ATTORNEY FOR APPELLANTS

Michael J. Chapman
Rendigs, Fry, Kiely & Dennis, LLP
Cincinnati, Ohio

ATTORNEY FOR APPELLEE – DAVID MARTINI

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath
Madison, Indiana

IN THE

COURT OF APPEALS OF INDIANA

Blind Hunting Club, LLC and Brian Lane,

Appellants-Defendants,

v.

David Martini and Theresa Farrell,

Appellees-Plaintiffs.

April 20, 2021

Court of Appeals Case No. 20A-PL-1868

Appeal from the Dearborn Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No. 15C01-1908-PL-39

Najam, Judge.

Statement of the Case

[1] Blind Hunting Club, LLC and Brian Lane (collectively, "BHC") appeal the trial court's grant of summary judgment in favor of plaintiffs David Martini and Theresa Farrell on their complaint for a declaratory judgment regarding the scope of an easement. BHC raises one issue for our review, namely, whether

the trial court erred when it entered summary judgment in favor of Martini and Farrell and denied BHC's motion for summary judgment.[1]

[2] We affirm.

Facts and Procedural History

[3] Martini and Farrell own neighboring properties in Guilford with frontage on York Ridge Road. Blind Hunting Club, LLC (the "Hunting Club") owns 440 acres adjacent to the Martini and Farrell properties that is zoned agricultural. Pursuant to a 2016 "Easement and Maintenance Agreement" (the "agreement") entered into by the prior owners of the properties, the Hunting Club (the "dominant estate") has an easement over Martini's and Farrell's properties (the "servient estates") to access its land from York Ridge Road.[2]

[4] The agreement provides, in relevant part, as follows:

> WHEREAS there has long been an easement to the Dominant Estate [now held by the Hunting Club] from York Ridge Road which runs through the Servient Estate[s, now held by Martini and Farrell,] for access to farm homes; and
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> WHEREAS the easement has been consistently referenced in the deeds in the Dominant Estate's chain of title as "the farm privilege of a gateway from the York Ridge Road . . . as said is

[1] Farrell does not participate in this appeal.

[2] The Hunting Club's property is made up of multiple parcels, which have frontage on multiple roads. However, because of the topography of the land, BHC cannot access part of its property without the easement over the servient estates from York Ridge Road. *See* Tr. at 77-78.

> now located and traveled and running in a westwardly direction until it intersects the land that is deeded . . .” or “reserving the right of way over the last above described premises for farm privilege,” or “the right to use of a lane or private roadway from said farm to public road[.]”
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> * * *
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> EASEMENT
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> * * *
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> *Subject only to the conditions stated herein*, Grantor[s] hereby convey[] and grant[] to Grantees *an unrestricted right of ingress, egress, use and access to, over, across and upon a perpetual easement (“Easement”) being twenty (20) feet of even width . . . to provide access for farm equipment, pedestrian and vehicular traffic to and from the Dominant Estate*, to and from the physically open and publicly dedicated roadway commonly known as York Ridge Road.
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> Grantor[s’] grant of the Easement herein is *subject to the following condition, and Grantees do hereby covenant and agree to limit the use of said Easement for the ingress and egress to no more than two (2) residences in total, that may hereafter be constructed* and located on the two (2) parcels that comprise the Dominant Estate[.]

Appellants’ App. Vol. 2 at 62-63 (emphases added; some omissions in original).

[5] In April 2017, the Hunting Club leased 150 acres of its property to Jeff and Brandon Feiss. The Feisses used the property to plant and harvest corn and soybeans as part of a commercial farming operation. They also used the easement to transport various large pieces of farming equipment to their

property. The Feisses terminated their lease with the Hunting Club in May 2019.

[6] In 2019, the Hunting Club leased its 440-acre property to Lane. Lane lives on the property, and he uses it to operate a fee-based hunting club, where members pay to hunt birds and deer. Lane does not raise the birds but purchases them from suppliers, holds them in pens, and releases them into fields to be hunted. *See* Tr. at 51, 55. Lane also uses 150 acres to plant and tend milo grain, which he does not harvest but which serves as cover for the birds to be hunted. *Id*. at 56. Lane uses the easement granted by the agreement to provide members of his hunting club with access to the property.

[7] On November 18, 2019, Martini and Farrell filed an amended complaint against BHC in which Martini and Farrell sought a declaratory judgment regarding the easement.[3] Specifically, Martini and Farrell asked the court to declare that the easement is "limited to farm and residential use" and "specifically prohibits" BHC's use of the easement for its hunting business. Appellant's App. Vol. 2 at 60.

[8] Thereafter, Martini and Farrell filed a motion for summary judgment. In a supporting memorandum, Martini and Farrell asserted that the easement is "limited to that of farming activity or to a residence on the real estate." *Id*. at 90. And Martini and Farrell asserted that Lane was "admittedly" using the

[3] Martini and Farrell also sought a preliminary injunction, which the trial court denied.

easement to allow members of his hunting club to access the property in order to hunt birds that Lane had procured from outside sources. *Id*. Accordingly, Martini and Farrell maintained that BHC's "current usage" of the easement "does not fall into the categories allowed by" the agreement. *Id*.

[9] BHC responded and filed a cross-motion for summary judgment. BHC asserted that the plain language of the agreement gives it "a broad general ingress and egress easement" not limited to residential or farm use. *Id*. at 99. But BHC contended that, if its use of the easement were limited to farm or residential uses, then its operation of an "agrotourism business, a game preserve . . . and an upland bird and whitetail deer hunting club" is a farm use consistent with the language of the agreement. *Id*. at 102.

[10] The court entered summary judgment for Martini and Farrell. In its order, the court found that the language of the agreement demonstrates that "the framers of the [a]greement intended the following: you can farm the land, and/or you can build up to 2 homes on the land." *Id*. at 122. And the court found that BHC's hunting operation "is a business not contemplated by the framers of the Easement Agreement" and that BHC's "use of the easement for th[is] business purpose[] is thus not permitted." *Id*. at 124. This appeal ensued.

Discussion and Decision

[11] BHC contends that the trial court erred when it denied BHC's motion for summary judgment and entered summary judgment for Martini and Farrell. The Indiana Supreme Court has explained that

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id*. (internal citations omitted).
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> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an issue for the trier of fact. *Id*. at 761–62 (internal quotation marks and substitution omitted). And "[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *McSwane v. Bloomington Hosp. & Healthcare Sys*., 916 N.E.2d 906, 909–10 (Ind. 2009) (internal quotation marks omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*). "'The fact that the parties have filed cross-motions for summary judgment does not alter our standard for review, as we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law.'" *SCI Propane, LLC v. Frederick*, 39

N.E.3d 675, 677 (Ind. 2015) (quoting *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind. 2012)).

[12] Here, the trial court entered findings of fact and conclusions thereon in its summary judgment order. While such findings and conclusions are not required in a summary judgment and do not alter our standard of review, they are helpful on appeal for us to understand the reasoning of the trial court. *See Knighten v. E. Chicago Hous. Auth.*, 45 N.E.3d 788, 791 (Ind. 2015).

[13] The parties do not dispute the underlying facts. Rather, on appeal, the parties dispute whether the agreement allows BHC to use the easement to operate a fee-based hunting club. Thus, this appeal requires that we interpret the agreement. Cases involving contract interpretation generally are particularly appropriate for summary judgment. *Celadon Trucking Servs., Inc. v. Wilmoth*, 70 N.E.3d 833, 842 (Ind. Ct. App. 2017).

[14] It is well settled that, "[w]hen construing an instrument granting an easement, the trial court must ascertain and give effect to the intention of the parties, which is determined by proper construction of the instrument from an examination of all the parts thereof." *McCauley v. Harris*, 928 N.E.2d 309, 314 (Ind. Ct. App. 2010). Particular words and phrases cannot be read alone, as the parties' intention must be gleaned from the instrument as a whole. *Id*. at 315. Further, "[a] document is ambiguous only when reasonable persons find it subject to more than one interpretation." *Kwolek v. Swickard*, 944 N.E.2d 564, 571 (Ind. Ct. App. 2011).

[15] Here, the operative provisions of the agreement provide as follows:

> Subject only to the conditions stated herein, Grantor[s] hereby convey[] and grant[] to Grantees an *unrestricted right* of ingress, egress, use and access to, over, across and upon a perpetual easement . . . to provide access for farm equipment, pedestrian and vehicular traffic to and from the Dominant Estate[.]
>
> Grantor[s'] grant of the Easement herein is *subject to* the following condition, and Grantees do hereby covenant and *agree to limit* the use of said Easement *for the ingress and egress to no more than two (2) residences* in total, that may hereafter be constructed[.]

Appellants' App. Vol. 2 at 62-63 (emphases added).

[16] The first operative provision states broadly that BHC has "unrestricted" access to the easement for farm equipment and pedestrian and vehicular traffic. *Id*. at 63. But this general grant is made subject to the condition described in the second operative provision that the parties "agree to limit" use of the easement for access "to no more than two (2) residences[.]" *Id*. The meaning of those two clauses is not clear. One reasonable person could read the provisions together and reach the conclusion that the easement can be used to access no more than two residences and is otherwise unlimited. But another reasonable person could read the two clauses together and conclude that the easement can only be used to access no more than two residences and for no other purpose.

[17] In other words, the plain meaning is not readily apparent and does not disclose whether the "subject to" clause merely carves out an exception to the general grant or severely limits the general grant. When read together, those two

provisions create an uncertainty and a patent ambiguity, an ambiguity apparent on the face of the instrument, such that reasonable people could come to different conclusions about the scope and meaning of the easement. *See Simon Prop. Grp., L.P. v. Mich. Sporting Goods Distrib. Inc.*, 837 N.E.2d 1058, 1070 (Ind. Ct. App. 2005). The resolution of a patent ambiguity presents a pure question of law. *See id*. at 1071.

[18] Where the operative provisions of a contract are ambiguous, a court may consider the recitals as an aid in interpreting the operative language. *See U.S. Fid. and Guar. Co. v. Warsaw Chem. Co., Inc.*, 990 N.E.2d 18, 23 (Ind. Ct. App. 2013). Here, the recitals include numerous references to farming. Indeed, the recitals provide that "there has long been an easement" to the dominant estate "for access to farm homes." Appellant's App. Vol. 2 at 62. And the recitals provide that the easement has been consistently referenced as "the farm privilege," as reserving a right of way "for farm privilege," or as a right to use the easement "from said farm to public road." *Id*. Those recitals show that the parties anticipated that the owner of the dominate estate would use the easement to access the property in order to farm it.

[19] Further, the parties' course of conduct supports our conclusion that farming is an approved use of the easement. Indeed, the prior owners of the properties entered into the easement agreement in 2016. And from 2017 until early 2019, the Feisses used the dominant estate to engage in a commercial farming operation and used the easement to transport farm equipment to and from the property. That course of conduct, which is undisputed, is a reliable guide to

determine the contract's meaning, and we accept it as such. *See Castleton Corner Owners Ass'n, Inc. v. Conroad Assocs, L.P.*, 159 N.E.3d 604, 612 (Ind. Ct. App. 2020).

[20] The operative language of the easement is ambiguous. However, the recitals and the course of conduct are clear.[4] The agreement allows BHC to use the easement to access the dominant estate to farm the property and/or to access no more than two residences "that may hereafter be constructed[.]" Appellant's App. Vol. 2 at 63.

[21] Still, BHC contends that the agreement "cannot be construed to restrict traffic volume or such language would contradict the word 'unrestricted' in the operative portion" of the agreement. Appellant's Br. at 20. But, again, words cannot be read alone, and if we were to elevate the word "unrestricted" to the exclusion of other provisions as BHC asks us to do, that word would usurp and obviate the remainder of the agreement. *See Castleton Corner Owners Ass'n, Inc.*, 159 N.E.3d at 611. Rather, as discussed above, the agreement as a whole, together with the historical use of the easement, demonstrates that BHC's use of the easement is not unrestricted but is, instead, limited to specific uses.

[22] It is well established that "easements are limited to the purpose for which they are granted." *McCauley*, 928 N.E.2d at 314. And, here, it is clear that the

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[4] Martini acknowledges that the operative portion of the contract does not include any provision related to farming. However, he does not advocate for "such a narrow reading of the Easement" and concedes that farming is an approved use of the easement. Appellee's Br. at 16.

purpose of the easement is to allow BHC to access the property to farm it and/or for access limited to no more than two residences. Accordingly, the trial court did not err when it concluded that the agreement "permits use of the easement to access farming and/or no more than two (2) residences[.]" Appellant's App. Vol. 2 at 124.

[23] However, our inquiry does not end there. On appeal, BHC further contends that if, as the trial court found, its use of the easement is limited to farm or residential use, then its use of the easement to operate a fee-based hunting club is also a permitted use. On this question, BHC first asserts that the "trial court's Opinion allows crossing the Easement to engage in farming but then contradicts itself by prohibiting any business activity." Appellant's Br. at 21. BHC maintains that the ruling is "contradictory and unworkable" because, according to BHC, farming and business "are one [and] the same." *Id*. at 22. And, BHC continues that, because farming is a business allowed by the easement and because fee-based hunting is a business, then fee-based hunting should be allowed as a permitted use of the easement. We are not persuaded by this reasoning.

[24] First, we note that the trial court did not find that the easement prohibits *all* business activity. Rather, the court found that the use of the easement is limited to farming or for access to not more than two residences, that BHC's fee-based hunting operation is "a business not contemplated by the framers of the [a]greement[,]" and that BHC's "use of the easement for th[is] business purpose[] is thus not permitted." Appellant's App. Vol. 2 at 124. It is clear that

the trial court concluded that the agreement allows BHC to access no more than two residences or for the sole business purpose of operating a farm. And we agree. The plain language of the easement does not permit any and all business uses but, instead, allows BHC to access the property for farming. Thus, while both farming and fee-based hunting are businesses, that does not mean that both uses are allowed under the agreement.

[25] Second, BHC contends that, if the easement limits business activity to that of farming, then its operation of a fee-based hunting club is allowed because fee-based hunting is "farming activity" expressly permitted by the agreement. Appellant's Br. at 23. We must therefore determine whether the use of the term "farm" in the agreement includes fee hunting. We conclude that it does not.

[26] The easement does not define the term "farm." But the plain and ordinary meaning of a "farm" is "a tract of land devoted to agricultural purposes." Merriam-Webster, https://www.merriam-webster.com/dictionary/farm (last visited April 1, 2021.) Further, the definition of "to farm" means "to devote to agriculture." *Id*. And "agriculture" is defined as "the science, art, or practice of cultivating the soil, producing crops, and raising livestock[.]" Merriam-Webster, https://www.merriam-webster.com/dictionary/agriculture (last visited April 1, 2021).

[27] Here, BHC is not using a tract of land to cultivate soil, produce crops, or raise livestock. Rather, BHC is using the property to grow a grain that Lane will not harvest and to invite paying members to hunt animals that Lane has not raised.

Indeed, Lane acknowledged that he will purchase birds from suppliers and keep them in cages until he releases them into the milo grain fields to be hunted by the members of his club. Tr. at 51, 55. Accordingly, BHC is not using the property as a "farm," and it is not "farming" the land but is, instead, using the land to "hunt," which means "to pursue for food or sport." Merriam-Webster, https://merriam-webster.com/dictionary/hunt (last visited April 1, 2021). In other words, contrary to BHC's assertion on appeal, farming and hunting are not one and the same. Because BHC's use of the property as a fee-based hunting club is not farming, it does not fit into one of the two stated purposes of the easement. Accordingly, the trial court did not err when it concluded that BHC cannot use the easement to access the property for its fee-based hunting operation.

[28] In sum, the agreement as a whole and the parties' course of conduct demonstrate that BHC can use the easement either to access the property for a farm purpose and/or to access not more than two residences. And BHC's fee-based hunting operation is not a "farm" and is therefore not permitted by the agreement. Accordingly, the trial court did not err when it concluded that a fee-based hunting operation is not a business contemplated by the easement. We therefore affirm the court's entry of summary judgment in favor of Martini and Farrell.

[29] Affirmed.

Riley, J., and Crone, J., concur.