BAKER COMMUNITY SERVICES DISTRICT

Court Case: Baker CSD v. RBJ baker, Inc. 2005 Cal. App. Unpublished.

Attachment 2d

Document(1)

1. BAKER COMMUNITY SERVS. DIST. v. RBJ BAKER, INC., 2005 Cal. App. Unpub. LEXIS 2389

   Client/matter: 14141.00000.6458

BAKER COMMUNITY SERVS. DIST. v. RBJ BAKER, INC.

Court of Appeal of California, Fourth Appellate District, Division Two
March 17, 2005, Filed
E034968

Reporter: 2005 Cal. App. Unpub. LEXIS 2389; 2005 WL 635057

BAKER COMMUNITY SERVICES DISTRICT, Plaintiff, Cross-defendant, and Appellant, v. RBJ BAKER, INC., Defendant, Cross-complainant, and Respondent.

Prior History: APPEAL from the Superior Court of San Bernardino County. No. BCV05575. John M. Tomberlin and David Cohn, Judges. *

Disposition: Affirmed in part and reversed in part.

Core Terms

easement, trial court, diagonal, prescription, street, utility easement, undedicated, formation, community service, implied power, carry out, private property, cross-complaint, pipeline, prescriptive easement, triable issue of fact, fire protection, public entity, trash, acquisition of property, implied dedication, public road, domain, summary judgment motion, cause of action, no power, recreation, eminent, patent, statutorily

Counsel: McIntire Law Corporation and Michael V. McIntire for Plaintiff, Cross-Defendant and Appellant.

Law Office of Pope & Gentile and Steven J. Pope for Defendants, Cross-Complainants and Respondents.

Judges: RICHLI, J.; RAMIREZ, P. J., GAUT, J. concurred.

Opinion by: RICHLI

Opinion

This action arose when defendant RBJ Baker, Inc. (RBJ) fenced off a piece of property, preventing plaintiff Baker Community Services District (the District) from having access to it. Previously, the District had installed a water pipeline **[*2]** in a strip down one side of the property. In addition, the general public, including the District, had been using a diagonal strip across the property as a road. The District had maintained this road, along with other unpaved private roads, by smoothing it and, recently, placing asphalt on it.

The District filed this action against RBJ and others to quiet title to three claimed interests in the property: (1) a public road easement arising by implied dedication, (2) a road easement arising by prescription, and (3) a utility easement.

RBJ asserted, as a defense and also by way of a cross-complaint, that the District lacked the power to acquire a road easement. RBJ also asserted in its cross-complaint that the District lacked the power to maintain roads. On a motion for summary judgment brought by RBJ, the trial court agreed.

This left only the District's utility easement claim to be tried. The trial court, after a bench trial, ruled that the District had failed to establish this claim.

The District appeals. We will hold that:

1. There was at least a triable issue of fact with respect to whether the District had the power to maintain roads.

2. There was at least a triable issue **[*3]** of fact with respect to whether the District had the power to acquire a road easement.

3. Even assuming the District had no power to acquire a road easement, it had standing to sue to establish a public road easement arising by implied dedication.

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* Judge Tomberlin granted summary adjudication on the cross-complaint and on the road easement claims in the complaint. Judge Cohn then tried the utility easement claim in the complaint.

4. The trial court could properly find insufficient evidence to support the District's utility easement claim.

Accordingly, we will affirm in part and reverse in part.

I

FACTUAL BACKGROUND

This action concerns a four-acre parcel of land in Baker (the property). In 1957, the United States conveyed the property by patent to Chester T. Huber. The patent reserved an easement running north-south along the western boundary of the property for road and utility purposes.

Baker Boulevard forms the southern boundary of the property. Van Ella Road, a dirt road running north-south, travels down the western boundary of the property, apparently within the road and utility easement. This route, however, crosses a drainage channel or wash. Accordingly, partway down the western boundary, a diagonal road or path (the Van Ella diagonal) runs northwest-southeast across the property, to connect Van Ella Road to Baker Boulevard while avoiding the **[*4]** wash. According to the District, the Van Ella diagonal has existed since time immemorial. According to RBJ, however, a flood created the wash in 1980; only after that did users of Van Ella Road begin beating a path across the property.

The District was formed in 1956. It provides the citizens of Baker with water, sewer, trash, fire protection, ambulance, park and recreation, street lighting, and television translator services.

In 1969, the District installed a water pipeline within the road and utility easement reserved by the United States. Around 1991, the District began maintaining certain roads in Baker, including the Van Ella diagonal. In 1999 or 2000, it placed asphalt on the Van Ella diagonal.

When Huber died, his widow, Mary Huber, inherited the property and placed it in the Mary Frances Huber Trust (Trust). In September 2000, the Trust entered into a contract to sell the property to RBJ. Ray Hunt is the president of RBJ. He, personally, however, has no interest in the property.

In November 2000, RBJ put up a fence around the property, removed the asphalt, and prevented the District from entering the property. On March 20, 2001, the District filed this action.

In September **[*5]** 2002, the sale of the property to RBJ closed.II

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This left only the District's utility easement claim to be tried. The trial court, after a bench trial, ruled that the District had failed to establish this claim.

The District appeals. We will hold that:

1. There was at least a triable issue of fact with respect to whether the District had the power to maintain roads.

2. There was at least a triable issue of fact with respect to whether the District had the power to acquire a road easement.

3. Even assuming the District had no power to acquire a road easement, it had standing to sue to establish a public road easement arising by implied dedication.

4. The trial court could properly find insufficient evidence to support the District's utility easement claim.

Accordingly, we will affirm in part and reverse in part.

PROCEDURAL BACKGROUND

In March 2001, the District filed this action **[*6]** against RBJ, Ray Hunt, [1] and Mary Huber (as trustee of the Trust), [2] as well as other defendants later dismissed.

In its complaint, as subsequently amended, the District asserted five causes of action. First, ″on behalf of the general public,″ it claimed a road easement in the Van Ella diagonal by implied dedication. It prayed for a judgment that it, ″as a public entity acting for and on behalf of the general public, had a public road easement″ in the Van Ella diagonal. Second, it claimed a road easement in the Van Ella diagonal by prescription. It prayed for a judgment that it, ″on its own behalf, had a **[*7]** road easement″ in the Van Ella diagonal. Third, it claimed a utility easement. Fourth, it sought an injunction against interfering with any of the claimed easements. Fifth, it sought damages for the destruction of the asphalt it had placed on the Van Ella diagonal.

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[1] RBJ and Hunt filed a single respondents' brief. Hunt, however, has disclaimed any interest in the property and is not a party to the cross-complaint. We therefore deem him not to be a party to this appeal.

[2] After the sale to RBJ closed, Mary Huber ceased to participate in the action. She has informed us that she no longer considers herself a party. We agree that she is not a party to this appeal.

RBJ filed a cross-complaint against the District. It sought a declaration that the District had no ″road powers″ and an injunction prohibiting the District from ″repairing, maintaining or constructing roads″ or attempting ″to acquire roads . . . through litigation.″

RBJ filed a motion for summary judgment on its cross-complaint, and for summary adjudication on the District's road easement claims, on the grounds that the District had no power to construct, repair, or maintain roads and no power to acquire the claimed road easements. The trial court granted the motion. After a bench trial, the trial court ruled that the District had failed to prove a right to the claimed utility easement. It therefore entered judgment against the District.

III

THE DISTRICT'S ″ROAD POWERS?

A. *The Source and Scope of the Evidence*.

The trial court resolved RBJ's cross-complaint and the District's road easement claims on **[*8]** a motion for summary judgment. Accordingly, ″we take the facts from the record before the trial court when it ruled on that motion. [Citation.]″ (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1034-1035.)

We accept all facts listed in RBJ's separate statement that the District did not dispute. We also accept all facts listed in RBJ's separate statement that the District *did* dispute, to the extent that (1) there is evidence to support them (*Code Civ. Proc., § 437c, subd. (b)(1)*), and (2) there is no evidence to support the dispute (*Code Civ. Proc., § 437c, subd. (b)(3)*). Finally, we accept all facts listed in the District's separate statement, to the extent that there is evidence to support them. (*Ibid*.) We disregard any evidence not called to the trial court's attention in the separate statement of one side or the other, except as necessary to provide nondispositive background, color, or continuity. (See *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 314-316.)

Each side filed evidentiary objections. The trial court sustained some, overruled others, and apparently treated others **[*9]** as waived. Nobody has challenged these rulings. Accordingly, we consider all of the evidence submitted, except that to which the trial court sustained objections. (*Code Civ. Proc., § 437c, subd. (c)*.) [3]

″We must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing his evidentiary submission while strictly scrutinizing defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor. **[*10]** [Citations.]″ (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768-769.)B. *Summary of the Evidence*.

Baker is a small community in the Mojave Desert. It has about 600 residents. The nearest city, Barstow, is about 60 miles away.

Historically, the County of San Bernardino (the County) has provided Baker with ″few, if any, municipal services.″ The District was formed to provide basic municipal services the County was not providing. The District was expressly created for the purposes of providing water, sewer, trash, fire protection, park and recreation, and street lighting services. [4] In 1978, by statute, the District was allowed to adopt the additional purposes of providing emergency medical care and television translator services. (*Gov. Code, § 61601.6*.)

There are only two dedicated public roads in Baker -- Highway **[*11]** 127 and Baker Boulevard. Baker grew and developed around a system of private, undedicated, mostly dirt roads (undedicated roads). [5] Most of the homes in Baker can be reached only by these undedicated roads. The District must use these undedicated roads to provide fire protection, ambulance, and trash collection services and to get to the park, the community building, and the water and sewer systems that it operates and maintains.

Without regular maintenance, the undedicated roads deteriorate quickly. They develop ruts **[*12]** that make them impassable by the District's ambulances, fire trucks, and other vehicles and unsafe for use by its trash trucks.

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[3] The District, ignoring the procedural posture of the case, cites evidence that had only been introduced earlier, in connection with other motions.

Similarly ignoring the trial court's evidentiary rulings, the District cites evidence the trial court expressly excluded. We do not mean to say the trial court's evidentiary rulings were (or were not) correct. We mean only that the District has waived any challenge to them.

Fortunately for the District, the excluded evidence was largely cumulative to evidence RBJ itself offered, without limitation.

[4] The District also has the express purposes of providing police services and mosquito abatement. It does not appear, however, that it is currently doing so.

[5] Although the District introduced testimony that these roads were private and undedicated, that is something of a legal conclusion. There are indications that they may have become public as a result of implied dedication. (See generally *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810.) It might be more accurate to refer to them as *unaccepted* roads. (See Sts. & Hy. Code, § 941, subd. (b).) For purposes of our opinion, however, the distinction is not significant.

Accordingly, around 1991 or 1992, the District began maintaining the undedicated roads. This is necessary if it is to provide the services it was established to provide. The District performs only such maintenance as is necessary to keep the undedicated roads open and safe for its use in providing other services. Until recently, this consisted mainly of smoothing the road surface and occasionally sprinkling the surface with water.

The County has disclaimed any jurisdiction over the undedicated roads. The District has asked the County to maintain them; the County has refused.. The District would ″happily″ stop maintaining the undedicated roads if the County would do so.

One of the roads the District maintains regularly is the Van Ella diagonal. In 1999 or 2000, it placed asphalt on a number of roads, including the Van Ella diagonal.

The Van Ella diagonal is one of the most heavily traveled undedicated roads in Baker. It is ″the most direct and fastest way to travel″ north of Baker Boulevard. Until RBJ fenced it off, the District was using it every day.

[*13] C. *Discussion*.

We review the trial court's decision granting the motion for summary judgment de novo. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65-66.)

RBJ tends to characterize the motion for summary judgment as turning on the issue of whether the District had ″road powers.″ Actually, there were two issues: (1) whether the District had the power to maintain roads, and (2) whether the District had the power to acquire a prescriptive road easement. These issues -- although related -- are analytically distinct and require separate discussion.

1. *Statutory Background*.

The District is a creature of the Community Services District Law (the Act). (*Gov. Code, § 61000 et seq.*) [6] Under the Act as it stood when the District was formed, the formation of a new community services district began with the filing of a petition. (Former *Gov. Code, § 61101*, Stats. 1955, ch. 1746, § 3, p. 3205.) The petition had to state the purposes for which the district was to be formed. (Former *Gov. Code, § 61102*, Stats. 1955, ch. 1746, § 3, p. 3205.) An election would then be held to decide whether or not to form the district. (Former *Gov. Code, § 61127*, Stats. **[*14]** 1955, ch. 1746, § 3, p. 3207.) Like the formation petition, the notice of election had to state the purposes for which the district was to be formed. (Former *Gov. Code, § 61123*, Stats. 1955, ch. 1746, § 3, p. 3207.)

The Act as it now stands is largely the same. (*Gov. Code, §§ 61100, subd. (a)*, *61101*, *61110, subd. (a)*, *61115, subd. (c)*, *61600*, *61601*.) The only differences worth mentioning here are that: (1) in lieu of a formation petition, a county or city can adopt a formation resolution (*Gov. Code, §§ 61100, subd. (b)*, *61106*); (2) neither a formation petition nor a formation resolution has to state any longer the purposes for which the district is to be formed (*Gov. Code, §§ 61101*, *61106, subd. (a)*); and (3) the formation of **[*15]** the proposed district must be approved by the Local Agency Formation Commission (LAFCO). (*Gov. Code, §§ 56831*, *56847*, *56880*, *56884*, *61107*, *61110, subd. (a)*.)

Part 5, Chapter 1 of the Act, consisting of *Government Code sections 61600 through 61602*, is entitled ″Purposes.″ *Government Code section 61600* lists most of the statutorily permitted purposes of a community services district.

″A district . . . may exercise the powers granted for any of the [statutorily permitted] purposes designated in the petition for formation of the district and for any other of the [statutorily permitted] purposes that the district shall adopt . . . .″ [7] (*Gov. Code, § 61600*.) If a district seeks to adopt a purpose not designated in its formation petition, it must hold an election so the voters can decide ″whether the district should adopt the additional purpose or purposes.″ (*Gov. Code, § 61601*.) [8] The statutorily permitted purposes include:

″(a) To supply . . . water for domestic use, irrigation, sanitation, industrial use, fire protection, and recreation.

″(b) The collection, treatment, or disposal of sewage, waste, and storm water . . . .

″(c) The collection or disposal of garbage or refuse matter.

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[6] The District has filed a request for judicial notice of legislative history materials related to the Act. RBJ has not opposed the request. We hereby take such judicial notice. (Evid. Code, §§ 452, subd. (c), 459; *White v. Davis* (2003) 30 Cal.4th 528, 553, fn. 11.)

[7] This is curious, as a formation petition no longer has to state the purposes for which the district is to be formed. Moreover, it is unclear how this would apply to a district formed by resolution, rather than by petition.

[8] RBJ claims that the adoption of a new purpose also requires LAFCO approval. This is not necessarily apparent on the face of the relevant statutes. (See Gov. Code, §§ 56021, 56040, 56073, 56100, 56375, subds. (a), (d), (e), 56434, subd. (a), 56821, subd. (b), 56822.5, 56824.10, 56824.12, subd. (a), 56824.14, subd. (a), 61601.) As the record indicates, however, the San Bernardino LAFCO has adopted rules that purport to so require. (Rules and Regulations of the Local Agency Formation Commission of San Bernardino County, §§ 3(d), 8-10, available at <http://www.sbclafco.org/PolicyManual/Documents/section_5/rules_2.pdf>, as of Mar. 4, 2005.)

″(d) Protection against fire.

″(e) Public recreation . . . .

″(f) Street lighting.

″(g) Mosquito abatement.

″(h) The equipment and maintenance of a police department, other police protection, **[*17]** or other security services . . . . [P] . . . [P]

″(j) The constructing, opening, widening, extending, straightening, surfacing, and *maintaining*, in whole or in part, of *any street in the district*, subject to the consent of the governing body of the county or city in which the improvement is to be made.″ (*Gov. Code, § 61600*, italics added.)

Part 5, Chapter 2 of the Act, consisting of *Government Code sections 61610 through 61626.7*, is entitled ″Powers.″ Under this chapter, one of the statutorily permitted powers of a community services district is the power to ″acquire real or personal property of every kind within or without the district by grant, purchase, gift, devise, lease, or eminent domain.″ (*Gov. Code, § 61610*.) [9] In addition, ″each district has the power generally to perform all acts necessary to carry out fully the provisions of [the Act].″ (*Gov. Code, § 61622*.)

[*18] 2. *The District's Power to Maintain Roads*.

A community services district is a ″district of limited powers.″ (*Gov. Code, § 56037*.) ″The only implied powers a district of limited powers possesses 'are those essential to the limited, declared powers provided by its enabling act.' [Citation.]″ (*Turlock Irrigation Dist. v. Hetrick* (1999) 71 Cal.App.4th 948, 953, quoting *Water Quality Assn. v. County of Santa Barbara* (1996) 44 Cal.App.4th 732, 746.) ″'″The rule is well established that language purporting to define the powers of a municipal corporation is to be strictly construed, and . . . the power is denied where there is any fair, reasonable doubt concerning the existence of the power. [Citation.]″ [Citation.]' [Citation.]″ (*Water Quality Assn.*, at p. 746, quoting *Trimont Land Co. v. Truckee Sanitary Dist.* (1983) 145 Cal. App. 3d 330, 350, 193 Cal. Rptr. 568, quoting *City of North Sacramento v. Citizens Utilities Co. of Cal.* (1961) 192 Cal. App. 2d 482, 483, 13 Cal. Rptr. 538, quoting *City of Madera v. Black* (1919) 181 Cal. 306, 312.) A special district is a ″municipal corporation″ **[*19]** for purpose of such rules. (*Zack v. Marin Emergency Radio Authority* (2004) 118 Cal.App.4th 617, 633.)

The District therefore argues that maintaining the undedicated roads is essential if it is to carry out its other purposes. Under even the strictest possible construction, we must agree. Ambulances, fire trucks, and trash trucks cannot operate without passable roads. The District introduced uncontradicted evidence that: ″The District has no alternative except to perform basic maintenance on the desert roadways located on private property within the District. Without maintenance, such roadways quickly disintegrate and become unusable. When that happens, the District will be unable to serve its constituents.″

Indeed, RBJ does not really argue otherwise. Instead, it argues that the District ″has never offered a single instance when it was unable to perform its duties due to impassable or dangerous roads.″ Of course not -- precisely *because* the District has maintained the roads, such an instance (which could put life or property at risk) has not occurred.

Next, RBJ tries to shift the issue -- it argues that there was no evidence that maintaining *the Van Ella diagonal* **[*20]** was essential. As we will discuss further below, the District raised a triable issue of fact as to the necessity of the Van Ella diagonal. however, the same argument could be made about almost any road; there is usually some more roundabout way to get to the same place. Even assuming the District could do without any one road, it needs to use the local road system as a whole. In any event, the trial court ruled that the District was not authorized to maintain *any* roads.

It is also uncontradicted that no other person or entity is willing to maintain the roads. If the County, or anyone else, were to take over their maintenance, the District would happily stand down. Moreover, the District performs only such maintenance as is necessary to enable it to perform its other functions. In these respects, the District's limited power differs from a plenary power to construct, maintain, and improve streets under *Government Code section 61600, subdivision (j)*.

RBJ argues that, if the District's position is correct, ″then a school district, which has numerous school busses operating over the local roads on a daily basis, . . . may also exercise road powers . . . .″ (Capitalization omitted. **[*21]**) We agree that this conclusion follows; we do not find it, however, as ridiculous as RBJ seems to think. For this hypothetical to be analogous, it must also be the case that *nobody else is willing to maintain the roads*. In that event, unless the school district maintains the roads, eventually children would not be able

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[9] A community services district also has the power to ″construct any works along, under, or across any street, road, highway, or other property devoted to a public use subject to consent of the governing body in charge of the public use.″ (Gov. Code, § 61625.) Curiously, the parties have not cited or discussed this statute. The District may be reluctant to rely on it because there are questions as to whether (1) the District's road maintenance constitutes ″constructing works,″ (2) the undedicated roads are ″devoted to a public use,″ and (3) the relevant ″governing body″ has consented. Because the parties have not relied on this section, and because we, too, find it unnecessary to do so, we do not discuss it further.

to get to school, and the school district would not be able to serve its lawful purposes. The school district would therefore have the power to maintain the roads to the extent necessary to prevent that from happening.

RBJ also argues that: ″While incidental powers may be exercised when such powers are reasonably necessary to carry out [a district's] express powers, no incidental power may be implied where the Legislature has expressly denied such power.″ (Emphasis omitted.) [10] According to RBJ, the Legislature expressly authorized a community service district to perform road maintenance under *Government Code section 61600, subdivision (j)*, but only if it complies with ″specific statutory conditions precedent″ (such as an voter approval in an election); the District did not comply with these conditions; hence, we cannot imply an incidental power to maintain roads **[*22]** under *Government Code section 61622*.

We note, but do not decide, one of the arguments the District makes in response. It points out that *Government Code section 61600, subdivision (j)* speaks in terms of maintaining a ″street.″ It argues that ″street″ in this context should be construed to mean a dedicated public thoroughfare; hence, this subdivision simply has no bearing on the power to maintain a private road. As already noted, however (see fn. 5, *ante*), it is not **[*23]** at all clear that what we have been calling ″undedicated″ roads are truly private. Also, some of the legislative history materials proffered by the District at least arguably suggest that *Government Code section 61600, subdivision (j)* was intended to allow a district to maintain private as well as public streets. (See, e.g., Sen. William A. Craven, letter to Gov. Edmund G. Brown re Sen. Bill No. 232 (1979 Reg. Sess.) Jun. 20, 1979; Sen. Local Gov. Com., Statement on Sen. Bill No. 232 (1979 Reg. Sess.) Apr. 2, 1979.) Accordingly, we do not decide this point, and we express no further opinion on it. Rather, we assume, without deciding, that ″street″ as used in *Government Code section 61600, subdivision (j)* can include a private road.

We acknowledge the general principle that ″this court . . . will not by construction confer upon [ministerial] officers [of the state] authority which the Legislature has seen fit to withhold. [Citation.]″ (*Christophel v. Riley* (1929) 206 Cal. 242, 245.) We may assume that this principle applies not only to state ministerial officers, but also to local governmental agencies of limited powers. Even so assuming, however, we do not see **[*24]** how here, the Legislature has withheld the claimed power. Quite the contrary -- the Legislature has expressly *allowed* a community services district to maintain streets.

It is true that a district cannot adopt street maintenance as one of its express purposes without the approval of the electorate (and possibly also the approval of LAFCO). This applies, however, only if a district is seeking the plenary power to construct, maintain, and improve streets under *Government Code section 61600, subdivision (j)*. If a district is merely seeking to exercise an implied, incidental power under *Government Code section 61622*, no such approval is needed. Thus, we see no bar to the District's exercise of a limited, implied power to maintain roads, to the extent necessary for it to carry out its other purposes. Indeed, if we were to hold that the District has no such power, the electorate's intent to have the District provide fire protection, trash, and other services would be frustrated.

RBJ argues that the purpose of requiring an election is to protect the taxpayers from being stuck with the bill for services they have not approved. In principle, we agree. However, this is not a particularly **[*25]** fine-tuned process. For example, once the electorate has approved the formation of a district to provide public recreational services, that district may choose to provide only a vest-pocket park, or it may choose to provide the Taj Mahal of recreational facilities. A formation petition does not have to specify a budget or a tax rate. (See *Gov. Code, § 61101*.) Taxpayers are protected from exorbitant tax increases only indirectly -- by the power of district residents to vote for members of the district's board of directors (*Gov. Code, § 61200*) and by a cap on taxation, absent further voter approval, of $ 1 per $ 100 of assessed valuation. (*Gov. Code, § 61755.5*; see also *Gov. Code, § 61670*.) Accordingly, the mere fact that providing a particular service will cost taxpayers money is not particularly helpful in telling whether that service represents a new purpose requiring voter approval or merely an incidental power.

It is similarly true that a district cannot adopt street maintenance as one of its express purposes without ″the consent of the governing body of the county or city . . . .″ (*Gov. Code, § 61600, subd. (j)*.) Once again, however, we see no reason why this should limit **[*26]** a district's implied power to maintain roads. After all, such a power would not even exist if a county or a city were willing to maintain the roads. Here, the District has asked the County to maintain the undedicated roads, but the County has refused to do so, taking the position that it has no jurisdiction over them. It is evident that the District has the County's de facto consent to maintain the roads.

As the District points out, RBJ's position is ultimately impractical. It would mean that once a district formed

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[10] Elsewhere in its brief, however, RBJ concedes this argument away. It admits that ″a district, not originally formed for the express purposes of [Government Code section] 61600(j), is limited to those activities essential to carrying out its authorized functions *which may include some but not all of the activities . . . referred to in [Government Code section] 61600(j)* but only when essential, not merely desirable or convenient . . . .″ (Italics added.) We nevertheless address the argument, though solely as an alternative to waiver.

solely for park purposes built a park, it could not supply water to water fountains in the park, pick up trash in the park, remove graffiti in the park, or kill mosquitoes in the park, because it did not adopt these as additional express purposes. (See *Gov. Code, §§ 61600, subds. (a), (c), (g), (q), 61601.1*.) Such a district, however, has no reason to adopt these as express purposes. It does not need the plenary power to supply water, collect trash, or abate graffiti or mosquitoes throughout the district; it merely needs the limited power to do so within the park, to carry out its park purposes.

We conclude that the trial court erred by ruling that RBJ had shown, beyond **[*27]** a triable issue of fact, that the District lacked the power to maintain roads. Indeed, at least on this record, as a matter of law, the District has a limited, implied power to maintain undedicated roads within its boundaries, specifically including the Van Ella diagonal, to the extent necessary for it to carry out its other purposes.

3. *The District's Power to Acquire a Road Easement*.

We therefore turn to the question of whether the District has the power to acquire a prescriptive road easement.

Preliminarily, we note that the trial court erred by granting summary adjudication on the District's first cause of action on this ground. In the District's second cause of action, it claimed that it had acquired an easement by prescription. In its first cause of action, however, it claimed that a public easement had arisen by implied dedication. ″[A] person gaining a personal easement by prescription is acting to gain a property right in himself . . . . [Citation.] Such a personal claim of right need not be shown to establish a[n implied] dedication because it is a public right that is being claimed.″ (*Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29, 39, 84 Cal. Rptr. 162.) **[*28]** Certainly the District had the power to drive on a public road. As a member of the public in general, and a user of the Van Ella diagonal in particular, the District had standing to assert such a claim. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 261-262, 98 Cal. Rptr. 790.)

At oral argument, in support of its contention that the District lacked standing, RBJ cited *Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd.* (1999) 75 Cal.App.4th 327. There, however, the plaintiff public entity was seeking a writ of mandate, which required it to have ″'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.' [Citation.]″ (*Id.* at p. 331, quoting *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796, 166 Cal. Rptr. 844.) By contrast, any member of the public has standing to sue to establish a public easement. (*Marks v. Whitney, supra*, 6 Cal.3d at pp. 261-262; see also *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 431, fn. 11, 189 Cal. Rptr. 346 **[*29]** [″any member of the general public [citation] has standing to raise a claim of harm to the public trust″].)

Also at oral argument, RBJ asserted that that District prayed to quiet title to the asserted public easement in itself alone, and not in the general public. Not so. The District's prayer on its cause of action for an easement arising by implied dedication requested ″a judgment that [the District], as a public entity acting for and on behalf of the general public, has a public road easement . . . .″ By contrast, its prayer on its cause of action for a prescriptive easement requested a judgment that the District had an easement ″on its own behalf.″ Although, in hindsight, the distinction could have been made clearer, it was clear enough.

We turn, therefore, to RBJ's contention that the District had no power to acquire a prescriptive easement. RBJ essentially argues that, because the District has not adopted any of the purposes permitted under *Government Code section 61600, subdivision (j)*, it ″has no authority to acquire property or easements for roads or streets.″ (Emphasis omitted.) As already noted, this subdivision allows a district to adopt the purpose of ″constructing, **[*30]** opening, widening, extending, straightening, surfacing, and maintaining″ streets. It does not expressly allow a district to adopt the purpose of acquiring easements for street purposes. A district can construct, improve, or maintain a street without having to acquire an easement in it. Accordingly, even by RBJ's logic, *Government Code section 61600, subdivision (j)* does not preclude a district from having the implied power to acquire an easement for a street or road.

RBJ responds that acquiring a road easement constitutes ″construction.″ It cites *Streets and Highways Code section 29*. That section does indeed provide that ″construction″ includes the ″acquisition of rights-of-way . . . .″ (*Sts. & Hy. Code, § 29, subd. (a)*.) This definition, however, applies only under the Streets and Highways Code, and even then, only when the context does not otherwise require. (*Sts. & Hy. Code, § 5*.) The common, everyday meaning of ″constructing″ requires some alteration or improvement. This interpretation is reinforced by the fact that the Legislature grouped ″constructing″ with ″opening, widening, extending, straightening, surfacing, and maintaining.″ Thus, *Government Code section 61600, subdivision* **[*31]** (j) does not speak to whether a community services district can acquire a road easement.

RBJ also relies on *Government Code section 61610*, which provides: ″A district may acquire real or personal property of every kind . . . by grant, purchase, gift, devise, lease, or eminent domain.″ RBJ reasons that, by negative implication, a district cannot acquire property

by prescription. [11] This argument, however, if taken to its logical extreme, would abrogate *Government Code section 61622* and implied powers altogether. The mere fact that the Legislature has not seen fit to grant a particular power expressly cannot preclude the same power from being implied under *Government Code section 61622*.

[*32] We conclude that the District can have the implied power to acquire a prescriptive road easement. The trial court erred by ruling that the District lacked such a power and hence by granting summary judgment on RBJ's cross-complaint.

The question remains, however, of whether the District has the implied power to acquire an easement *over the Van Ella diagonal* because this power is necessary to carry out its other purposes. If it does not, the trial court could properly grant summary judgment on the District's second cause of action.

RBJ claims that ″photographs . . . clearly show alternative paths and roads . . . to reach all areas within the vicinity of the . . . property without use of the . . . property . . . .″ The District countered with evidence that the Van Ella diagonal is ″the most direct and fastest way to travel″ anywhere north of Baker Boulevard. In light of the District's mandate to provide fire and ambulance services -- in which time is of the essence -- this was sufficient to raise at least a triable issue of fact with respect to whether the District needed, and therefore had the implied power to acquire, an easement over the Van Ella diagonal by prescription.

[*33] Separately and alternatively, we note that two other statutes also give the District the power to acquire a prescriptive easement. First, *Code of Civil Procedure section 1240.130* provides that: ″Subject to any other statute relating to the acquisition of property, any public entity authorized to acquire property for a particular use by eminent domain may also acquire such property for such use by grant, purchase, lease, gift, devise, contract, *or other means*.″ (Italics added.) The District is a ″public entity″ within the meaning of *Code of Civil Procedure section 1240.130*. (*Code Civ. Proc., § 1235.190*.) It is seeking a road easement for a public use. (See *Code Civ. Proc., § 1240.010*.) It seems incontrovertible that the District could condemn an easement, if it sought to do so. It follows that it can also acquire one by other means.

Second, *Government Code section 61623.4* provides that: ″A [community services] district may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, [sections 13800 et seq.] of the Health and Safety Code[,] if the petition for formation **[*34]** of the district included fire protection among the designated purposes for which it was formed . . . .″ One express power of a fire protection district is the power ″to acquire any property . . . within the district by any means . . . .″ (*Health & Saf. Code, § 13861, subd. (b)*.) One of the original purposes of the District, as set forth in its formation petition, is fire protection. Thus, it has the power to acquire an easement by prescription.

We conclude that the trial court erred by ruling that, beyond a triable issue of fact, the District had no power to acquire a prescriptive road easement. The trial court therefore also erred by granting summary judgment on the District's first two causes of action and on RBJ's cross-complaint.

IV

THE DISTRICT'S UTILITY EASEMENT CLAIM

A. *Additional Factual and Procedural Background.*

At trial, the District introduced a document entitled ″Grant of Right of Way″ (Huber Grant). [12] Mary Huber had the original Huber Grant. The District had a copy in its files.

[*35] The Huber Grant recited that Chester T. Huber was granting the District a right of way along the western boundary of the property for pipeline purposes. The lines at the bottom for the date and for the grantor's signature were blank. Nevertheless, on the back, there was the following notarized acknowledgement:

″STATE OF NEVADA

″County of Clark

″On this **23rd** day of **Oct.** A.D., 19**69**, before me, **William K. Barrett**, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared **Chester T. Huber** personally known to me to be the person whose name **is** subscribed to the within Instrument, and duly acknowledged to me that he executed the same.

″IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

″**William K. Barrett**

---

[11] RBJ also challenges the District's power to acquire an easement ″by litigation.″ The District, however, has the express statutory power to sue and be sued. (Gov. Code, § 61612.) Accordingly, the key question is whether it had the underlying power to acquire an easement by prescription. If so, it could sue to quiet its title to such an easement.

[12] The District claims ″the trial court refused to admit [the Huber Grant] in evidence . . . .″ Not so. The trial court admitted it.

″Notary Public in and for said County and State.″

The words in boldface were handwritten; the rest were preprinted. ″Chester T. Huber″ appeared to be in different handwriting than ″William K. Barrett.″

In 1969-1970, the District built a water system. As part of that system, it laid an **[*36]** underground water pipeline along the western boundary of the property. The District has worked on the pipeline both immediately north and immediately south of the property. At least since 1991, however, it has not worked on the pipeline on the property itself.

B. *The Trial Court's Ruling*.

The trial court rejected the District's claim of a utility easement for three reasons.

First, it ruled that the Huber Grant was ineffective. It found that it was not signed: ″The Grant of Right of Way . . . has its own blanks for signatures . . . . The notarization stating that Chester L. Huber's name is 'subscribed' to the within instrument is erroneous on its face. There is no evidence that the words 'Chester L. Huber' are Mr. Huber's signature.″ It further found insufficient evidence that it was delivered: ″The original is not in [the District]'s possession and there is no explanation how [the District] obtained a photocopy . . . .″

Second, it ruled that there had been no enforceable oral grant: ″There was no testimony to support an oral grant, nor does the unsigned written deed provide any such evidence. '[A] party who claims a right to a conveyance of land under a parol or verbal **[*37]** contract upon the ground of part performance must make out by clear and satisfactory proof the existence of the contract alleged by him; and it is not enough that the acts of part performance proved are evidence of some agreement, but they must be unequivocal and satisfactory evidence of the particular agreement charged in the complaint.' [Citations.]″

Third, it ruled that there was no prescriptive easement, in part because: ″There was no evidence submitted that [the District]'s use was adverse; the evidence supported a finding that [the District]'s use was permissive.″

C. *Discussion*.

1. *Failure to Rule on the Reserved Easement*.

The District argues that the trial court erred by ″dismissing″ its quiet title complaint without ″defining the parties' respective rights and obligations in the property . . .″ The gist of this argument, however, seems to be that the trial court failed to determine whether the District had any rights under the easement reserved by the United States in its 1957 patent to Huber (reserved easement).

a. *Additional Factual and Procedural Background*.

The record suggests (but does not conclusively prove) that the United States granted or **[*38]** assigned the reserved easement to the District. (See *43 U.S.C. § 1761*.)

RBJ argued below that there was no need for a trial at all because: ″The[District] has the right by a patent . . . to maintain that water line there and it is reserved by the federal government in the patent . . . .″ It offered to give the District access to the pipeline, on request, and access to a key to a gate in the fence for use in an emergency. The District insisted that the trial go forward; it explained that it wanted to establish that it had its own easement, granted by Huber in 1969, and that hence it had an absolute right of access, without request, that was violated by the very presence of the fence.

Accordingly, the trial court, in its statement of decision, did not mention the reserved easement. It concluded that it would enter judgment ″for RBJ . . . and against Plaintiff . . . .″

The trial court's final judgment stated: ″Judgment on the complaint on the issue tried before the Court, *i.e.*, whether plaintiff has an interest in the real property . . . [P] . . . [P] is granted to defendant . . . on the ground that the plaintiff has failed . . . to establish its right **[*39]** to a prescriptive easement for a water line or a right resulting from an oral or written grant of an interest in said property.″

b. *Discussion*.

By the time of trial, the only title the District was seeking to have determined, and the only title RBJ was disputing, was title to an independent easement arising some time after the reserved easement. Thus, the trial court did not err by failing to address the reserved easement in the statement of decision. (*Friends of the Trails v. Blasius, supra*, 78 Cal.App.4th at p. 831; *Butler v. Butler* (1961) 188 Cal. App. 2d 228, 231, 10 Cal. Rptr. 382; *Lower Yucaipa Water Co. v. Hill* (1958) 157 Cal. App. 2d 306, 312-313.)

Unlike the statement of decision, however, the judgment could be read to mean that the District has no interest whatsoever in the property, including the reserved easement. In light of the District's position at trial, the trial court's failure to address the reserved easement in the judgment is understandable. Nevertheless, RBJ has repeatedly conceded, not only at trial, but in its briefs to this court, and yet again in oral argument, that the District has a valid and **[*40]** enforceable interest in the reserved easement. Accordingly, we will direct the trial court, when it enters a new final judgment, to state this explicitly.

2. *The District's Right to a Utility Easement*.

The ruling on the District's claim of a utility easement was the product of a full trial, in which the trial court acted as trier of fact. ″Accordingly, we apply the substantial evidence test to its findings of fact and independently review its conclusions of law. [Citations.]″ (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1178, fn. 27.)

Moreover, the District had the burden not only of proving its claim (*Ernie v. Trinity Lutheran Church* (1959) 51 Cal.2d 702, 706; *Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291), but of proving it by clear and convincing evidence. (*Evid. Code, § 662*; see *Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1067.) ″Absent indisputable evidence [supporting the claim] -- evidence no reasonable trier of fact could have rejected -- we must therefore affirm the [trial] court's determination.″ (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.) **[*41]**

The District claimed a utility easement on three alternative theories: under a written grant, under an oral grant or license, or by prescription. We address these in turn.

a. *Written Grant*.

The trial court could reasonably find insufficient evidence that Huber ever executed the Huber Grant. We may assume, without deciding, that there was sufficient evidence from which it *could* have found due execution; but it was not compelled to do so. ″Proof of acknowledgment by a notary public is prima facie evidence of the execution of the writing, but such a showing is rebuttable and not conclusive.″ (*People v. Geibel* (1949) 93 Cal. App. 2d 147, 170; see also *Civ. Code, § 1189, subd. (b)*, *Evid. Code, § 1451*.) The fact that the Huber Grant was not signed in the proper place gave the trial court sufficient reason to disbelieve the notary's acknowledgement.

Certainly one possible scenario was that Huber signed the acknowledgement by mistake, intending to sign the document. An instrument need not be signed at the end; the signature may appear anywhere, although it must have been written with the intent to execute the instrument. (*In re Bloch's Estate* (1952) 39 Cal.2d 570, 572-573; **[*42]** *Marks v. Walter G. McCarty Corp.* (1949) 33 Cal.2d 814, 820.) In that event, however, any competent notary would have insisted that Huber sign the document in the proper place. The mere fact that Huber's name was written in different handwriting than the notary's did not prove that it was written by Huber. Another possible scenario is that a careless notary signed the acknowledgement before Huber signed the document; Huber then decided not to sign.

Likewise, the trial court could reasonably find insufficient evidence that the Huber Grant was ever delivered. ″The mere signing of the deed by the grantor and a witness and acknowledgment by the grantor are not sufficient to divest the grantor of title. Delivery is essential. [Citations.]″ (*Miller v. Jansen* (1943) 21 Cal.2d 473, 476-477.) ″To effect a valid delivery of a deed, the grantor must intend to divest himself of title to the property. [Citations.]″ (*Steiner v. Steiner* (1958) 160 Cal. App. 2d 665, 668.) ″'Various presumptions and inferences arise in favor of the validity of the delivery because of due execution, manual transfer, possession of the document by the grantee, its **[*43]** acknowledgment and recordation. But these presumptions and inferences are all rebuttable.'″ (*Obranovich v. Stiller* (1963) 220 Cal. App. 2d 205, 208, 34 Cal. Rptr. 923, quoting *Henneberry v. Henneberry* (1958) 164 Cal. App. 2d 125, 129.)

Again, we may assume, without deciding, that there was sufficient evidence from which the trial court *could* have found delivery. Given the irregularities in the execution and acknowledgement of the Huber Grant, however, it could also find that no presumption of delivery arose. Moreover, the fact that Huber kept the original, while the District had only a copy, was sufficient evidence of nondelivery. (*Miller v. Jansen*, *supra*, 21 Cal.2d at pp. 477-478.) The District argues that delivery should be inferred from the fact that it went ahead and built its pipeline. However, it could have been relying on the reserved easement, not on the Huber Grant.

b. *Oral Grant*.

The trial court also could reasonably find insufficient evidence that Huber gave the District an oral grant or license. Once again, both sides may have been relying on the reserved easement. Indeed, that would explain why Huber never **[*44]** bothered to execute the Huber Grant properly, and why the District never insisted that he do so. Also, as already noted, it would explain why the District went ahead and built its pipeline.

It is certainly possible that the District initially had no right to use the reserved easement; Huber, however, allowed it to do so, and this permissive use eventually ripened into either an oral grant (enforceable based on estoppel) or an irrevocable license. Indeed, from the District's complaint, this seems to have been the theory it had in mind. RBJ, however, conceded that the District had the right to use the reserved easement. The only issue that went to trial was whether the District had an independent easement. (See part IV.C.1.a, *ante*.) The trial court could reasonably find, based on RBJ's concession, that the parties had been relying on the reserved easement all along.

c. *Prescriptive Easement*.

Finally, the trial court could reasonably find that no prescriptive easement arose because the District's use was permissive. The District argues that, if its use was permissive, it had an enforceable oral grant or license; if its use was not permissive, it had a prescriptive easement.

[*45] As we have already discussed, however, the District's use may have been permissive, but pursuant to the reserved easement, not pursuant to some new and independent permission.

We conclude that the trial court did not err by rejecting the District's claim of a utility easement independent of the reserved easement.

V

DISPOSITION

The judgment with respect to the District's road easement claims is reversed. The judgment with respect to the District's utility easement claim is affirmed; however, the trial court is directed to make it clear in any new final judgment that the District has a valid and enforceable interest in the easement reserved by the United States in its 1957 patent to Huber. The District shall recover costs on appeal against RBJ.

RICHLI, J.

I concur:

RAMIREZ, P. J.

GAUT, J.

Concur by: GAUT, J., Concurring:

Concur

GAUT, J., Concurring:

I concur in the opinion but write separately to set forth my concerns about the retrial of this action.

The trial court granted RBJ Baker, Inc.'s (RBJ) motion for summary judgment on the issue of RBJ's assertion that the Baker Community Services District (District) was not authorized to maintain any roads in the City of Baker. **[*46]** The majority concludes that under *Government Code section 61622* [13] District is entitled to maintain any road in the City of Baker that is necessary for it to perform the services District provides pursuant to *section 61600*. In that connection the majority concludes that under *section 61600, subdivision (j)*, reference to the District's power to construct and improve "any street" in the district, subject to the consent of the governing body of the city or county, includes a road over private property.

The majority admits that District cannot maintain streets without the approval of the electorate, but nevertheless they conclude that the District has implied "plenary" power under *section 61600, subdivision (j)* to maintain roads to the extent necessary to carry out its other purposes. There appears to be no authority to support the position that District's "right" to maintain streets means that it can maintain and use private roadways, **[*47]** particularly in the face of the owner's opposition. The majority concludes that the District has limited, implied power to maintain undedicated roads within its boundaries, specifically including the Van Ella diagonal, to the extent necessary for it to carry out its other purposes.

I have grave misgivings about that conclusion. I recognize that the matter has been remanded to reconsider the right of the District to use and maintain the Van Ella diagonal. I suggest, however, that substantial additional evidence of the District's rights to use and maintain roads on private property, including the Van Ella diagonal, will be necessary before a finding can properly be made that the District can simply maintain and take over the permanent use of private property without the exercise of eminent domain.

In that connection the majority concludes that the District has the "implied power" to acquire an easement for a street or road by prescription and that the trial court erred when it concluded to the contrary. The majority finds a triable issue of fact with respect to whether the District needed the Van Ella diagonal to carry out its purposes and whether it therefore had the implied power **[*48]** to acquire an easement over that property by prescription. I am not convinced, by the District's assertion, that such a decision should be based upon whether use of the Van Ella diagonal is "the most direct and fastest way to travel." Is the right to acquire private property by prescription based upon a comparison of the number of minutes it takes to cross private property as opposed to another route? If it shortens the trip by two minutes is that enough to allow acquisition of the property by prescription?

The majority concludes that there are two statutes that give the District power to acquire a prescriptive road easement: *Code of Civil Procedure section 1240.130* and section 61623.4. *Code of Civil Procedure section 1240.130* provides that a public entity authorized to acquire property for a particular use by eminent domain may also "acquire such property for such use by grant, purchase, lease, gift, devise, contract, or other means." The majority reads the "other means" of that section in conjunction with *section 61610*, which authorizes a community services district to acquire real property by eminent domain, to mean that the District has the right to acquire property by prescription. **[*49]** I am not convinced a public entity can acquire private property without paying for it and I suggest upon trial of that issue a more specific basis authorizing such acquisition must be required.

[13] Unless otherwise stated, all statutory references are to the Government Code.

The majority also relies upon section 61623.4 on the issue of prescription. That section authorizes a community services district to exercise the powers vested in a fire protection district, which include the power to ". . . acquire any property . . . within the district by any means, . . ." (*Health & Saf. Code, § 13861, subd. (b)*.) I suggest that to interpret that section to authorize acquisition by a public entity of private property by prescription is a stretch. I find it hard to believe that a governmental agency can acquire private property without a voluntary conveyance or purchase. At the very least, retrial of this issue will require the trial court to consider carefully all authority bearing on this issue.

In short, I do not believe the trial court should read our opinion in this case as establishing, without more, that the District has a right to the continued maintenance and use of the Van Ella diagonal either because of the District's powers under the Community Services District **[*50]** Law or because it has the right of prescription based upon that law or upon that law in conjunction with the Code of Civil Procedure or the Health and Safety Code.

Gaut, J.