MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Bryce Runkle
Peru, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ronald J. Wolfe,
Appellant-Third-Party Plaintiff,

v.

Max Weaver and Wabash Valley Abstract Co., Inc.,
Appellees-Third-Party Defendants

February 5, 2021

Court of Appeals Case No. 20A-PL-1618

Appeal from the Miami Circuit Court

The Honorable Timothy P. Spahr, Judge

Trial Court Cause No. 52C01-1908-PL-757

Crone, Judge.

Case Summary

[1] Ronald J. Wolfe purchased an interest in a tract of land from the estate of Hazen Horner. Max Weaver, president of Wabash Valley Abstract Co., Inc. (WVAC), prepared an abstract of title that documented a railroad right-of-way

across the tract. Wolfe reviewed the abstract before the purchase was finalized. The abstract was certified before the recording of the estate administrator's deed to Wolfe, which did not mention the right-of-way. Wolfe conveyed the tract to purchasers via a warranty deed that used the same legal description as the administrator's deed. The right-of-way's owner sued the purchasers to quiet title, and the purchasers filed a breach-of-warranty complaint against Wolfe. Wolfe, in turn, filed a third-party complaint for negligence against Weaver and WVAC (Appellees). Appellees moved for summary judgment, which the trial court granted. Wolfe now appeals, claiming that the trial court erred. We affirm.

Facts and Procedural History

[2] The relevant facts are undisputed. Horner died in March 1987, and his nephew Ivan Martin was appointed administrator of his estate. At his death, Horner owned an undivided one-third interest in a tract of land in Miami County, which Martin obtained court permission to sell. Wolfe was the highest bidder at a private auction held on or before September 15, 1987. Weaver prepared an abstract of title for the tract. The abstract's cover page contains the following legal description of the tract:

> Beginning at the northwest corner of the southeast quarter of Section Twelve (12) Township Twenty-seven (27) North, Range four (4) East; thence East on said quarter section line forty (40) rods to a stake, thence south and parallel with the west line of said quarter section thirty one (31) rods seven and a quarter (7¼) feet; thence west to the center of the public highway; thence in center of said highway in a southwestern direction to the

> northeast corner of the Shrock cemetery, thence west on the north line of said cemetery to the northwest corner of the same; thence north to the west line of said quarter section to the place of beginning, *except what the railroad right of way cuts off at the northwest corner.* Also except a strip twenty (20) feet in width on the east side and south of the public highway which has been deeded to Lucy Horner, containing nine (9) acres, more or less.

Appellant's App. Vol. 3 at 20 (emphasis added).

[3] The abstract contains typewritten summaries or transcriptions of deeds and other documents in the chain of title dating back to 1849, when the entire west half of the southeast quarter of Section 12, containing eighty acres, was conveyed to Joseph Shrock. In 1890, Dorothy and Joseph Shrock conveyed to the Peru & Detroit Railway Company via quitclaim deed a "strip of ground" beginning at the northwest corner of the northwest quarter of the southeast quarter of Section 12, "thence East 80 feet thence S 27½° W. 166 feet to West line [of] said [half quarter section], thence North 146 feet to the place of beginning containing 13/100 acre, more or less." *Id.* at 23. The next two relevant deeds are from 1901 and from 1905; the latter conveyed the foregoing nine-acre tract to Horner's parents, Frank and Harriet, from whom he inherited his interest. Both deeds contain a legal description of the tract that is almost identical to the legal description on the cover page of the abstract, which mentions the railroad right-of-way. The last page of the abstract states, "We hereby certify that the above and foregoing continuation is a full, true and complete abstract of title to the real estate herein described from the date of certificate to the 28th day of December, 1987 at 8:00 A.M." *Id.* at 53.

[4] Wolfe reviewed the abstract before he finalized the purchase of the tract. He received an administrator's deed and a warranty deed to the tract, both of which were prepared by the estate's attorney, Albert H. Cole, and were recorded on January 20, 1988. The deeds' legal description of the tract reads in pertinent part as follows:

> Beginning at the Northeast corner of the West Half of the Northwest Quarter of the Southeast Quarter of Section 12, Township 27 North, Range 4 East and running thence West 20 rods to the Northwest corner of said half Quarter Section; thence South on the West line to the Northwest corner of the Shrock Cemetery; thence East to the Northeast corner of said Cemetery; thence Southeastwardly to the Southeast corner of said Cemetery; thence Northeastwardly to a point in the East line of said half Quarter Section; thence North along the East line thereof to the place of beginning, and containing 9 acres, more or less.

Id. at 16, 18. Unlike the abstract's cover page and the 1901 and 1905 deeds, neither deed mentions the railroad right-of-way.

[5] In August 2008, Wolfe conveyed the tract to Terry P. Powell and Joyce A. Powell via warranty deed.[1] The deed's legal description of the tract is identical in all relevant respects to the legal description in the administrator's and warranty deeds. In August 2019, Kent Eiler filed a quiet-title complaint against

[1] The deed does not purport to convey an undivided one-third interest in the tract; the record does not indicate whether Wolfe acquired full ownership of the tract by 2008.

the Powells, alleging that in 1979 he acquired title to a tract via a warranty deed from Joe Hetzner and Ruby Hetzner with the following legal description:

> A parcel of land in the North half of the South half of Section 12, Township 27 North, Range 4 East 100 feet in width, being 50 feet on each side of a center line described as follows:
>
> Beginning at a point about 12½ feet East of the center of said Section 12; running thence in a Southwesterly direction 415 feet, more or less, to a curve; thence in a Southerly direction along said curve to the South line of the North half of the Southwest Quarter of said Section, being the tract across said North half of the South half of said Section, originally conveyed to the Peru and Detroit Railroad Company, and being immediately West of and adjacent to a tract now owned by Jesse G. Grant and Donna J. Grant.

Appellant's App. Vol. 2 at 22. Eiler alleged that the Powells claimed an adverse interest in that real estate that clouded his title.

[6] In February 2020, the Powells filed an amended third-party complaint against Wolfe for breach of warranty, requesting that he be ordered to defend them against Eiler's lawsuit and pay them damages if he prevails. In March 2020, Wolfe filed a third-party complaint against Appellees, alleging that they were negligent in omitting from the abstract the Hetzners' deed to Eiler and a prior deed from the Winona Railroad Company to Joe Hetzner.[2]

[2] Wolfe asserts that the Winona Railroad Company is a successor to the Peru & Detroit Railway Company.

[7] In May 2020, Appellees filed a motion for summary judgment asserting that "the abstract is not for the disputed real estate" because it excepts the railroad right-of-way, and that Greg Deeds, "a registered surveyor, was clearly able to identify the land in question as shown by his survey dated October 12, 2018." *Id*. at 76, 77. Appellees designated the survey in support of their motion, noted that it was on file with the county surveyor's office, but did not submit it to the trial court. In June 2020, the trial court denied Appellees' motion on that basis but stated that its ruling did not prohibit them from filing another motion, "especially if designated materials are properly made of record in this case." *Id*. at 170. Less than two weeks later, Appellees filed a second motion for summary judgment, in support of which they designated and submitted Deeds's survey and affidavits from Deeds and Weaver, as well as Wolfe's complaint, to which the abstract was attached as an exhibit. Wolfe filed a response to Appellees' motion.

[8] In August 2020, the trial court issued an order granting Appellees' motion, in which it quoted the legal description of the nine-acre tract on the abstract's cover page and the legal description of the 13/100-acre tract that the Shrocks conveyed to the Peru & Detroit Railway Company. The order further states,

> 2. Nothing in Weaver's certification at the end of the abstract indicates an intention for the abstract to cover any real estate other than that which is described at the beginning of the document.…
>
> ….

4. From a comparison of the legal descriptions found at the start of the abstract and in the quitclaim deed [to the railway company], it is simple to determine that the 13/100 acre referenced in the latter description is the railroad property referenced in the former description. Making it even easier to make that determination is the fact that each of the two descriptions proceeds from the same point of beginning.

5. Given that the abstract specifically excepted the railroad property on its very cover, it makes perfect sense that the quitclaim deed from the Winona Railroad Company to Joe Hetzner dated November 18, 1950, and recorded on May 15, 1952, in the Office of the Miami County Recorder was not included in the abstract. For the same reason, it makes perfect sense that the warranty deed from Joe Hetzner to Kent Eiler dated October 2, 1979, and recorded on the same date in the Office of the Miami County Recorder was not included in the abstract.

6. As reflected in item 8 of the abstract, Joseph A. Shrock executed a Warranty Deed on May 12, 1905, that transferred certain real estate to Frank P. Horner and Harriet L. Horner, his wife. The description used in that deed is the same as the one listed on the abstract cover except for some inconsequential variances as to the capitalization of letters.

7. A review of the remainder of the abstract indicates that the approximately nine-acre parcel was not described again in a document recorded in the Miami County Recorder's office prior to the preparation of the abstract. As a result, the legal description used on the cover of the abstract was the most up-to-date legal description for the real estate on record in that office at that time.

8. Wolfe points to the Administrator's Deed that Ivan Martin signed on November 18, 1987, in support of his claim that Weaver should have noticed that the legal description in that

> deed lacked the exclusion for the railroad property transfer. However, that deed was not recorded in the Office of the Miami County Recorder until January 20, 1988 – several weeks after the certification date referenced in Weaver's abstract. Likewise, the Warranty Deed signed by Ivan Martin, both in his personal capacity and in his capacity as attorney-in-fact for 11 other people, on January 15, 1988, was not recorded in the Office of the Miami Recorder until January 20, 1988.
>
> 9. Albert H. Cole served as the attorney for the estate of Hazen Horner and prepared the Administrator's Deed and Warranty Deed referenced in the preceding paragraph of this Order. The deeds that he prepared omitted from the legal description the exclusion for the railroad property transfer. None of the designated evidence shows that Cole's omission of that language from each deed was in any way the fault of Weaver or WVAC.

Appealed Order at 2-3. Wolfe now appeals.

Discussion and Decision

[9] Wolfe contends that the trial court erred in granting Appellees' summary judgment motion. "Summary judgment is appropriate if the designated evidence '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.'" *Cruz v. New Centaur, LLC*, 150 N.E.3d 1051, 1055 (Ind. Ct. App. 2020) (quoting Ind. Trial Rule 56(C)). We review the trial court's ruling de novo and apply the same standard as the trial court. *Id*. The moving party bears the initial burden of making a prima facie showing that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. *Id*. Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the

nonmovant must come forward with evidence establishing that a genuine issue of material fact exists. *Id*. On appeal, the nonmovant has the burden to persuade us that the trial court erred in granting summary judgment, but we will carefully assess the ruling to ensure that the nonmovant was not improperly denied his day in court. *Id*. Special findings and conclusions are not required in summary judgment proceedings and are not binding on appeal, but they offer us valuable insight into the trial court's rationale for its ruling and facilitate appellate review. *Id*. "We will affirm the trial court's summary judgment ruling on any basis supported by the designated evidence." *Id*.

[10] Appellees did not file a brief. Accordingly, we will not undertake the burden of developing arguments on their behalf and will reverse if Wolfe establishes prima facie error. *WindGate Props., LLC v. Sanders*, 93 N.E.3d 809, 813 (Ind. Ct. App. 2018). "Prima facie, in this context, means at first sight, on first appearance, or on the face of it." *Id*. "This standard, however, 'does not relieve us of our obligation to correctly apply the law to the facts in the record in order to determine whether reversal is required.'" *Id*. (quoting *Wharton v. State*, 42 N.E.3d 539, 541 (Ind. Ct. App. 2015)).

[11] Wolfe notes that our supreme court has held that a title researcher has a duty in tort "to communicate the state of a title accurately" to a purchaser or lender who acts in justifiable reliance on that communication. *U.S. Bank, N.A. v.*

Integrity Land Title Corp., 929 N.E.2d 742, 749 (Ind. 2010).[3] There is no dispute that Wolfe acted in justifiable reliance on Appellees' abstract; the only question is whether Appellees accurately communicated the state of the tract's title. The trial court concluded that they did, and we agree. The abstract's cover page and the 1901 and 1905 deeds unambiguously put Wolfe on notice of a railroad right-of-way—a potential title defect—in the northwest corner of the tract, and the 1890 deed provides a metes-and-bounds description of that potential defect.[4] Armed with that information, Wolfe could have "negotiate[d] … for the removal [of that defect], bargain[ed] to pay a lower amount to take subject to [that risk], or rescind[ed] the transaction." *Id*. (quoting PATTON & PALOMAR ON LAND TITLES § 41). Wolfe did none of those things, however, and he may not hold Appellees responsible for that failure.[5] Accordingly, we affirm.

[12] Affirmed.

Najam, J., and Riley, J., concur.

---

[3] The *U.S. Bank* court expressly declined to "adopt the proposition that a tort claim … may be brought where the parties are in contractual privity." 929 N.E.2d at 749 n.6. The record is silent regarding the party that contracted with Appellees, but there is no indication that it was Wolfe.

[4] The 1890 deed and Eiler's complaint suggest that the right-of-way is actually a fee simple interest, but the nature of the title defect is not at issue here.

[5] Wolfe notes that the administrator's and warranty deeds were drafted before Weaver certified the abstract, but he cites no authority for the proposition that Weaver should have been on notice of deeds that had not yet been recorded. Wolfe also complains that the trial court gave Appellees "a mulligan" by allowing them to file a second summary judgment motion to submit additional evidence. Appellant's Br. at 26. We do not condone this practice, but because Wolfe did not move to strike the motion or any of the designated evidence, we find this objection waived. *See Reynolds v. Reynolds*, 64 N.E.3d 829, 834 (Ind. 2016) ("Appellants may not sit idly by and raise issues for the first time on appeal.").