Filed 12/14/09 Wild Goose Storage v. Roseville Land Development Assn. CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

WILD GOOSE STORAGE, INC., Plaintiff and Respondent, v. ROSEVILLE LAND DEVELOPMENT ASSOCIATION, Defendant and Appellant.	C059421 (Super. Ct. No. 121473)

In this eminent domain proceeding, defendant Roseville Land Development Association (Roseville Land), appeals from a post-judgment order granting the motion of plaintiff Wild Goose Storage, Inc. (Wild Goose), to amend the final judgment in condemnation, nunc pro tunc, to correct a clerical error in the description of a condemned easement over Roseville Land's property. Roseville Land contends that by amending the judgment nunc pro tunc, the court effectively eliminated its potential trespass claim against Wild Goose. Roseville Land further contends the trial court erred in leaving the payment provision in the amended judgment and in refusing to permit Roseville Land

to select an independent surveyor, at Wild Goose's expense, to determine the exact location of the pipeline previously installed on Roseville Land's property. We find no error and affirm the order.

FACTS AND PROCEEDINGS

This matter concerns the condemnation of an easement across the real property of Roseville Land. On March 27, 1998, the trial court granted Wild Goose prejudgment possession of the easement, and soon thereafter Wild Goose installed a subsurface natural gas pipeline across Roseville Land's property. (*Wild Goose Storage, Inc. v. Roseville Land Development Association* (Nov. 30, 2005, C045754) [nonpub. opn.] (hereafter *Wild Goose II*), p. 4.) On August 21, 2003, the trial court entered final judgment of condemnation, awarding Roseville Land just compensation in the amount of $12,500. Roseville Land appealed the judgment to this court, and we affirmed. (*Wild Goose II*, p. 15.)

Wild Goose later discovered it had used an outdated description of the easement for the judgment and moved to amend. The trial court granted the motion on July 27, 2006.

Thereafter, Wild Goose discovered the description of the easement that had been incorporated into the written judgment in 2006 did not match the description of the easement granted by the court. In particular, a distance of 180.42 feet had been misstated as 100.42 feet, thereby resulting in a description

that placed a portion of the easement 80 feet from its adjudicated location.

Wild Goose moved to amend the judgment nunc pro tunc to correct this clerical error. Roseville Land objected, arguing Wild Goose had concealed the error for five months while negotiating for a second pipeline, and any amendment of the judgment nunc pro tunc would effectively shield Wild Goose from a potential trespass claim. Roseville Land also asked for an independent survey of the easement. At the hearing on the motion to amend, Roseville Land said it had no objection to amending the judgment to correct the clerical error, but argued that, to avoid confusion, the amended judgment should not contain any language regarding the payment of money for the easement or a temporary construction easement, since all money had been paid and all construction had been completed. Finally, Roseville Land argued a quitclaim deed would be needed to eliminate the erroneous easement that had previously been entered.

The trial court granted the motion to amend nunc pro tunc and further ordered that, prior to recordation of the amended judgment, a quitclaim deed be filed removing the erroneous easement.

DISCUSSION

Roseville Land contends Wild Goose brought its latest motion to amend the judgment because of concerns "for its considerable exposure to trespass liability." Roseville Land

argues Wild Goose acknowledged Roseville Land had a viable trespass claim and, by requesting an amendment nunc pro tunc, "was essentially demanding a summary adjudication of the trespass cause of action." Roseville Land further argues "the law required the trial court to refuse the request for retroactive effect" because "[i]t was not the court's error that was at issue" but that of Wild Goose. According to Roseville Land, Wild Goose installed its gas pipeline "45-50 feet from the intended, legally-described location" and hid that location from Roseville Land, thereby creating a risk that Roseville Land might drill or dig into the pipeline inadvertently.

As stated by the trial court, "all of this is silly." Roseville Land never had a viable trespass claim. In the judgment that was amended in 2006, the trial court awarded Wild Goose an easement described with the correct distance of 180.42 feet. However, due to a clerical error, the legal description of the easement incorporated into the written judgment read 100.42 feet. Although Roseville Land describes this as an error made by Wild Goose rather than the court, the fact remains the trial judge signed an order that did not reflect what had in fact been ordered. In order to correct this error, the trial court granted the motion to amend nunc pro tunc. This was not an amendment of the judgment, as had occurred in 2006, but a correction of the written document to make it conform to the actual judgment entered.

Roseville Land contends the amended judgment "recited directions to the State Treasurer to issue specific warrants to

[Roseville Land's] counsel, directions that were stale by many years, having been fully discharged." This is apparently a reference to the fact the condemnation judgment directs Wild Goose to pay just compensation for the easement. This direction first appeared in the judgment entered in 2003, which was subsequently affirmed. Presumably, payment was thereafter made by Wild Goose. Roseville Land argues it "is at risk of loss from the fact that the orders are recent and appear to direct the payment of state funds, which may be regarded as income to [Roseville Land]."

We disagree. The trial court did not enter a new judgment containing the language directing payment of just compensation for the easement. The court ordered that the 2006 amended judgment be further amended nunc pro tunc, thereby making the latest version effective as of the date of the original and supplanting the original altogether.

"The scope of orders and judgments nunc pro tunc in California has consistently been described by our Supreme Court in the following terms: 'A court can always correct a clerical, as distinguished from a judicial error which appears on the face of a decree by a nunc pro tunc order. [Citations.] It cannot, however, change an order which has become final even though made in error, if in fact the order made was that intended to be made. . . . "The function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered--not to make an order now for then, but to enter now for then an order previously made. The question

presented to the court on a hearing of a motion for a nunc pro tunc order is: What order was in fact made at the time by the trial judge?"' [Citation.] The court went on to hold nunc pro tunc orders may not be made to 'make the judgment express anything not embraced in the court's decision, even though the proposed amendment contains matters which ought to have been so pronounced. [Citations.]' [Citation.] 'It is only when the form of the judgment fails to coincide with the substance thereof, as intended at the time of the rendition of the judgment, that it can be reached by a corrective nunc pro tunc order.' [Citations.]" (*Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 890.)

In the present matter, when the trial court amended the judgment nunc pro tunc, the court corrected a clerical error in the judgment rather than a judicial error. This was not the entry of a new judgment or even an amendment of the original judgment but a correction of the written document to reflect what the judgment always had been.

Roseville Land next contends the trial court erred in refusing to permit it to select an independent surveyor to confirm the location of the pipeline and the legal description of the easement. More specifically, Roseville Land argues the trial court erroneously refused to allow it to select its own surveyor at Wild Goose's expense. However, Roseville Land cites nothing in the record to support its underlying assertion that the trial court refused to allow it to select a surveyor at Wild Goose's expense. While Roseville Land certainly requested that

it be permitted to select a surveyor at Wild Goose's expense, there is no indication the court ever refused the request. On the contrary, counsel for Roseville Land expressly stated he did not believe his request required any court action. It is not for this court to comb the record looking for evidence to support an appellant's arguments. (See California Rules of Court, rule 8.204(a)(1)(C); *Grand v. Griesinger* (1958) 160 Cal.App.2d 397, 403.)

Finally, Roseville Land contends Wild Goose should have informed it immediately that the legal description of the easement was incorrect, instead of waiting several months, and should have cooperated with Roseville Land in drafting simple corrective orders without surplusage. Roseville Land argues Wild Goose thereby violated its duty of candor in this condemnation proceeding.

Although there is some dispute as to when Wild Goose learned of the error, even assuming it delayed notifying Roseville Land for several months, Roseville Land fails to explain how this resulted in any prejudice. Roseville Land was aware of the judgment that had been entered in 2006, including the correct description of the easement. Presumably, Roseville Land was not aware the attachment to the written judgment did not accurately reflect what the trial court had ordered. In other words, Roseville Land could not have been mislead by the incorrect description because it was not aware of it. The assumption in Roseville Land's argument is that it was not aware of the location of the easement, and hence the pipeline, until

the judgment was corrected. By the same logic, Roseville Land would not have been aware of the location of the pipeline until judgment was entered in 2003 or amended in 2006, which was years after the pipeline was installed. Hence, so the argument goes, Roseville Land went several years without knowing the location of the pipeline. This is patently incorrect. Roseville Land always knew where the pipeline was located. The confusion was in the exact location of the easement.

As for Roseville Land's suggestion that Wild Goose was required to cooperate with it in drafting simple corrective orders without surplusage, we have already rejected Roseville Land's argument about surplusage in the amended judgment. The trial court's order could not have been simpler. The court ordered amendment of the condemnation judgment to correct a clerical error. The only other thing the court did was to direct the filing of a quitclaim deed, which Roseville Land had requested.

DISPOSITION

The order granting Wild Goose's motion to amend the judgment nunc pro tunc to correct a clerical error is affirmed. Because we conclude Roseville Land's contentions on appeal were

wholly without merit, Wild Goose is awarded its costs on appeal. (See Code Civ. Proc., § 1268.720.)

HULL, J.

We concur:

NICHOLSON, Acting P. J.

RAYE, J.