IN THE COURT OF APPEALS OF IOWA

No. 1-426 / 10-1596
Filed August 24, 2011

RYAN BESSINE, JULIE BESSINE, DAVID BESSINE, and KATHY BESSINE,
Petitioners-Appellants,

vs.

THOMAS L. SHOCKLEY and REBECCA R. SHOCKLEY,
Respondents-Appellees.

THOMAS L. SHOCKLEY and REBECCA R. SHOCKLEY,
Third-Party Petitioners,

vs.

GARY RHEINSCHMIDT,
Third-Party Respondent.

Appeal from the Iowa District Court for Des Moines County, John G. Linn, Judge.

Petitioners/landowners seeking reformation of deeds or alternatively, an implied easement appeal the trial court's dismissal of their case. **AFFIRMED.**

Matthew D. Bessine of Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C., Burlington, for appellants.

Marlis J. Robberts of Robberts & Kirkman, L.L.L.P., Burlington, for appellees.

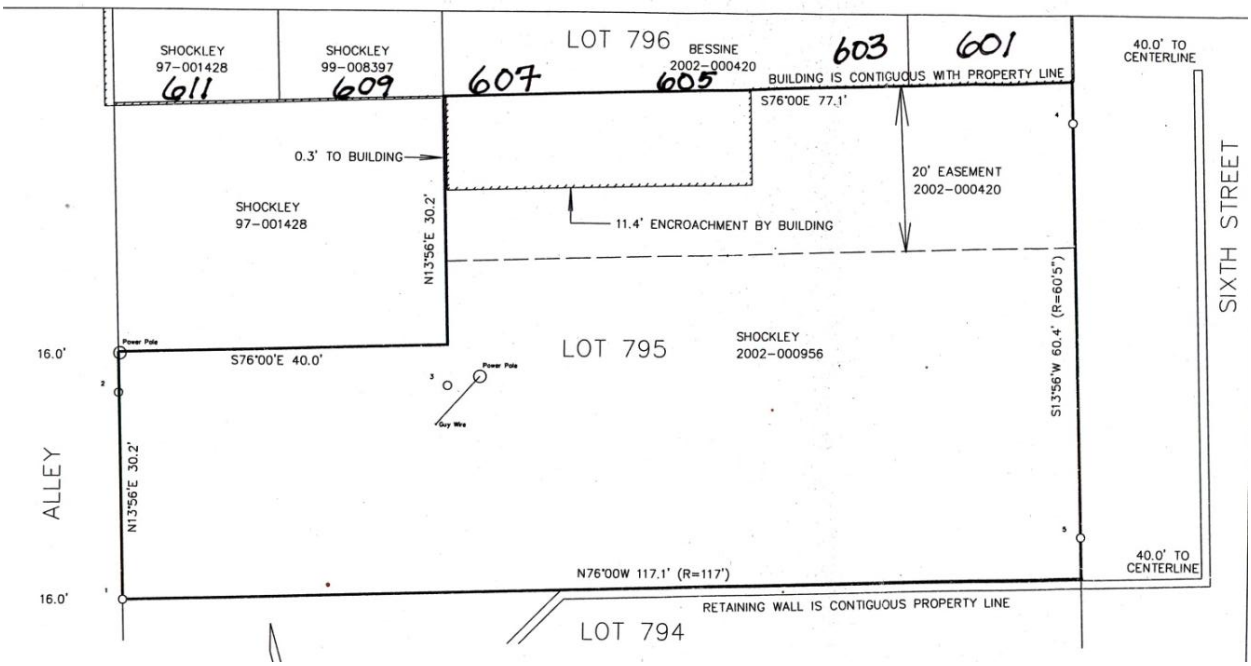
Heard by Eisenhauer, P.J., and Doyle and Tabor, JJ.

EISENHAUER, P.J.

This case involves the disputed ownership of the land and a portion of a garage located in Burlington, Iowa. The trial court denied the Bessines' (Ryan, Julie, David, and Kathy) request for reformation of deeds, or alternatively, imposition of an implied easement. We affirm.

I. Background Facts and Proceedings.

The Bessines wanted to renovate the second floor of buildings they own in Burlington into rental apartments and wanted to build an enclosed staircase exiting the rear and resting on the roof of the garage behind two of the buildings. Part of the garage and the land it is on are the subjects of this litigation. Lot 796 adjoins and is directly north of Lot 795. Lot 796 contains six, contiguous store fronts/buildings of approximately twenty feet per address. These six north-facing buildings have addresses ranging from 601 Jefferson on the east (by Sixth Street) to 611 Jefferson (by an alley). Lot 795 is a gravel parking area. The only building currently on Lot 795 is a portion of the disputed, one-story, cinderblock garage. The diagram below shows all of Lot 795 and some of Lot 796.



Buildings 601, 603, and 611 have southern/back walls ending at the boundary line between Lots 796/795. Buildings 605, 607, and 609 have southern/back walls that line up and are recessed approximately 8-9 feet from the boundary line between Lots 796/795. The disputed garage is attached to the recessed back walls of buildings 605 and 607 and is partially on Lot 796 and partially (11 feet, four inches) on Lot 795.

Gary Rheinschmidt's father previously owned both Lot 796 and Lot 795. The district court found:

> Presumably, when Gary's father had this structure [the garage] erected, he either did not know where the boundary line was between Lot 795 and 796, or he did not care that the building encroached over onto Lot 795 because he owned both lots.

Early in the 1990's Gary purchased Lots 796/795. Gary testified he always considered the garage to be a part of buildings 605 and 607.

In March 1997, Thomas and Rebecca Shockley purchased building 611 with some Lot 795 parking from the Sharps ("West 20 feet of Lot Number 796 [building] and the West 40 feet of the North Half of Lot Number 795 [parking]"). The Shockleys wanted to be sure of the boundary lines for their L-shaped purchase, so they hired a registered surveyor to prepare a survey drawing. On December 9, 1997, this survey was recorded in the Des Moines County Recorder's Office. The district court found:

> The survey reveals the boundary line and various pins and landmarks from which a person can determine a boundary line between Lots 796 and 795; however, it does not show the [garage] attached to the buildings located at 605 and 607 Jefferson. Shockleys testified they were aware of the boundary line between Lot 796 and 795 by reviewing the survey.

In December 1999, the Shockleys purchased (from the Dalys) building 609 Jefferson, including the land between 609's recessed back/south wall and the Lot 796/795 boundary line ("East Half of the West 40 feet of Lot No. 796"). With this purchase the Shockleys prior L-shaped holding became a rectangle.

In October 2000, Gary entered into an installment purchase contract with Dustin Bessine for the sale of buildings 603, 605, and 607 Jefferson ("Westerly 57 feet of the Easterly 77 feet of Town Lot 796"). The contract makes no mention of the garage, and its legal description follows the boundary line between Lot 795/796. The contract included "a permanent easement for ingress and egress over the Northerly 20 feet of Lot No. 795." We note this easement language includes the Shockleys parking located in Lot 795 and purchased in 1997.

Late in the summer of 2001, the Shockleys learned Gary was interested in selling the remainder of Lot 795, and they were interested in obtaining this additional parking. Attorney James Miller represented Gary on the sale and prepared the November 2001 contract signed by Gary and the Shockleys. The contract states:

> Lot Number 795 . . . subject to a permanent easement of 20 feet over Lot Number 795 retained by Grantor for ingress and egress. Furthermore, the grantor had supplied the same easement pursuant to a Contract for the sale of Lot No. 796.
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> . . . .
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> 18. ADDITIONAL PROVISIONS.
> The real estate and improvements thereon are being sold "as is" and the Sellers grant no warranties or guarantees, express or implied. The purchasers have had ample opportunity to inspect the premises and purchases the same without any condition as to the quality of the property.

It is undisputed the only improvement on Lot 795 is a portion of the garage at issue. At trial the Shockleys contended paragraph 18 indicates that more than simply land was being purchased. Gary testified he believed he was selling the Shockleys the gravel parking area and he was not selling any portion of the garage attached to buildings 605/607 Jefferson. Attorney Miller testified paragraph 18 was "boilerplate language" and he believed his client, Gary, was selling the Shockleys a gravel parking lot for the purchase price of $8000.

Attorney Cahill conducted a title search for the Gary/Shockley sale and testified:

> Q. Do you remember or recall what actual property was changing hands at that time? A. Yes. Yes, I do, and the reason that I do, and it's the only reason that this transaction had any possibility of being in my recollection is that we did have . . . some difficulty in getting the description correct, because the description that was being proposed included an easement that shouldn't have been there.
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> Q. And can you explain to the court specifically what you're talking about? A. Tom and Becky Shockley had purchased two lots to the west of the property that we're talking about here today sometime prior. They already owned not only the two lots to the west but . . . 40 feet . . . out into the parking lot, which would have been to the south, so in other words, when [Gary] was going to convey this property, he was giving an easement over property that the Shockleys already owned.

On January 10, 2002, Dustin Bessine and Gary amended their real estate sale contract to state: "a permanent easement for ingress and egress over the Northerly 20 feet of Lot No. 795, except the west 40 feet of the north half of Lot No. 795, that would be transferrable with the other real estate." Attorney Cahill testified:

> Q. So, ultimately, that title objection was resolved by . . . amending the real estate contract between Dustin Bessine and Gary Rheinschmidt? A. Yes.

> . . . .
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> Q. Okay. And was there any other indication to you that there [were] any other boundary issues with the property at that time? A. I didn't even really consider that so much as a boundary problem, as a description of an improper easement. But, no, I had . . . no knowledge of any boundary problem at that point.

The January 21, 2002 warranty deed from Gary to the Shockleys conveyed: "Town Lot Number 795 (except the Westerly 40 ft of the Northerly One-half of said Lot [already owned by the Shockleys]) . . . SUBJECT to easements of record." The deed does not exclude/except the land containing the portion of the garage on Lot 795. The trial court found:

> Thomas and Rebecca testified they were aware of the boundary line between Lot 795 and 796 based on a general visual inspection. This, coupled with the survey completed in 1997, provided to Shockleys knowledge that caused them to understand a portion of the [garage] encroached upon the parking area they were purchasing from Gary (Lot 795). This did not concern the Shockleys because they wanted the parking lot and also understood that the owner of buildings 603, 605, and 607 Jefferson had an easement over Lot 795 for ingress and egress.
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> . . . .
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> The warranty deed was recorded February 6, 2002. There was no formal closing. . . . Gary does not believe he made arrangements for a key to the [garage] to be given to Shockleys. Thomas [Shockley] credibly and believably testified he received a key to the [garage] after the closing. Shockleys convincingly testified they understood a portion of the [garage] encroached upon Lot 795. That portion of the building had no value to them, but they were very interested in owning the entire parking area on Lot 795. Shockleys viewed the [garage] as a common building which they would share with the owner of buildings 603, 605, and 607 Jefferson. Shockleys credibly and believably testified they cleaned out the [garage] during February of 2002. The debris was thrown in a dumpster which was then hauled to the landfill. It took Shockleys two or three days to do the cleaning. Shockleys testified that Dustin Bessine never objected to Shockleys' activity in cleaning out the [garage]. Shockleys stored a few items in the [garage . . . and] rarely entered [it.] . . .

Six years later, on January 23, 2008, Gary executed a warranty deed to Dustin Bessine for: (1) the "Westerly 57' of Easterly 77' of Town Lot Number 796," (building 603, 605, 607 and a *portion* of the disputed garage) and (2) a permanent twenty-foot easement consistent with the January 2002 amended Dustin/Gary sale contract. The next day, January 24, 2008, Dustin executed a warranty deed to his brother Ryan, sister-in-law Julie, father Dave, and mother Kathy for the "Westerly 57' of Easterly 77' of Town Lot Number 796" subject to easements of record. The trial court found:

> Ryan and Julie testified [Dave and Kathy did not appear at trial] that when Bessines purchased from Dustin Bessine the buildings at 603, 605, and 607 Jefferson, they also believed they were purchasing the [garage] attached to the rear of buildings 605 and 607, however, both conceded during their trial testimony they did not know the location of the boundary between Lot 796 and 795. Ryan testified he helped Dustin clean out some of the junk located in this [garage]. Ryan was unaware of any ownership over the [garage] asserted by the Shockleys until the spring of 2008.

The Bessines wanted to renovate the dilapidated second floor of buildings 603, 605, and 607 Jefferson into rental apartments and wanted to build an enclosed staircase exiting the rear and resting on the roof of the garage. The Bessines were aware the Shockleys asserted an ownership interest to a portion of the garage. The trial court found:

> Bessines decided to go ahead with their plan to build the staircase. They did not want Shockleys to enter the [garage], so they changed the lock on the entry door. At one point, Bessines, Shockleys, and their attorneys [met] at the rear of the [garage] to discuss resolution of this dispute. Several concessions were made, but a final resolution was never reached.

On September 17, 2008, Ryan, Julie, David, and Kathy Bessine filed a petition in equity for declaratory relief and a temporary injunction against the

Shockleys. Dustin is not a party to this litigation and is not included when we state, "the Bessines." The petition states:

> 7. During the course of negotiating the sale to [Shockleys], the previous owner, Gary . . . made clear to [Shockleys] that the garage was not intended to be included in the sale and that [Shockleys] were only purchasing a gravel lot. As such, the deed given by [Gary] did not reflect the actually [sic] agreement between [Gary] and the [Shockleys]. . . .
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> . . . .
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> WHEREFORE, [Bessines] respectfully [request] that the Court . . . enter an order reforming the deeds to reflect the actual agreement between the parties, enter a temporary injunction . . . to restrain [Shockleys] from entering onto the contested property . . . .

On September 17, the court granted the Bessines a temporary injunction.

On October 1, 2008, the Shockleys answered and counterclaimed for an injunction "to stop construction until a final resolution." After hearing, on October 17, 2008, the court found the Bessines' injunction "overbroad" and modified it to allow the Shockleys "unfettered access to the portion of the garage they believe belongs to them." The court also ruled the Shockleys "are entitled to a temporary injunction against [the Bessines] restraining and prohibiting . . . further construction, including the stairway exit, in or on the garage." Subsequently, the Shockleys filed a third-party petition against Gary seeking damages, attorney fees, and costs. Gary answered and asserted affirmative defenses.

In early 2010, the Bessines filed an amended petition, which added an alternative count seeking the establishment of an implied easement over the portion of the garage that encroaches onto Lot 795.

As part of the trial in equity, the judge went to the site and viewed the disputed area. [T]he court's July 2010 ruling dismissed the Bessines' petition, stating:

> Bessines seek reformation of the deed from Gary to Shockleys so as to divest them of that portion of the annex or garage which encroaches onto Lot 795. Bessines allege there was a mutual mistake in the legal description on the deed by Gary to Shockleys because both believed Shockleys were simply purchasing a gravel parking lot, and not the [garage].

The court ruled the "Bessines do not have standing to bring a claim against [the] Shockleys divesting them of that portion of Lot 795 consisting of the [garage] which encroaches south of the boundary line between Lot 795 and 796." The court also found the "Bessines are not the real party in interest to bring a claim seeking reformation of the warranty deed conveying Lot 795 from Gary to Shockleys." Alternatively, the court ruled the "Bessines cannot prove entitlement to the remedy of reformation of the deed from Gary to Shockleys." Further, the court denied the Bessines' request for an easement by implication, stating:

> Bessines cannot establish that their predecessor to title or the Shockleys ever intended that a staircase be built upon the roof of the [garage]. There is no showing of a continuous use, on top of the [garage], ever exercised by the predecessor in title or the Bessines. Essentially, Bessines are attempting to expand their use of a portion of the [garage] by extending a staircase over the roof . . . which encroaches upon Lot 795. . . . This is an impermissible attempt to expand the original easement for ingress and egress.

Finally, the court dismissed the Shockleys' third-party petition against Gary and this ruling is not before us on appeal.

In August 2010, the Bessines filed a motion to amend and enlarge findings and conclusions. In September 2010, the court denied the motion, ruling:

> [The Bessines] renew their request to reform the legal description of a warranty deed conveying property to them from [Dustin] January 24, 2008. This would also require reforming the legal description of the warranty deed received by [Dustin from Gary] January 23, 2008. In the Court's ruling, a conclusion was made that [the Bessines] did not have standing, nor were they the real parties in interest, to bring a claim against Shockleys seeking

> reformation of the January 21, 2002 warranty deed conveying Lot 795 from [Gary] to Shockleys. In [the Bessines'] motion they allege it is not necessary to reform the warranty deed from [Gary] to Shockleys, but the Court should merely allow reformation of the deed from [Gary] to Dustin . . . and then from Dustin . . . to the four [Bessines]. However, if the Court grants [the Bessines] this remedy, additional land is granted to [the Bessines], and by implication, land is taken from Shockleys. The Court continues to conclude that [the Bessines] do not have standing to divest Shockleys of a portion of Lot 795, nor are [the Bessines] the real parties in interest to bring a claim seeking reformation of the warranty deed from [Gary] to Shockleys.

This appeal followed.

II. Standard of Review.

We review this equity case de novo. Iowa R. App. P. 6.907. We give weight to the trial court's findings, especially regarding credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(*g*).

III. Merits.

The Bessines note their amended petition's request for relief asked for "an order reforming the deeds to reflect the actual agreement between the parties." The Bessines argue the parties referenced are Dustin, Gary, and the Bessines, who "were mistaken in their drafting of the transfer documents to each other, not necessarily Shockleys. Thus, Bessines were seeking to reform the real estate contract and deeds between Gary and Dustin and deed from Dustin to Bessines."

The Shockleys argue the Bessines have no right of reformation against the Shockleys and the Bessines are seeking to reform an instrument [Gary to Shockley deed] that was not in their chain of title. The Shockleys contend the Bessines are ultimately seeking a reformation of the deed from Gary to the

Shockleys and are seeking the property of the Shockleys. The Bessines cannot avoid the fact they "were not in privity with Shockleys."

"Reformation may sometimes be appropriate to correct a mistake in a deed." *Kendall v. Lowther*, 356 N.W.2d 181, 187 (Iowa 1984). In *Hosteng Concrete & Gravel, Inc. v. Tullar*, 524 N.W.2d 445, 449 (Iowa Ct. App. 1994) (citations omitted), we explained:

> In reforming an instrument a court does not change an agreement between the parties but changes a drafted instrument to conform to the parties' real agreement.
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> . . . .
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> Reformation may be had not only by the original parties to an instrument but also by a real party in interest claiming privity with a party to the instrument, such as a purchaser at an execution, judicial or foreclosure sale.

Privity is "a mutual or successive relationship to the same rights of property." *In re Estate of Richardson*, 250 Iowa 275, 281-82, 93 N.W.2d 777, 781 (1958). While the Bessines are in privity with Dustin as to the Lot 796 deed from Gary, the Bessines do not have a mutual or successive relationship, or privity, to the Shockleys' rights of property in Lot 795.

Additionally, the Bessines' argument ignores the fact that their request to reform the Gary to Dustin to the Bessines deeds would directly affect the adjoining Shockleys' property interest and take property away from the Shockleys. A similar request for reformation that would affect an adjoining landowners' property interests was recently denied by the Iowa Supreme Court in *Orr v. Mortvedt*, 735 N.W.2d 610, 613 (Iowa 2007). The Mortvedts sought reformation of *their deed* arguing *their deed does not describe the intended boundary line and their grantor intended* a different eastern boundary for the

property conveyed to the Mortvedts. *See Orr*, 735 N.W.2d at 613. However, extending the Mortvedts' eastern boundary would directly affect the Orrs' adjoining property interest and the Orrs' were not parties to the Mortvedts' deed. *Id.* The court ruled:

> The Mortvedts offered evidence tending to prove their grantor intended the water's edge on the west side of the lake would be the eastern boundary of the property conveyed to the Mortvedts.
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> . . . .
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> [T]he district court correctly concluded the remedy of reformation is unavailable to the Mortvedts under the circumstances of this case. We will only order reformation of a deed against a party to it, a person in privity with a party, or a person with notice of the relevant facts. *See Burner v. Higman & Skinner Co*., 133 Iowa 315, 316, 110 N.W. 580, 580 (1907). *Reformation will not be ordered to the prejudice of innocent third persons.* 76 C.J.S. Reformation of Instruments § 54 (1994); *see also Lee v. Brown*, 482 So. 2d 293, 297 (Ala. 1985) (declining to reform a deed to the detriment of an adjoining landowner who was an innocent purchaser). Notwithstanding the Mortvedts' assertions to the contrary, we find the Orrs were innocent third parties as to the transaction between the Twedt estate and the Mortvedts.
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> . . . .
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> The Mortvedts contend . . . the Stumbo survey [prepared when the Mortvedts purchased their land from the Twedt estate] put the Orrs on inquiry notice of the Mortvedts' claim that the boundary between the two parcels is marked by the water's edge rather than the straight, solid boundary line shown on the survey. . . . Although the survey did note . . . the approximate location of the water's edge in relation to the east boundary line identified in the Mortvedts' deed, we conclude the Orrs were not on inquiry notice of any mutual mistake made by the grantor-estate and the Mortvedts in the deed's description of that boundary line.
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> A reasonably prudent person would interpret the survey . . . as confirmation that the Mortvedts had not acquired from their grantor the narrow strip of land on the west side of the lake that is the subject of this dispute. Nothing stated or illustrated in the Mortvedts' recorded deed and survey would cause a prudent subsequent purchaser to further inquire into the deeding parties' intentions and to consequently discover any discrepancy between those intentions and the legal description in the deed. Indeed, contrary to the Mortvedts' contention, the survey and deed taken together would lead a reasonable person to believe the Mortvedts' east boundary did not extend to the water's edge. . . . Because the

> Orrs were not on inquiry notice of the claimed mistake in the legal description within the Mortvedts' deed, they were innocent purchasers whose property interest in the narrow strip of land at issue in this case cannot be compromised by reformation of the Mortvedts' deed.

Id. at 613-15 (emphasis added) (citations omitted).

Under the circumstances of this case, reformation of the Gary to Dustin to the Bessines deeds "will not be ordered to the prejudice of innocent third persons," the Shockleys. *See id* at 613. A reasonable, prudent person would interpret the 2000 contract and the 2002 amended contract from Gary to Dustin as conveying the portion of land and garage located on Lot 796 and constituting a conveyance in conformity with the survey the Shockleys' paid for and recorded in 1997. We recognize the trial court's superior ability to hear the witnesses and evaluate their credibility. The trial court found the Shockleys credible regarding their receipt of a garage key and their cleaning out the common garage after their 2002 purchase and these findings support our conclusion. Accordingly, the Shockleys' 2002 property interest in the Lot 795 portion of the garage cannot be compromised by reformation of the 2008 Lot 796 deeds from Gary to Dustin and from Dustin to the Bessines.

We adopt the trial court's analysis in its denial of the Bessines' request for an implied easement.

AFFIRMED.