IN THE COURT OF APPEALS OF IOWA

No. 0-498 / 09-1571
Filed August 25, 2010

MARK BINNS and GRACE BINNS,
Plaintiffs-Appellees,

vs.

DON STEWART and BRENDA STEWART,
Defendants-Appellants.

Appeal from the Iowa District Court for Cedar County, Mark J. Smith, Judge.

Defendants appeal the trial court's finding that the plaintiffs have a permanent easement over their lot. **AFFIRMED.**

Jay T. Schweitzer of Schweitzer & Wink Law Firm, Columbus Junction, for appellants.

Douglas W. Simkin, Tipton, for appellees

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

SACKETT, C.J.

In this declaratory judgment action between adjoining lot owners, Don and Brenda Stewart challenge a finding that Mark and Grace Binns have a permanent easement over their lot. We affirm.

I. SCOPE OF REVIEW. This case was in equity, so our review is de novo. Iowa R. App. P. 6.907; *W. States Ins. Co. v. Continental Ins. Co.*, 602 N.W.2d 360, 362 (Iowa 1999). Our review of actions for injunctive relief is also de novo. *See In re Luloff*, 569 N.W.2d 118, 122 (Iowa 1997). Thus, we give weight to the findings of fact made by the trial court in this case, especially with respect to the credibility of witnesses, but are not bound by those findings. *See id.*

II. BACKGROUND. The parties' lots are in Hidden River Heights Part III in Cedar County, Iowa. Binns own Lot 20 and Stewarts own Lot 19. The lots both adjoin a cul-de-sac and are subject to the restrictive covenants of the addition. There is a private blacktop driveway on Lot 19, the Stewarts' lot, which provides access to a subdivision's well.[1] The Stewarts' Lot 19 runs for an additional ten feet beyond the blacktop driveway before Lot 19 adjoins the Binns' Lot 20.

Stewarts purchased Lot 19 from Wilton Motors Inc. and on January 11, 2002, they received a warranty deed that included what we find to be two

[1] According to the subdivision covenants, water for the subdivision was supplied by shared wells owned in equal shares by the owners of the lots receiving water from the respective well.

easements. The deed provided that both easements and rights of access "shall be permanent and shall run with the land."

The easement that is not subject to dispute is a grant to the Hidden River Heights Homeowners Association of

> an easement for ingress and egress over the driveway from the cul-de-sac up to and including the #1 Well Easement and will maintain the portion of the driveway over which it has said easement.

The second easement that is the subject of this action provides:

> In addition, Wilton Motors Inc. and its successors in interest to Lot 20 of the Hidden River Heights III Subdivision shall likewise share access to the said portion of the driveway from the cul-de-sac to and including the #1 Well Easement.

Binns are successors in interest to the Stranks, who purchased Lot 20 from Wilton Motors Inc. on May 6, 2002. Stranks built a house on the lot and placed their driveway across the ten-foot strip between Lot 20 and Lot 19 to access the road from the blacktopped driveway rather than going directly to the cul-de-sac. After the Binns purchased Lot 20 they sought to change the angle of their driveway and Stewarts objected, arguing the easement only provided that the owners of Lot 20 could travel from the cul-de-sac on the driveway to the well. The action was filed by Binns seeking a declaratory judgment establishing their right to use the easement and for money damages and attorney fees.

The district court heard the matter and opined that the Stewarts' position was unreasonable but the language in the deed to the Stewarts that addressed the easement was ambiguous. The court looked to an addendum to an offer by Stewarts to buy Lot 19 made in December of 2001 before the warranty deed to the property was executed and delivered. The offer provided:

> Hidden River Heights, Phase III Subdivision, will maintain the driveway from the cul-de-sac up to and including the well, which is platted as a part of Lot 19. In addition, Lot 20 will share access to this parcel of driveway.

The court found:

> To interpret the easement as is requested by the Stewarts would effectively negate any reason for the easement in that the owners of Lot 20 would only have the same access to the blacktop lane as would any other lot owner in the subdivision. Therefore, the Court interprets the language contained in the Stewart warranty deed as allowing the owners of Lot 20 to access the road from any portion of their lot across the 10-foot space between the Lot 19 boundary and the blacktop road. This will require the owners of Lot 19 not to block any access to the blacktop road from Lot 19 along the entire length of this service [road] up to and including the well.

The court also dismissed Stewarts' position that the easement was in contravention of the restrictive covenants, reasoning that

> [t]he Stewarts specifically allowed the easement to be placed in their warranty deed and cannot now complain that it is in violation of their restrictive covenants.

The court concluded as to the January 2002 warranty deed that the deed shall be interpreted

> to allow the owners of Lot 20 direct access to the service road from the cul-de-sac to and including the well. The owners of Lot 19 shall not create any obstruction that would disallow access of the owners of Lot 20 to this service road. This easement shall be for road purposes and allow the owners of Lot 20 to build a road from the boundary of Lot 20 to the service road.

III. WAS THE DISTIRCT COURT CORRECT IN FINDING AN EASEMENT? Stewarts first argue that the easement was not ambiguous and the offer to purchase should not have been considered and the easement should be enforced as written. Binns also contend that the easement is not ambiguous and the district court correctly decided the case.

There are four ways to create an easement: (1) by express grant or reservation, (2) by prescription, (3) by necessity, and (4) by implication. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 568 (Iowa 2004). We deal here with an easement created by grant or reservation. Iowa Code section 557.3 (2009) provides: "Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used." In interpreting a grant of an interest in land the intent of the grantor is the polestar. *See Skoog v. Fredell*, 332 N.W.2d 333, 334 (Iowa 1983). The grantor's intent is controlling, and it is ascertained by applying general contract principles. *Nichols*, 687 N.W.2d at 567.

We agree with the district court that the Stewarts' current interpretation of the easement is unreasonable. But we are inclined to agree with the parties that the easement is not ambiguous. The language of the second easement indicates a clear intent to grant an easement over the ten feet in question and the only reasonable reading of it is that the owner of Lot 20 shares access to the blacktop drive from the cul-de-sac to the well over the ten-foot strip of Stewarts' land between the Binns' land and the blacktop driveway.

IV. DID THE DISTRICT COURT HAVE JURISDICTION? Stewarts next contend the district court did not have jurisdiction to overturn a restrictive covenant requiring all homeowners to construct a driveway because all the lot owners were not parties to this suit. Binns argue that the district court has jurisdiction over the declaratory judgment action under Iowa Code section 602.6101 and we tend to agree. But Stewarts' argument, though not entirely

clear, appears to challenge the district court's considering of the covenants without all the lot holders being parties to the action. We agree with Stewarts that due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950); *Barkema v. Williams Pipeline Co.*, 666 N.W.2d 612, 615 (Iowa 2003). Stewarts have failed to show how this or any of their other arguments were preserved for review; nor do they support this claim by citation to the record. Iowa Rule of Appellate Procedure 6.903(2)(*g*) requires an appellant's brief to state how each issue was preserved for review. Accordingly, the issue is waived. Iowa R. App. P. 6.903(2)(*g*)(1), (3); *Channon v. United Parcel Serv. Inc.*, 629 N.W.2d at 835, 866 (Iowa 2001).

Stewarts also contend the district court expanded the easement to the Binns in that the district court's ruling does not limit where the Binns may access the driveway on Stewarts' property and expands the easement over the entire boundary. Binns contend the district court did not expand the easement given and they were not asking the district court to do so; for they only asked the court to define their right under the easement so they could complete paving their driveway. They contend that the easement allows them to be present on the easement way at any point between the cul-de-sac up to and including the number one well easement. They argue the description of the easement does not specify or limit the area under the easement as the paved portion of the

easement way, but generally states the benefited parties have a right to be present at any point along the easement way. We find no reason to disagree with this argument.

We have considered the other issues raised and find them either not preserved or without merit. We deny the requests for attorney fees.

AFFIRMED.