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Platt v. Platt, 337 P.3d 431 (Wyo. 2014)

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ment was one of their only obligations under the contracts.

Finally, the Court held that North Loup did not act negligently by failing to deliver water to the Webers, even though non-delivery of the water might have been a statutory violation. Nebraska Revised Statutes section 46-263 makes it a misdemeanor for a person in charge “of a ditch or canal used for irrigation purposes . . . to prevent or interfere with the proper delivery of water to the person or persons having the right thereto.” North Loup argued that the statute was inapplicable because it applied to “persons” and not to “public entities.” The Court did not address whether the statute applied to “public entities,” instead finding that the statute did not require North Loup to deliver water to “those having no right to the water.” The Court held that the Webers’ nonpayment of the irrigation fees relieved North Loup of its duty to deliver water. Because North Loup had no duty to deliver the water at all, the Court found that North Loup’s failure to deliver the water was not negligent.

Accordingly, the Court affirmed the district court’s grant of North Loup’s motion for summary judgment.

Kylie Wyse

WYOMING

Platt v. Platt, 337 P.3d 431 (Wyo. 2014) (holding the district court’s order to partition in kind a ranch property, including the water rights appurtenant to the individual parcels, through construction of a separate ditch to carry water from one parcel to the other, was incomplete and clearly erroneous because the record lacked competent evidence to establish that the ditch requirement would not manifestly injure the value of the property).

Ralph E. Platt, Wayne W. Platt, and appellant Alice A. Platt (“Alice”), inherited their family ranch near Encampment, Wyoming. The Platt brothers eventually placed their half of the ranch in the Platt Ranch Trust (the “Trust”), one of the appellees in this case. Disagreements concerning the operation of the ranch led the parties to seek partition in kind from the District Court of Carbon County, Wyoming (“district court”). Finding the parties were entitled to partition, the district court appointed three commissioners to determine an equitable division of the land and water rights. The commissioners proposed a division of the land that the parties accepted, and additionally recommended allocation of the water rights to the parcels of land to which they were appurtenant.

In Wyoming, “[w]ater rights can be partitioned along with the real property to which they pertain, provided that each parcel receives an equitable share of the right and has enough water to permit continued use of the land as it has historically been used.” Historically, the Platt’s irrigated the ranch by drawing water from the King Turnbull Ditch No. 2 located on the neighboring Kraft ranch, and then sending it through the North-South Ditch to flood-irrigate the Trust’s parcel. They recaptured the remaining water to irrigate Alice’s parcel. Because this system depended on a single water right, the commissioners determined that a ditch, headgate, and measuring device were necessary to meter and distinguish Alice’s water from the Trust’s. Accordingly, the commissioners recommended establishing a “Dedicated Ditch” to separately carry Alice’s

allocated water to her property from the Trust's property.

In the first proceeding before the district court, the commissioners recommended the parties decide the location for the Dedicated Ditch because snow cover prevented the commissioners from locating it. When the parties were unable to agree on a location, the district court held a second hearing to decide the issue. The district court heard recommendations from the commissioners, Alice, and the Trust. Ultimately, the district court ordered the parties to construct the Trust's proposed "Westerly Ditch" because, although it was "arguably the most expensive option, [it offered] the best future outcome for both parties, being that there would be minimal to no interaction between them for maintenance and inspection." The Westerly Ditch required an easement from Kraft Ranches, a non-party. The district court ordered the parties share the cost of construction, including the cost of installing a workable irrigation system.

Alice appealed to the Wyoming Supreme Court ("Court"), arguing that the district court's order for construction of the Westerly Ditch was legally and factually erroneous because it required her to obtain an easement from a non-party and to change her means of water conveyance without evidence that she could do either without causing manifest injury to the value of her property.

On appeal, the Court first addressed whether the district court's first order for partition in kind of the parties' property was clearly erroneous. Under Wyoming law, partition in kind is inappropriate if "the real property cannot be divided in kind without causing manifest injury to its value." In the first proceeding, the district court determined the property could be partitioned in kind "without manifest injury to the whole" despite the fact that the commissioners did not determine the exact location of the Dedicated Ditch. The Court found this conclusion erroneous. Given that Alice planned to use the partitioned property for agriculture and ranching, knowing whether and how water could be delivered to her parcel was essential to determining the land's value. The Court noted "[t]here can be little doubt that a property with good water rights and a means to convey the water to the land is worth considerably more in arid Wyoming than land without one or the other." The Court held that the location of the Dedicated Ditch would also affect the value of the Trust's parcel because two of the ditch locations the district court considered would have used seven acres of the Trust's valuable hay meadows. Because the location of the Dedicated Ditch would impact the partitioned property's value, the Court held the district court's finding that partition in kind would not manifestly injure the value of the property, without affirmatively locating the ditch, was clearly erroneous.

Next, the Court addressed whether the district court erred in the second proceeding when it ordered the parties to build the Westerly Ditch because it required an easement from a non-party, Kraft Ranches. Alice argued the district court could not require the parties to obtain an additional easement across Kraft Ranches's property without evidence of permission. The Platt brothers argued that the district court could require the easement because evidence in the record demonstrated Kraft Ranches would grant it. The Court began by noting that it was a matter of first impression whether a court has the power to order a party to obtain an easement from a non-party in a partition proceeding. The Court held that one approach to the issue may lie in the

common law doctrine of “owelty,” where one coparcener compensates the other when land is not capable of being partitioned into exactly equal shares. Accordingly, had the record supported a conclusion that it was possible to obtain an easement from Kraft Ranches and build a ditch connecting the Westerly Ditch to King Turnbull Ditch No. 2, the district court could have ordered the Trust to pay the difference in value or divide the cost of construction between the parties to effectuate an equitable partition.

The Court held, however, that the “vague promise of future performance” from Kraft Ranches in the commissioners’ report was not specific enough to constitute consent to an easement under the Statute of Frauds. Because the district court did not determine if the easement (i) could be obtained, (ii) would allow appropriate construction and necessary maintenance of the ditch, or (iii) would run with the land, the Court held it had no basis to determine that the partition was equitable, nor that the order would not manifestly injure the value of the partitioned property.

Next, the Court considered whether the district court’s order for construction of the Westerly Ditch required Alice to change her means of conveyance for the water she received in the partition. Alice argued she could not be compelled to change her means of conveyance because Wyoming law requires her to petition the State Board of Control for the change, but does not guarantee permission. The Trust argued that a person can change their means of conveyance without petitioning the Board of Control. The Court held that the Wyoming Legislature did intend to “require a person changing the means of conveyance of water supplied through a water right to obtain approval by the Board of Control,” but that the district court did not order Alice to change her means of conveyance. If the district court required construction of the Westerly Ditch on remand, Alice could choose to change her means of conveyance to bring water to her land, or choose not to change her means of conveyance and forego her water rights. The Court noted that this result “may be a Hobson’s choice, but it may also be unavoidable.” However, the Court also noted the lack of evidence demonstrating that Alice could obtain approval to change her means of conveyance. On remand, evidence that Alice could not obtain permission to change the means of conveyance would negatively affect the value of her partitioned parcel and weigh against the Westerly Ditch as an equitable means of dividing the property.

Finally, the Court considered whether the district court abused its discretion in choosing the Westerly Ditch over the alternatives that Alice and the commissioners suggested. Alice contended that building the Westerly Ditch was a high cost risk because the ditch was unproven. The Trust argued that evidence presented at trial showed the Westerly Ditch could be successfully built and operated. The Court concluded the district court did not review evidence of construction costs for the Westerly Ditch until after selecting it, and remanded the issue of whether the cost of building the Westerly Ditch would manifestly injure the value of the property.

Accordingly, the Court reversed the district court's order to construct the Westerly Ditch and remanded with instructions for the district court to determine whether the property could be partitioned in kind without manifestly injuring its value, and if so, whether the Westerly Ditch is an equitable means of dividing the property.

Molly Kokesh