Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-176

NOVEMBER TERM, 2003

Maurice and Claire Desautels	}	APPEALED FROM:
v.	}	Addison Superior Court
James and Nancy Reynolds	}	DOCKET NO 55-3-00 Ancv
	}	Trial Judges: Helen M. Toor & Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

In this action to quiet title, plaintiffs Maurice and Claire Desautels appeal the superior court= s orders determining the location of a disputed parcel of land and confirming the existence of a right of away across their property to allow defendants James and Nancy Reynolds access to the parcel. We affirm.

The Desautels filed suit to quiet title to an eight-acre parcel of land claimed by both parties. The Desautels alleged that they had record title to the property, and later amended their complaint to add a claim of adverse possession. The Reynolds filed a counterclaim, alleging that they owned the disputed parcel by chain of title, the last of which was a 1983 deed from James Reynolds= parents to the Reynolds. They also claimed adverse possession in the alternative. The Desautels did not dispute that the Reynolds owned an eight-acre parcel of land, but they contended that the deeds in the Reynolds= chain of title described a parcel located on the other side of the road from their property, and that the eight acres claimed by the Reynolds are part of the Desautels= farm.

The Reynolds moved for partial summary judgment on their claim of record title. The superior court initially denied the motion. After the parties conducted discovery, however, and following a May 16, 2002 hearing in which the parties= attorneys presented oral argument, another superior court judge rotating into the Addison Superior Court granted the motion. Later, the parties proceeded to trial on the Desautels= claim of adverse possession. Following an evidentiary hearing, a third superior court judge denied the claim, and further found that a right of way to the landlocked parcel existed in the location described by Mr. Reynolds. In response to the Desautels= motion to amend, the court ruled that the right of way was part of the Reynolds= deed found to be valid by the previous judge. On appeal, the Desautels argue that the superior court erred (1) by deciding disputed issues of material fact in granting the Reynolds= motion for partial summary judgment; and (2) by awarding the Reynolds a right of way across the Desautels= land even though the Desautels= chain of title does not include B and the Reynolds= counterclaim does not seek to establish B any such right of way.

The Desautels first argue that, in granting partial summary judgment to the Reynolds on the issue of record title, the superior court disregarded disputed evidence of material fact. According to the Desautels, statements by the superior court and the Reynolds= attorney at the May 16 hearing demonstrate that there are disputed issues of material fact concerning the location of the eight-acre parcel. The Desautels also complain that the court did not make findings before granting summary judgment. We find these arguments unavailing. After hearing both parties= arguments, the court concluded that the 1847 deed initially conveying the eight-acre parcel to the Reynolds= predecessor-in-title unambiguously described the parcel as being in what is now the southwest corner of the Desautels= farm. The court rejected the Desautels= suggestion that the description of the parcel as being in the southwest corner of the farm was simply a scrivener= s error made not once, but twice. As the superior court stated, the parties= surveyors could testify at

an evidentiary hearing, but the nineteenth century deeds at the source of the Reynolds= chain of title would control the outcome of this case in the end. See Withington v. Derrick, 153 Vt. 598, 603 (1990) (words contained in deed itself A declare the understanding and intent of the parties@). Here, the language in the controlling deed is unambiguous, and the Desautels fail to identify any evidence, not already known to the court, creating doubt as to what parcel was intended to be conveyed by the 1847 deed. See White v. Quechee Lakes Landowners= Ass= n, 170 Vt. 25, 28 (1999) (party opposing summary judgment must set forth specific facts showing that there is genuine issue of material fact for trial). As for the Desautels= complaint that the superior court failed to make findings, no findings were requested, and the court= s ruling on the record plainly indicates the basis for its decision. See Roy v. Mulford, 161 Vt. 501, 507 (1994) (court has duty to make findings, when requested, that are essential to disposition of issues to be decided; findings must indicate what was decided and how decision was reached).

Next, the Desautels argue that, even assuming the superior court correctly determined the location of the eight-acre parcel, the court erred by granting the Reynolds a right of way across the Desautels= property to reach the landlocked parcel, given that the Reynolds did not seek to establish a right of way in their counterclaim, and the right of way does not exist in the Desautels= chain of title. As noted, in response to the Desautels= motion to amend, the superior court judge presiding over the adverse possession hearing ruled that the right of way was part of the deed the previous superior court judge had found to be valid in granting partial summary judgment to the Reynolds. We find no reversible error, if any error at all. The Desautels commenced this action by asking the superior court to declare them the owners of eight acres to which the Reynolds claimed ownership under a deed establishing a right of way to the property over the Desautels= land. The right of way came up repeatedly in both the summary judgment hearing and the later hearing on adverse possession. The superior court found the right of way to exist in the location as testified by Mr. Reynolds. We conclude that the issue of the existence and location of the right of way was tried by the implied consent of the parties. See V.R.C.P. 15(b). Further, we conclude that the existence of the right of way was proved by an unbroken chain of title dating back more than forty years to a 1951 deed, see 27 V.S.A. ' ' 601-602 (person holding unbroken record chain of title to real estate for at least forty years, with nothing of record purporting to divest person of that interest, is deemed to have marketable record title to that interest), and that the location of the right of way was established by two witnesses= undisputed testimony.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice