some of the Sulentas' claims. The trial court entered judgment against Mr. Huish as to all the claims and ordered him to restore access to the temporary easement and provide the Sulentas with a permanent equivalent easement. We hold the judgment void and remand for further proceedings consistent with this opinion.

ISSUES

[¶2] Mr. Huish states the issues as follows:

Did the trial court abuse its discretion when it entered a judgment against Appellant without (1) a trial on the merits; (2) Appellant's confession to said judgment; or (3) Appellant's consent to said judgment?

The Sulentas present the following issues:

1. What is the effect of a confession of judgment?
2. Did the District Court abuse its discretion by granting Appellees (plaintiffs) judgment for the relief sought in their Complaint, after Appellant (defendant) confessed judgment?
3. Did the District Court abuse its discretion when, upon a confession of judgment by defendant, it defined the term "reasonable" as requested in plaintiffs' Complaint seeking a declaratory judgment of the respective parties' rights under an easement?

We view the pertinent issue as being whether the trial court abused its discretion in entering judgment on all claims after Mr. Huish filed a confession of judgment to part of the claims.

FACTS

[¶3] In 1978, the owner of land in the Half Moon Lake Lot Division in Sublette County granted to the Sulentas a temporary right of way easement across his property to allow them to build a road accessing their property. The third paragraph of the temporary right of way easement provides:

The Right of Way Easement hereinabove set forth shall be a temporary easement only and shall terminate when the owner of such land grants to Grantees a permanent substitute easement, at which time Grantees agree to restore at their sole expense the easement herein above described, to it[]s original condition and topography as near as may be possible.

The Sulentas used the temporary easement for over twenty years to get to their property. In 1999, Mr. Huish acquired the servient property and began various construction projects which had the effect of obstructing the Sulentas' access. Although he allegedly offered to grant a substitute easement, the parties were apparently unable to agree on an acceptable alternative location.

[¶4] On September 1, 2000, Mrs. Sulenta filed a complaint against Mr. Huish asserting claims for trespass; quiet title; breach of contract; waiver, estoppel, or laches; and declaratory judgment.¹ She sought judgment requiring Mr. Huish to restore the access road and quieting title in her or, in the alternative, declaring that any substitute easement be limited to a location "similar in nature, length, terrain covered, and access point" to the original temporary easement. Mrs. Sulenta also sought actual and punitive damages for trespass and interference with the easement plus actual damages for breach of contract.

[¶5] Mr. Huish answered the complaint, asserting his right under the written easement to terminate the temporary easement by granting a permanent substitute easement. He alleged he granted a substitute easement to Mrs. Sulenta by recording it with the county clerk on September 8, 2000. Mr. Huish contended he was not required under the terms of the original easement to substitute an easement of any particular character or location. He also filed a counterclaim for damages arising from the Sulentas' failure to restore the temporary easement to its original condition after he granted the substitute easement as required by the written right of way easement.

[¶6] On October 20, 2000, Mrs. Sulenta filed a motion for partial summary judgment asking the court to enter judgment as a matter of law as follows: Mr. Huish's right to terminate the temporary easement is void by operation of the rule against perpetuities, the substitute easement recorded by Mr. Huish is unacceptable, and Mr. Huish's counterclaim is

¹ John A. Sulenta, Mrs. Sulenta's son, acquired an ownership interest in the property belonging to his mother in April of 2001. On April 25, 2001, Mrs. Sulenta sought the trial court's approval to file an amended complaint adding her son as a plaintiff in this action. The trial court granted her motion on May 1, 2001.

without lawful basis. The court held a hearing on December 22, 2000, and on January 11, 2001, entered an order denying Mrs. Sulenta's motion. It held: The right to terminate the temporary easement does not violate the rule against perpetuities, any substitute easement granted by Mr. Huish must be reasonable for the purposes for which it was intended, and the duty to restore the temporary easement to its original condition has not arisen. The court granted judgment as a matter of law in favor of Mr. Huish as to the applicability of the rule against perpetuities and denied summary judgment on the issues of reasonableness and the duty to restore, finding genuine issues of material fact existed.

[¶7] The court held a pretrial conference on March 7, 2001, at which time it set the matter for jury trial to commence on October 2, 2001. On July 10, 2001, Mr. Huish filed a motion offering to modify the September 2000 substitute easement or submit an alternative in an effort to satisfy the Sulentas' reasonableness objections. On August 1, 2001, Mr. Huish also filed a motion for partial summary judgment on the Sulentas' fourth cause of action for waiver, estoppel, or laches. By order filed August 30, 2001, the court denied Mr. Huish's motion to modify or submit an alternative easement, finding modifications or alternative proposals were not relevant to the issues presented. The court's order expressly prohibited Mr. Huish from introducing testimony, exhibits, argument, or inference of proposals to alter the September 2000 substitute easement.²

[¶8] Over the course of the next few weeks, the parties filed pretrial memoranda, jury instructions, and various motions in preparation for the October 2nd trial date. At some point during this time frame, an unreported telephone conference took place between counsel for the parties and the court in which Mr. Huish's counsel indicated his client would confess judgment to some or all of the Sulentas' claims. No transcript appears in the record, and the parties disagree as to what was said during the conference. In any event, on September 26, 2001, the court entered an order stating it had been advised Mr. Huish would admit the permanent substitute easement was not reasonable and judgment would be entered for the Sulentas on that issue. The order also denied Mr. Huish's motion for summary judgment on the waiver, estoppel, or laches claim. The following day, September 27, 2001, the Sulentas moved for entry of judgment in their favor on their complaint, stating the court had been advised Mr. Huish elected to confess judgment resulting in the trial date being vacated and the parties would resolve the amount of damages and costs between themselves or, failing that, present the issue to the court for resolution.

[¶9] On October 5, 2001, Mr. Huish filed a partial confession of judgment in which he admitted the substitute easement filed September 8, 2000, was unreasonable. He further admitted the trespass and breach of contract claims and that the Sulentas suffered nominal damages as a result of his obstruction of the temporary easement. However, Mr. Huish expressly denied any intention to confess judgment to the Sulentas' right to a substitute

² While we question the reasoning behind this ruling, Mr. Huish did not appeal it, and it is not, therefore, an issue before us. However, it would seem from the record before us that allowing Mr. Huish to address the Sulentas' concerns by submitting modifications to the proposed substitute easement or an altogether different proposal would have facilitated resolution of this action in one proceeding.

easement of any specific description or location and to the claims for waiver, estoppel, or laches and punitive damages. Along with the partial confession of judgment, Mr. Huish filed an objection to the Sulentas' motion for entry of judgment in which he reiterated his intent to confess judgment only to the unreasonableness of the September 2000 substitute easement and nominal damages for trespass and breach of contract. Additionally, Mr. Huish again stated it was not his intent to confess judgment to the Sulentas' entitlement to a permanent substitute easement in any particular location or of any particular description.

[¶10] The trial court entered judgment on November 30, 2001, finding: (1) Mr. Huish confessed judgment "for the relief sought by plaintiffs," (2) the allegations in the Sulentas' complaint are taken as established and Mr. Huish's allegations to the contrary are rejected, and (3) the Sulentas are entitled to entry of judgment "for the relief sought" in their complaint. The trial court ordered Mr. Huish to restore the temporary access road and provide the Sulentas with a substitute easement in a location "similar in nature, length, terrain covered and access point" to the temporary easement. The court awarded actual and punitive damages for trespass and willful interference with the temporary easement plus actual damages for breach of contract. Upon stipulation of the parties, the court entered judgment on December 12, 2001, in the amount of \$5,000 in actual damages for breach of contract and trespass plus \$5,926.50 in costs. No punitive damages were awarded. Mr. Huish timely appealed.

STANDARD OF REVIEW

[¶11] Denial of the application to enter a judgment by confession rests in the sound discretion of the trial court. 46 Am. Jur. 2d *Judgments* § 233 (1994). We conclude the grant of an application to confess judgment likewise rests in the trial court's discretion. The ultimate question in determining whether an abuse of discretion has occurred is whether the trial court reasonably could have concluded as it did. *GGV v. JLR*, 2002 WY 19, ¶14, 39 P.3d 1066, ¶14 (Wyo. 2002); *Vaughn v. State*, 962 P.2d 149, 151 (Wyo. 1998). Our review for abuse of discretion entails evaluation of the sufficiency of the evidence to support the trial court's decision. *Reavis v. Reavis*, 955 P.2d 428, 431 (Wyo. 1998). A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Polo Ranch Company v. City of Cheyenne*, 969 P.2d 132, 136 (Wyo. 1998). The burden is on the appellant to show an abuse of discretion. *MTM v. LD (Adoption of KJD)*, 2002 WY 26, ¶21, 41 P.3d 522, ¶21 (Wyo. 2002).

DISCUSSION

[¶12] Mr. Huish contends the trial court abused its discretion in entering a judgment that goes beyond the matters admitted in his confession of judgment. Specifically, he claims the judgment goes too far because he did not admit the Sulentas had a right to a permanent substitute easement “in a location which is similar in nature, length, terrain covered and access point as the original temporary easement” as ordered by the trial court. Rather, Mr. Huish contends he confessed judgment to only the general unreasonableness of the September 2000 substitute easement and not to any particular location or characteristic of the substitute easement referred to in the right of way easement. Mr. Huish asserts that, by entering judgment requiring him to provide the Sulentas with a permanent substitute easement satisfying specific criteria, the trial court in essence granted a mandatory injunction without an evidentiary basis and contrary to the parties’ express agreement as set forth in the written right of way easement.

[¶13] The Sulentas claim the judgment entered by the trial court as to all their claims and all the relief sought in the complaint is consistent with the confession of judgment made by Mr. Huish through his counsel during the telephone conference. They claim the written confession of judgment Mr. Huish filed later is different from what was admitted during the conference call. They also assert that, upon Mr. Huish’s confession, the trial court properly entered judgment in their favor as to all claims made in the complaint because Wyoming law authorizes confession of judgment in full. The confession of judgment, they assert, cut off all defenses available to Mr. Huish and amounted to full proof against him for all claims raised in the complaint.

[¶14] A defendant’s right to confess judgment is recognized in Wyoming as follows: “A person indebted or against whom a cause of action exists, may personally appear in a court of competent jurisdiction and with the assent of the creditor or person having such cause of action, confess judgment, whereupon judgment shall be entered accordingly.” Wyo. Stat. Ann. § 1-16-201 (LexisNexis 2001). A partial confession of judgment is also authorized under Wyoming law:

The defendant in an action for the recovery of money may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. If the plaintiff, being present, refuses to accept such confession of judgment in full satisfaction of his demands in the action . . . and, on the trial, does not recover more than was offered to be confessed, with interest from the date of the offer, the plaintiff shall pay all costs of the defendant incurred after the offer was made.

Wyo. Stat. Ann. § 1-10-104 (LexisNexis 2001). The law does not generally favor confession of judgment. 49 C.J.S. *Judgments* § 138 (1997). Statutes authorizing confession of judgment have been strictly construed. 46 Am. Jur. 2d *Judgments* § 231 (1994).

The general rule constraining the power to confess judgment is that such authority must be clearly given and strictly followed, and a judgment entered in violation of this rule is void. Any doubt as to the validity of [a] confessed judgment must be resolved against the party entering the judgment. The policy underlying this rule of strict construction against the party in whose favor the power operates is based on the severity of the summary proceeding itself.

Id. at 557. When we apply the Wyoming statutory provisions governing confession of judgment together with the rule of strict construction, we conclude the trial court's judgment violates the rule and is void.

[¶15] The written confession of judgment filed by Mr. Huish is captioned, "Partial Confession of Judgment." It states in relevant part that Mr. Huish admits the permanent substitute easement is unreasonable, partially confesses judgment to the claims for trespass and breach of contract, and admits the Sulentas suffered nominal damages therefor. The written confession of judgment further specifically states Mr. Huish does not intend to admit liability or confess judgment to any claim of right to a permanent substitute easement of certain specifications or to the allegations of waiver, estoppel, or laches and punitive damages.

[¶16] In contrast to the confession of judgment, the trial court's judgment finds: Mr. Huish has confessed judgment "for the relief sought by plaintiffs," the Sulentas' allegations in their first amended complaint "are taken as established," and the Sulentas are entitled to entry of judgment for the "relief sought" in the first amended complaint. Based upon these findings, the court dismissed Mr. Huish's counterclaim with prejudice; ordered him to restore the temporary easement; ordered him to provide "a permanent easement in a location which is similar in nature, length, terrain covered and access point as the original temporary easement" and which is "not based upon use permits or other rights of less stature" than the original temporary easement; and awarded actual and punitive damages for trespass and willful interference with the easement plus actual damages for breach of contract.

[¶17] In this summary manner, the judgment purports to resolve all claims alleged in the complaint in favor of the Sulentas. Given the very specific language in the written confession of judgment limiting the confession to specified issues, we find Mr. Huish's intent was not to confess judgment in full but to confess judgment to only those claims specifically delineated in the written confession. Applying the rule of strict construction against the party in whose favor judgment is entered, we hold the judgment void because it finds for the Sulentas on all issues, even those not expressly admitted in the written confession of judgment.

[¶18] The Sulentas claim that, prior to the written confession of judgment, there was no indication of a partial confession of judgment. They contend their attorney received a

telephone call from counsel for Mr. Huish on September 19, 2001, prior to the telephone conference call with the court, in which he indicated his client wished to confess judgment to all issues except damages and costs. The Sulentas assert no mention was made during that telephone call of a “partial” confession. According to the Sulentas, that telephone call led to the conference call in which the parties advised the court of Mr. Huish’s intent to confess judgment. Again, the Sulentas assert all indications were that the confession would resolve all remaining issues except the damage amount and there was no suggestion of a partial confession of judgment.

[¶19] No transcript of these telephone calls appears in the record. The only documentation we have of what occurred is found in the trial court’s order and the submissions of the parties. We reiterate the guiding principles that confessions of judgment are to be strictly construed, authority for them must be clearly given, and they are to be construed against the persons in whose favor they are entered. In light of these principles, we are compelled, in the absence of contrary evidence, to give great weight to the written confession of judgment itself in determining the scope of the confession. Because it clearly and unambiguously states it is a “partial” confession of judgment to the unreasonableness of the September 2000 permanent substitute easement and the claims for trespass and breach of contract and specifically states it is not intended to constitute a confession to anything more, we conclude no confession was intended and no judgment can be entered as to any other claims.

[¶20] This conclusion gains support from the trial court’s order entered shortly after the conference call which states: “Last week counsel advised Defendant would admit that the easement granted by Defendant to Plaintiffs was not ‘reasonable’ and judgment would be entered in favor of Plaintiffs on this issue.” The order also states genuine issues of fact exist on the claim for waiver, estoppel, or laches lending further support to Mr. Huish’s assertion he did not indicate during the conference call that he intended to confess judgment to all claims in the Sulentas’ complaint. Given its proximity in time to the date of the conference call, the September 26, 2001, order convinces us Mr. Huish intended his admissions to be limited to those stated in the written confession of judgment.

[¶21] Given the express language of the written confession of judgment, the contents of the trial court’s own order after the telephone conference call, and the absence of evidence in the record to support confession of judgment on all claims, we find the trial court could not reasonably have concluded as it did that Mr. Huish intended to confess judgment in full. We hold the trial court abused its discretion in entering judgment for the Sulentas on all their claims on the basis of Mr. Huish’s limited confession of judgment.

[¶22] In addition to finding that the judgment is too broad, we are concerned about it in two other respects: First, it orders Mr. Huish to provide a permanent substitute easement, and, second, it dismisses Mr. Huish’s counterclaim with prejudice. Neither of these rulings is supported by the terms of the original right of way easement which allows, but does not require, Mr. Huish to provide a permanent substitute easement and requires the Sulentas to restore the temporary easement if a permanent substitute easement is granted. On remand, the trial court will need to consider these issues.

CONCLUSION

[¶23] We reverse the November 30, 2001, judgment and remand the case for further proceedings consistent with this opinion. On remand, the trial court will have to determine those issues left unresolved by Mr. Huish's partial confession of judgment, including whether Mr. Huish has any obligation at all under the original right of way easement to grant a permanent substitute easement; whether Mr. Huish is barred by the doctrine of waiver, estoppel, or laches from asserting a right to grant a substitute easement; and whether any new permanent substitute easement granted by Mr. Huish is reasonable and, if so, whether the Sulentas are required at their sole expense to restore the original temporary easement.