

**IN THE COURT OF APPEALS OF IOWA**

No. 0-631 / 09-1909  
Filed January 20, 2011

**VERNON FLINN and TONYA FLINN,**  
Plaintiffs-Appellees,

**vs.**

**MARVIN BOSCH, LAVONNE BOSCH,  
ERIC CAMPBELL, and NICOLE  
CAMPBELL,**  
Defendants-Appellants.

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**MARVIN BOSCH, LAVONNE BOSCH,  
ERIC CAMPBELL, and NICOLE CAMPLELL,**  
Counterclaim-Appellants,

**vs.**

**VERNON FLINN and TONYA FLINN,**  
Counterclaim-Appellees.

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Appeal from the Iowa District Court for Dallas County, Darrell Goodhue,  
Judge.

Landowners appeal the court's recognition of an agricultural access  
easement over their lots. **AFFIRMED.**

Jon Hoffmann of The Law Offices of Jon Hoffman, P.C., West Des  
Moines, for appellants.

Deborah M. Tharnish of Davis, Brown, Koehn, Shors & Roberts, P.C., Des  
Moines, for appellees.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

**EISENHAUER, J.**

Farmers Vernon and Tonya Flinn (Flinn) filed an equity action seeking a declaratory judgment and an injunction with respect to their rights to an easement over the land (Lots 3 and 4) of rural acreage owners Eric and Nicole Campbell (Campbell) and Marvin and Lavonne Bosch (Bosch). Campbell and Bosch counterclaimed for damages caused by Flinn while accessing his farm fields.



Since 1978 Flinn has accessed his farm ground by crossing the lots now owned by Campbell and Bosch. Originally, Delmar Cramer owned all the land at issue. The only public access road is Maffitt Lake Road, located on the southern boundary of Lot 3. The northern 144 acres of the

property is the farmland now owned by Flinn.

In the 1970's, the Greenbrier Estates housing development was built nearby. In order to provide water service, the developer negotiated with Cramer to place wells, water lines, an access driveway, a water treatment facility, and a water storage facility on Cramer's property. The water system became East Dallas Water Company (EDWC). In 1977, the first easement in favor of EDWC

was granted by Cramer. In 1978-79, Flinn began farming the north 144 acres of Cramer's property.

The southern Cramer property was platted into Willow Point Subdivision. Lot 3's southern boundary is Moffitt Lake Road and it borders Lot 4 on the north. Lot 4's northern boundary is the 144 acres of farmland now owned by Flinn. A lake runs along the western boundary of both lots. Portions of the EDWC easement ran on Lot 3, Lot 4, and the 144 acres. The EDWC treatment and storage facility is located in the northeastern section of Lot 4. EDWC's access to Moffitt Lake Road is south through Lot 4 and continuing south through the entirety of Lot 3.

In November 1983, Cramer sold Lots 3 and 4 to Steve and Jeanette Gladow (Gladow) by contract (recorded in April 1984). The plat of Willow Point was filed of record in January 1984. The plat reflects an access easement over the eastern thirty feet of Lots 3 and 4 and a "water easement" along the east side of the lake. About halfway through Lot 4, the "water easement" turns northeast toward the area of the water facility. Trial testimony indicated the original Moffitt Lake Road access driveways followed the above-described "water easement" in the same area where the underground water lines are located.

In 1985, revisions to Moffitt Lake Road required a new entrance to access the lots and water facility and new access driveways were created. Since 1985, Flinn has used this access route, which is now also the currently-existing Bosh/Campbell driveways and the post-1985 EDWC driveway.

In March 1987, Cramer and Gladow entered and recorded a second easement contract with EDWC, which related only to a new, broadly-defined access road area and which left intact the existing first easement for the water line. The usage of the easement was restricted to the parties.

In March 1989, Cramer sold the 144 acres to Flinn by contract. The Flinn/Cramer contract includes Cramer's interest in an easement for ingress and egress, the second easement in favor of the EDWC, and notes the sale is subject to an easement for the water line. Cramer, who is now deceased, orally assured Flinn there were access rights over Lots 3 and 4, but the deed from Cramer to Flinn does not mention this easement.

Bosch purchased an existing home and moved to Lot 4 in 2002. Bosch was aware of the EDWC easement. Bosch was aware of the existing access driveway starting on Moffitt Lake Road, over Lot 3, continuing to his home on Lot 4, continuing beyond his home to the EDWC facility in northeastern Lot 4, and continuing on to the 144 acres. The utility poles on the eastern thirty feet of Lot 4 were present when Bosch purchased the property. Bosch has no written easement for access to his property from Moffitt Lake Road over Lot 3. Bosch testified he knew almost immediately after moving into his house that Flinn was using the driveway past his house to access his farmland.

When Campbell purchased undeveloped Lot 3 in 2002, he thought both the existing house on Lot 4 and the operator of the water company had an easement, "so all three of us had that same drive." Campbell was told by EDWC that he had to make sure the driveway on Lot 3 was clear because EDWC would

come through once in the morning and once in the afternoon. Campbell built a new home and moved in during March 2005. Campbell testified he and Bosch have an oral agreement that Bosch “can come through to his house and back and forth.” Campbell admitted his oral agreement with Bosch is similar to the oral agreement Flinn testified was authorized by Cramer.

Therefore, at the time of their purchases of Lots 3 and 4, the driveways Bosch and Campbell use constituted the existing route used by EDWC and by Flinn. EDWC discontinued operation in 2007. Also in 2007, EDWC released its easements for “water treatment plant, underground water pipes, access, and the wells.” EDWC conveyed its facility building on Lot 4 to Bosch.

In March 2008, attorneys for Bosch and Campbell sent a letter to Flinn informing him there was no easement of record permitting him to use their driveways. Further, the letter informed Flinn he could no longer use the driveways. At that point in time, Flinn had been using the currently-existing access driveways for over twenty years.

After Flinn filed his declaratory judgment action, the parties agreed to allow short-term access to Flinn (until the harvest of 2009) while the litigation progressed.

Besides utility poles, the eastern thirty feet of Lot 3 contains a Bosch-property propane tank. Bosch testified the water building would need to be removed if the eastern thirty feet was turned into an access road. Flinn has considered access over the eastern thirty feet instead of over the existing

Bosch/Campbell/prior-EDWC driveways, but Dallas County will not permit access to Moffit Lake Road in the eastern thirty feet due to visibility issues.

In a lengthy and detailed opinion, the trial court ruled Flinn had established both an easement by implication and an easement of necessity. Therefore, “there exists an easement of ingress and egress for agricultural purposes only in favor of the [Flinn] property . . . over the presently existing driveway across [the Bosch/Campbell] properties.” The court further ruled Bosch and Campbell were not entitled to damages.

We review equity cases de novo. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 566 (Iowa 2004). On appeal, Bosch and Campbell argue: (1) Flinn failed to prove the only access to his property is through their lots; (2) if Flinn’s easement does exist, it should not be located on their driveways, but on the eastern thirty feet of their lots; (3) Flinn should pay all costs of acquiring an easement on the eastern thirty feet, and of creating/maintaining this new access driveway; and (4) Flinn’s interference with their property rights and trespass entitles them to damages.

After our de novo review of the record, we conclude the issues were thoroughly discussed and resolved by the well-written district court opinion. Because we agree with the district court’s reasoning, its conclusions, and its application of the law, we affirm pursuant to Iowa Rule of Appellate Procedure 6.1203(a), (d).

**AFFIRMED.**