

Affirmed and Opinion Filed April 13, 2018



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00456-CV

**ADALBERTO SANDOVAL, Appellant
V.
COMMUNITY MISSIONARY BAPTIST CHURCH, Appellee**

**On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-05791**

MEMORANDUM OPINION

**Before Justices Francis, Brown, and Stoddart
Opinion by Justice Francis**

Adalberto Sandoval appeals the trial court's summary judgments granting a declaratory judgment in favor of the Community Missionary Baptist Church. At issue is whether certain language on a survey plat filed by CMBC created an ingress/egress easement over CMBC's property for the benefit of Sandoval's property. Because we conclude the language on the plat did not create either an express easement or easement by estoppel, we affirm the trial court's judgments.

The relevant facts in this case are undisputed. The Judah family owned four contiguous lots of land in DeSoto, Texas. They were designated as lots A, B, C and D. The westernmost lot D, had access to Church Street and West Belt Line Road. The easternmost lot C, was accessible

by North Hampton Road. In 1985, the Judah family sold lot D to the DeSoto Church of Christ. Then, in 2006, the DeSoto Church of Christ sold the property to CMBC.



At the time CMBC purchased the property, the Judahs retained ownership of the three contiguous lots (A, B and C) running from CMBC's property to North Hampton Road. CMBC entered into an agreement with the Judah family granting them an access easement over the church's property to lot A which had a house on it. The only other access for lot A was across lots B and C to North Hampton Road. CMBC submitted evidence, and Sandoval does not dispute, that this easement agreement to lot A was granted only for as long as the Judahs owned the property.

Because of a need for more parking space, CMBC asked the City of DeSoto to abandon a portion of Church Road that abutted CMBC's parking lot. The City approved the request but, as part of the process, CMBC was required to provide utility easements. On June 28, 2007, Pastor

Oscar Epps, on behalf of CMBC, signed a new amended plat for the property that showed the abandoned roadway and specifically outlined utility easements. The Owners Certificate attached to the plat described the easements being granted to the public utilities in detail. On the front of the plat was a notation stating, “NOTE: A Blanket Ingress/Egress Easement is granted across Lot 1A, Block 4 of this plat [CMBC’s property] to 168 Church Street [lot A].”

In 2011, the Judah family signed a residential real estate listing agreement with Coffey Caesar and listed lots A, B, and C for sale as a single unit. When they were unable to sell the lots jointly, the Judahs decided to sell the properties as separate units. In late 2013, Sandoval became interested in purchasing lot A and signed an earnest money contract. Stewart Title Company was hired to perform the title work.

On December 2, 2013 the Judah family sent CMBC a letter stating they had a contract to sell lot A that was due to close in two weeks. The letter noted the Judahs had a longstanding agreement with CMBC, and the Church of Christ before it, allowing them to access lot A through the church parking lot. The Judahs asked CMBC if it would be willing to “extend that same courtesy to the new owner with a legally drawn document to assure future access to the property has been granted.” CMBC declined to extend the access agreement to the new owner.

A title examiner with Stewart Title then examined the plat and the notation about a blanket easement. In an email dated December 19, 2013, Kay Fields with Stewart Title informed the Judahs, Caesar, and Sandoval that “the notation on the replat is not sufficient to create an easement across the property that was replatted.” She stated the title policy would show a “lack of access.” Caesar had Sandoval sign a copy of the email the same day, and Sandoval stated that, at that point, he was not going to go through with the purchase of the property because it had no access.

When Stewart Tile was asked to reexamine the issue, Fields sent another email to the Judahs and Caesar stating “the title company will not remove the ‘lack of right of access to and

from the land.’ The notation on the plat of the adjacent property about ‘blanket easement’ is not sufficient for this purpose.” A second title company consulted on the matter also said it would require the Judahs and the Church to execute and file a “Consent to Encroachment, Absent Easement and Boundary Agreement.”

Caesar then had Stewart Title send the Sandoval file sent to Tanya Watkins with Fidelity National Title Agency, Inc. Fidelity Title agreed to issue a title policy showing access to lot A over CMBC’s property. Based on the new title opinion, Sandoval stated he was willing to go forward with the purchase. A deed was drawn up that showed the property to include a “Tract 2: Easement Estate created in the plat executed by Oscar Epps, Pastor of the Community Missionary Baptist Church of DeSoto, dated June 28, 2007 and filed under clerk’s file No. 20070315941, Real Property Records, Dallas County, Texas.”

On January 21, 2014, the Judahs signed a seller’s disclosure form. In the space asking if they were aware of any “Unplatted Easements” they responded “Y[es]” and explained they “have not received any notices but there is no legal easement to the property just have permission to cross church parking lot.” Sandoval signed the disclosure form the next day. Two days later, the Judahs signed the deed purporting to transfer lot A and the “Tract 2” easement estate, to Sandoval.

CMBC brought this suit against Sandoval, Caesar, Fidelity Title, Tanya Watkins, Craig Watkins Attorney at Law PLLC, and Craig Watkins individually. CMBC sought a declaratory judgment declaring the following: (1) Sandoval does not have an easement across CMBC’s property as alleged in its deed; (2) the utility easements across CMBC’s property do not provide access to Sandoval for ingress and egress across CMBC’s property; (3) the defendants must correct the deed to remove any reference to the non-existing easement; and (4) defendants are trespassing if they use CMBC’s property without permission. CMBC also sought attorney’s fees.

Sandoval and CMBC both moved for traditional summary judgment. Sandoval argued the blanket easement language on the amended plat created an express easement as a matter of law. In the alternative, Sandoval argued an easement was created by estoppel. CMBC argued the undisputed facts showed, among other things, that neither an express easement nor an easement by estoppel was created. CMBC also moved for a no evidence summary judgment arguing the defendants could not produce a writing conveying an express easement sufficient to satisfy the statute of frauds and there was no evidence of any of the elements of easement by estoppel.¹

The trial court granted CMBC's motions for traditional and no evidence summary judgment in their entirety and denied Sandoval's motion for summary judgment. CMBC then filed a motion for attorney's fees and costs with a supporting affidavit by its attorney requesting an award of \$83,191.18. The trial court denied the motion as well as CMBC's subsequent motion to modify the judgment. Sandoval appealed the judgments in favor of CMBC and CMBC filed a notice of cross appeal of the trial court's refusal to award it fees and costs. None of the other defendants appealed the judgments in favor of CMBC. In its brief on appeal, CMBC states it has abandoned its cross appeal.

Sandoval brings two issues contending the trial court erred in granting summary judgment in favor of CMBC. In his first issue, Sandoval contends the trial court erred in granting both a traditional and no evidence summary judgment in favor of CMBC because the notation on the amended plat regarding a blanket easement was sufficient to create an express easement. We review a trial court's grant of summary judgment de novo. *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 79 (Tex. 2015). In a traditional summary judgment motion, a movant must state specific grounds, and a movant who conclusively negates at least one essential element of the non-

¹ In both its traditional and no evidence motions for summary judgment, CMBC also argued the defendants could not show an easement by implication, necessity, or prescription. Appellant makes no argument on appeal that any of those types of easements apply in this case.

movant's cause of action or conclusively establishes all the elements of an affirmative defense is entitled to summary judgment. *Id.* (citing TEX. R. CIV. P. 166a(c)). In a no evidence summary judgment motion, the movant contends that no evidence supports one or more essential elements of a claim for which the nonmovant would bear the burden of proof at trial. TEX. R. CIV. P. 166a(i). The trial court must grant the motion unless the nonmovant raises a genuine issue of material fact on each challenged element. *KCM Fin.*, 457 S.W.3d at 79.

Sandoval concedes that an express easement is an interest in land and, to convey the interest, there must be a writing sufficient to satisfy the statute of frauds and statute of conveyances. *See Anderson v. Tall Timbers Corp.*, 378 S.W.2d 16, 23 (Tex. 1964); *Pick v. Bartel*, 659 S.W.2d 636, 637 (Tex. 1983). Although no special form or particular words need to be employed, because an easement is an interest in land, the grant should have the same essential characteristics as a deed to real estate. *See Hubert v. Davis*, 170 S.W.3d 706, 710–11 (Tex. App.—Tyler 2005, no pet.); *see also Wall v. Lower CO River Auth.*, 536 S.W.2d 688, 691 (Tex. Civ. App.—Austin 1976, writ ref'd n.r.e.) (scope of easement determined by same rules applicable to deeds). To be a legally effective conveyance, the instrument as a whole must (1) sufficiently identify the grantor and grantee, (2) contain operative words of grant showing an intention by the grantor to convey the interest to the grantee, (3) sufficiently describe the interest being conveyed, and (4) be signed and acknowledged by the grantor. *See Gordon v. W. Houston Tress, Ltd.*, 352 S.W.3d 32, 43 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The writing must express the essential terms of the contract with such certainty and clarity that it may be understood without recourse to parol evidence to show the intention of the parties. *See Pick*, 659 S.W.2d at 637.

Sandoval relies entirely on the notation regarding the grant of a blanket easement “to 168 Church Street” on the amended plat to satisfy the statute of frauds in this case. The notation does not, however, identify to whom the interest is being granted, which is an essential element of the

agreement. *See Gordon*, 352 S.W.3d at 43. The only easement grantees named on the plat are public utilities. In fact, CMBC asserts the notation actually refers to the utility easements described in the Owner's Certificate which would allow the utilities to access Sandoval's property.

Sandoval makes numerous arguments regarding why the notation cannot be read to refer to the public utility easements. Assuming Sandoval is correct, this does not mean the notation identifies a different grantee with whom Sandoval is in privity sufficient to satisfy the statute of frauds. The Judahs were the owners of 168 Church Street at the time the plat was amended. Nothing on the plat or in the Owner's Certificate references the Judahs as the grantees. Furthermore, no evidence shows the Judahs ever considered themselves to be the grantees of the easement purportedly created by the notation or that they accepted any such easement. Even if the notation could be read as a reference to the separate easement agreement between CMBC and the Judahs, it is undisputed that this agreement was only for a determinable easement which ended upon the Judahs' sale of the property. The circumstances surrounding the creation of the amended plat do not suggest that either CMBC or the Judahs intended the notation to be an easement agreement between them in addition to and apart from the determinable easement agreement they already had.

Sandoval argues the grantee of the blanket easement is the lot itself. He reads the language in the notation stating an easement is granted "to 168 Church Street" as not only describing the easement being conveyed but also identifying the party receiving the easement. But an express easement is a contract. *See Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700–01 (Tex. 2002); *Pick*, 659 S.W.2d at 637. Sandoval cites no authority for the proposition that a piece of land, separate from its owner, can be the grantee in a real estate contract.

Instead, Sandoval relies on case law discussing appurtenant easements that run with the land. An appurtenant easement attaches to the dominant estate and passes with it. *See McWhorter*

v. City of Jacksonville, 694 S.W.2d 182, 184 (Tex. App.—Tyler 1985, no writ). This means the easement extends to the landowners’ successors in interest and transfer of the dominant estate automatically includes the easement across the servient tenement’s land. *See McDaniel v. Calvert*, 875 S.W.2d 482, 484 (Tex. App.—Fort Worth 1994, no writ). The easement is for the benefit of the land rather than just the original grantee. This does not, however, eliminate the requirement that the original owner of the dominant estate be a party to the creation of the express easement, a circumstance the Judahs specifically denied in this case. Without the owner of the dominant estate as a party, there is no agreement; there is only a grant which would be, at best, in the nature of a dedication. Dedications of an interest in land must be for public use. *See Drye v. Eagle Rock Ranch, Inc.*, 364 S.W.2d 196, 203 (Tex. 1962). An easement cannot be dedicated for use by only a limited number of people such as the owners of the benefitted property. *See Viscardi v. Pajestka*, 576 S.W.2d 16, 19 (Tex. 1978). Sandoval does not assert on appeal the plat notation he is relying on gave rise to a dedication.

Because the notation relied upon by Sandoval does not identify a grantee, it does not contain all the elements for the creation of an express easement as required by the statute of frauds. Accordingly, we conclude Sandoval failed to produce sufficient evidence to defeat CMBC’s motion for no evidence summary judgment on Sandoval’s assertion of an express easement. We resolve Sandoval’s first issue against him.

In his second issue, Sandoval asserts the plat notation gave rise to an easement by estoppel. The gravity of a judicial means of acquiring an interest in the land of another solely by means of parol evidence requires that equitable estoppel be strictly applied and the estoppel should be certain, precise, and clear. *See McAnally v. Friends of WCC, Inc.*, 113 S.W.3d 875, 879 (Tex. App.—Dallas 2003, no pet.); *see also McClung v. Ayers*, 352 S.W.3d 723, 729 (Tex. App.—Texarkana 2011, no pet.). An easement by estoppel requires proof of three elements: (1) a

representation of the easement was communicated to the innocent party; (2) the communication was believed; and (3) the innocent party relied on the communication. *See Storms v. Tuck*, 579 S.W.2d 447 (Tex. 1979).

The only representation by CMBC that Sandoval alleges he relied upon when purchasing the property was the notation on the amended plat. The summary judgment record is replete with evidence that Sandoval did not rely on the notation as numerous people, including the sellers, told him the notation did not create a legal easement to 168 Church Street across CMBC's property. Sandoval himself testified he was not going to go through with the purchase until he was told Fidelity Title was willing to say the plat notation created an easement. As late as two days before closing on the sale, the Judahs informed Sandoval there was no legal easement to access the property he was purchasing. Accordingly, it was not the notation upon which Sandoval relied, but upon Fidelity Title's interpretation of the notation.

Sandoval argues he is not required to show reliance because CMBC is bound by the doctrines of estoppel by deed and estoppel by contract. The doctrine of estoppel by deed binds all parties and privies to a valid deed and prevents them from denying the truth of the recitals in the deed. *See Angell v. Bailey*, 225 S.W.3d 834, 841–42 (Tex. App.—El Paso 2007, no pet.). Similarly, under the doctrine of estoppel by contract, a party to a contract will not be permitted to take a position inconsistent with the contract's provisions. *See Johnson v. Structured Asset Servs., LLC*, 148 S.W.3d 711, 721–22 (Tex. App.—Dallas 2004, no pet.). The doctrine is founded on the theory that the parties have contracted upon the basis of the recited facts. *See XTO Energy Inc. v. Nikolai*, 357 S.W.3d 47, 56 (Tex. App.—Fort Worth 2011, pet. denied).

For estoppel by deed or by contract to apply in this case, Sandoval was required to produce evidence of a deed or contract between CMBC and the Judahs to which Sandoval would be privy and by which CMBC conveyed to the Judahs an easement interest it would now be estopped from

denying. Absent a valid deed or contract, the doctrines do not apply. *See Masgas v. Anderson*, 310 S.W.3d 567, 571 (Tex. App.—Eastland 2010, pet. denied). As discussed above, there is no evidence of any type of easement agreement between CMBC and the Judahs other than for a determinable easement which ended when the Judahs sold the property. The notation on the amended plat does not refer to the Judahs and there is no evidence CMBC intended, or the Judahs ever accepted, the notation to grant the Judahs an easement separate from the determinable easement agreement. Because there is no evidence of a contract or deed for a perpetual easement between CMBC and the Judahs by which Sandoval could claim estoppel as a privy, Sandoval's claims of estoppel by deed and estoppel by contract fail as a matter of law.

We conclude the trial court properly ruled that Sandoval produced no evidence of an express easement, estoppel by deed, or estoppel by contract. We further conclude CMBC produced sufficient summary judgment evidence to negate the element of reliance as to Sandoval's assertion of equitable estoppel. Accordingly we affirm the trial court's judgments in favor of CMBC.

/Molly Francis/

MOLLY FRANCIS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ADALBERTO SANDOVAL, Appellant

No. 05-17-00456-CV V.

COMMUNITY MISSIONARY BAPTIST
CHURCH, Appellee

On Appeal from the 101st Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DC-14-05791.

Opinion delivered by Justice Francis.

Justices Brown and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee COMMUNITY MISSIONARY BAPTIST CHURCH, recover its costs of this appeal from appellant ADALBERTO SANDOVAL.

Judgment entered April 13, 2018.