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Dane Mueller

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Roland v. Davis, 302 P.3d 91 (Mont. 2013)

Ashley Basta

Roland v. Davis, 302 P.3d 91 (Mont. 2013) (holding evidence was insufficient to support a finding of an implied easement because the plaintiff water rights holders failed to prove apparent and continuous use of an unmaintained conveyance ditch crossing neighboring property).

In 1993, Gene and Melinda Roland (collectively the “Rolands”) purchased a fifty-acre parcel from Roger and Beverly Russ (collectively the “Russes”) in Ravalli County. The warranty deed for the property did not contain explicit reference to water rights, ditch easements, or appurtenances. However, the Rolands believed a water right from Bunkhouse Creek came with the property. The Rolands also believed a ditch easement existed, which transported the water from Bunkhouse Creek to the property. Accordingly, the Rolands and the Russes filed a water right transfer certificate that accompanied the closing documents and transferred the water right appurtenant to the deeded land.

In 1994, Fred and Barbara Davis (collectively the “Davises”) also purchased a plot of land from the Russes. At the time of the purchase, the Davises did not observe any ditches on the property, although the Smith Ditch, which leads from Bunkhouse Creek to the Roland’s property, historically crossed the Davis parcel. In the mid-2000s, the Davises participated in a United States Forest Service fire reduction program. After the Davises cleared the land, remnants of an old ditch that crossed the property became visible.

In 1982, the Russes, before partitioning the land into two plots, filed a statement of claim for a water right on Bunkhouse Creek to irrigate thirty acres that would become a portion of the Roland parcel. In 1994, the Montana Water Court (“water court”) issued a preliminary decree that included the Russes’ statement of claim. Finally, in 2004, the water court reduced the irrigation right to twenty acres.

After the water court’s 2004 ruling, the Rolands attempted to reopen use of the Smith Ditch to grow trees as a cash crop, but the Davises did not agree that a ditch easement existed. In 2009, the Rolands filed a complaint against the Davises in the Ravalli County District Court (“district court”). The Rolands sought preliminary and permanent injunctive relief, declaratory judgment, and damages for the alleged ditch easement. The Davises denied Roland’s allegations and filed a counterclaim to quiet title.

At trial, the parties’ experts analyzed a 1958 Ravalli County Water Resources Survey (“Water Survey”) that indicated the Smith Ditch navigating from Bunkhouse Creek across the Davis property to the Roland property. A 1957 field note from the Water Survey also indicated irrigation of part of the Roland parcel using Bunkhouse Creek water conveyed through the Smith Ditch. However, the district court, relying on historical United States Department of Agriculture aerial photographs, found that an access road constructed before 1979 severed the Smith Ditch as a means of conveyance to the Roland property. The district court also found the Rolands’ predecessor in interest abandoned the Smith Ditch when he constructed the access road. The district court therefore concluded that the Rolands did not have a ditch easement

across the Davis property. The Rolands then appealed the district court's decision to the Montana Supreme Court ("Court").

The Court considered two issues on appeal: (i) whether the Rolands' purchase of the property included a ditch easement by operation of law; and (ii) whether the district court properly determined that the Rolands did not have an implied ditch easement that crossed the Davis property.

Regarding the first issue, the Court agreed with the Rolands that any water rights associated with the parcel automatically transferred to the Rolands upon purchase of the land. However, the Court also stated that water rights and ditch easements represent separate and distinct property rights. The court held that a person may own a water right without owning a ditch right. Accordingly, the Rolands owned water rights to the parcel but did not necessarily receive a ditch easement to transport the water.

The Rolands next argued they received an implied easement with the purchase of their parcel. The Court noted that to establish an implied ditch easement the Rolands needed to prove three elements: (i) separation of title; (ii) a use that was apparent and continuous at the time the Russes divided the property; and (iii) reasonable necessity of the easement for the beneficial enjoyment of the land. The Court held the Rolands met the first element because the Russes retained ownership of both properties until the Rolands purchased the fifty-acre parcel in 1993.

Regarding the second element, the Davises argued that the Rolands' predecessor in interest abandoned the ditch easement because the Russes never used Smith Ditch prior to selling the parcel. In response, the Rolands argued that mere nonuse was insufficient to establish intent to abandon an easement. The Court agreed with the Rolands but replied that the Rolands must do more than establish that his predecessor in interest did not abandon Smith Ditch. In order to prove the existence of an implied easement, the Rolands needed to establish apparent and continuous use of the Smith Ditch at the time they purchased the property in 1993.

With respect to apparent use, the Rolands argued the Davises should have discovered the ditch through reasonable inspection. First, the Rolands pointed to language in the Davises' deed indicating they took the property "subject to" all apparent easements. Additionally, after purchasing the land Fred Davis admitted seeing remnants of a ditch once the snow melted on the property, but he also stated that water never flowed in the ditch. The Court held the Rolands failed to present evidence that the Russes took any steps to undo the impediments to the Smith Ditch.

With respect to the continuous use of the easement, the Court noted that the Smith Ditch remained unused at least since 1979 because the Rolands' predecessor in interest constructed the access road that halted the flow of Smith Ditch. Next, the Rolands did not produce evidence that any predecessor in interest attempted to correct the impediments on Smith Ditch before the Russes sold the properties. The Court therefore held the Rolands failed to establish continuous use of the Smith Ditch easement at the time of the property's purchase. The lack of apparent and continuous use led the Court to determine that the Rolands did not acquire an implied ditch easement across the Davises' property, which eliminated the need to proceed to the final ele-

ment of the implied easement test. The Court also did not have to determine if the district court properly held that the easement was abandoned because the Rolands failed to establish that they received an implied easement in the first place.

Accordingly, the court affirmed the district court's holding that the Rolands did not have an implied ditch easement that crossed the Davis property.

Dane Mueller

City of Livingston v. Park Conservation Dist., 307 P.3d 317 (Mont. 2013) (holding the Park Conservation District's declaratory ruling was not arbitrary or capricious because the weight of evidence supported Natural Streambed and Land Preservation Act governance of the disputed channel as a natural stream).

The City of Livingston ("City") unsuccessfully appealed to the Supreme Court of Montana ("Court") a Sixth Judicial District Court order, which affirmed the decision of the Park Conservation District ("PCD"). The PCD decision declared that a channel adjacent to the Yellowstone River was part of the natural watercourse of the Yellowstone River and, therefore, the Natural Streambed and Land Preservation Act ("Act") governed the channel.

The disputed channel is located near Livingston, Montana. Heart K Ranch ("Ranch") used the disputed channel to divert water to satisfy Ranch's water rights. In order to obtain water, Ranch had to remove rocks and other accumulated debris to allow the water to flow into the channel during times of low flows. The PCD approved this practice under the Act, which allowed a water right holder to alter the state of a natural stream with approval from the conservation district.

In 2011, the City petitioned the PCD for a declaratory ruling on the Act. The City argued that the channel was not subject to the Act because it was not a natural watercourse and, thus, Ranch did not have the authority to conduct maintenance activities to remove accumulations on the channel. The PCD reviewed the narrow issue of whether the channel in question was a natural watercourse subject to the Act, or an irrigation ditch that would not be subject to the Act. There was no dispute as to whether the Yellowstone River itself was subject to the Act. The PCD ruled high flows shaped the channel as a natural part of the Yellowstone river. Furthermore, no evidence indicated the channel was a man-made irrigation channel. Thus, the PCD held the disputed channel was a natural watercourse and Ranch's maintenance activities fell under the governance of the Act. The City appealed the PCD ruling to the district court, which affirmed the PCD ruling. The City then appealed the decision to the Court.

On appeal, the City contended the PCD's decision was arbitrary and capricious, and the channel was not a natural channel from the Yellowstone River, but rather a man-made irrigation ditch. The Court first set out a standard of review, explaining that a court cannot alter a decision by the PCD, even if evidence in the record is inconsistent or could support another result, unless the PCD was arbitrary or capricious.