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Edmonson v. Edwards, 111 S.W.3d 906 (Mo. Ct. App. 2003)

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court concluded that the covenant ran with the land.

The court also reversed the circuit court's holding that the Camenisches were precluded from arguing anything other than a condition subsequent. The City claimed the Camnisches argued, in earlier litigation, that the interest was a condition subsequent and that the City relied to its detriment on that argument. The City contended the Camenisches could not now change their position. The court found in favor of the Camenisches on this issue, holding the City had every right to its own interpretation of the clause and did not rely to their detriment on the Camenisches interpretation. Therefore, the court held the clause created a covenant that ran with the land, vacated the circuit court's judgment, and remanded the case for the circuit court to hear other defenses the City intended to employ.

Robert E. Wells

MISSOURI

Edmonson v. Edwards, 111 S.W.3d 906 (Mo. Ct. App. 2003) (affirming circuit court judgment awarding riparian owner injunctive relief and damages for injuries sustained when upstream owner of a neighboring property dammed a stream that flowed through both pieces of land).

R.G. Edmonson and Doug Edwards owned adjoining parcels of real estate through which a stream flowed. A spring originating north of both properties fed the stream, which flowed through Edwards's land across and onto Edmonson's land. Edwards constructed a dam on the stream to fill two ponds on his property for recreational use. The dam effectively stopped water flowing to Edmonson's property, as it completely diverted stream water into the ponds on Edwards's property. Edmonson filed suit against Edwards in the Barry County Circuit Court. The circuit court granted Edmonson damages and a permanent injunction ordering Edwards to dismantle the dam. Edwards appealed the circuit court's decision.

Edwards asserted on appeal that (1) the circuit court's judgment denied him reasonable use of the stream, (2) injunctive relief was improper because Edmonson did not incur any harm, and (3) Edmonson was not entitled to damages. The Missouri Court of Appeals initially found that Edwards's brief did not explain how the legal reasons for his appeal supported the claim of reversible error, as mandated by Mo. Sup. Ct. R. 84.04(a). However, the court stated that it nonetheless could look to the argument portion of the brief to determine whether the circuit court committed plain error that may have resulted in manifest injustice.

The court first analyzed whether the injunction deprived Edwards of a reasonable use of the stream by virtue of his riparian ownership. The court found that what constitutes a reasonable use is a question of

fact depending on the circumstances of the specific case. Here, Edwards's dam deprived Edmonson of water for livestock. Edmonson farmed and worked on his property for over fifty years. To his knowledge, throughout those fifty years the stream never lacked sufficient water for his farm. The court found that Edwards's dam harmed Edmonson, as he needed to move his livestock from his property to another location. Furthermore, the court found that Edwards did not have exclusive title to, or control of, the stream's water, even while it was on his land. The court stated an owner of land through which a nonnavigable stream flows could not divert the stream's water to the exclusion of others. Because Edwards diverted the stream to the exclusion of Edmonson, the court found that Edwards's use of the stream unreasonable. The court also concluded Edwards's unreasonable use of the stream damaged Edmonson, and therefore the circuit court correctly awarded Edmonson injunctive relief.

Finally, Edwards argued that if Edmonson was entitled to injunctive relief, such relief barred him from collecting damages. Because evidence showed Edmonson incurred monetary damages in addition to irreparable harm, the court held he was entitled to seek both damages and injunctive relief. Since the court found no error, it affirmed the circuit court judgment.

Kyle K. Chang

NEVADA

Preferred Equities Corp. v. State Eng'r, 75 P.3d 380 (Nev. 2003)

(holding (1) an application to change water diversion point was moot due to forfeiture and failure to appeal forfeiture within thirty days; (2) application to change place and manner of use of water rights did not toll the forfeiture period; and (3) equitable relief was unavailable to water rights holder who did not make beneficial use of water rights).

In 1988, Preferred Equities Corporation ("PEC") applied to the State Engineer for a change in the diversion point and usage of PEC's water rights. The State Engineer did not immediately act on that application and, in 1992, began forfeiture proceedings on the same water rights. In 1996, concluding PEC had not utilized the water rights for a period exceeding five years, the State Engineer declared the rights in forfeit. PEC did not appeal. In February 1997, the State Engineer issued a ruling denying the 1988 application to change the diversion and usage of the forfeited rights. In May 1997, PEC sought judicial review of the February ruling. The Fifth Judicial District Court agreed with the State Engineer that PEC's appeal was an impermissible attempt to review a finally adjudicated forfeiture. The court also agreed the State Engineer's properly denied the application to change