IN THE COURT OF APPEALS OF IOWA

No. 1-870 / 11-0659
Filed April 11, 2012

RANDY OLSEN AND LINDA OLSEN,
Plaintiffs-Appellants,

vs.

ERIC HENNINGS, Trustee of the Trust Agreement of Herthel C. Uhl dated August 23, 2001,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane Hoffmeyer, Judge.

Plaintiffs appeal a district court order in a declaratory judgment action setting the rights of the parties with respect to an easement. **AFFIRMED AS MODIFIED**.

Daniel L. Hartnett and Marcy L. Iseminger of Crary, Huff, Inkster, Sheehan, Ringgenberg, Hartnett & Storm, P.C., Sioux City, for appellants.

Jessica R. Noll of Deck Law, Sioux City, for appellees.

Considered by Potterfield, P.J., Doyle, J., and Miller, S.J.*

Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

I. Background Facts & Proceedings

In 1979, Randy and Linda Olsen purchased about 3.0 acres of land from Clarence and Herthel Uhl in Woodbury County. A highway is just to the east of the property, and the Iowa Department of Transportation (DOT) owns the property bordering the Olsens' property on the east. The Uhls farmed property on the east side of the highway, which they accessed by an underpass. They retained an easement across the Olsens' property in order to access the farmland on the far side of the highway.[1]

The easement provided as follows:

> Sellers hereby reserve an easement for purposes of ingress and egress to the existing underpass of the Highway 520 Overpass, which easement shall run from the northwest corner of the conveyed property to the northeast corner of the conveyed property, and along the existing roadway from and to said points.

At the time Olsens bought the property 1979, Clarence Uhl had installed a gate that was eighteen feet wide at a point of access to both his driveway and the lane to the Olsens' property. Until after Clarence Uhl's death, in 2000, the gate remained in place, restricting the use of the easement to equipment no more than eighteen feet in width. The easement followed a path along the lane, past the front of the Olsens' house,[2] around the southeast corner of the barn,[3] and

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[1] The Uhls also granted to the Olsens an easement over property they retained to the west of the Olsens' property to allow access to a county road. Additionally, there was an easement for a water line, which both parties agreed had been abandoned. These easements are not at issue in this appeal.

[2] The lane comes within ten feet of the Olsens' front door.

[3] In 1982 the Uhls obtained a triangular piece of land that was 0.02 acres in a settlement with the Iowa Department of Transportation. This triangular piece of land adjoined the easement where the easement passed the southeast corner of the Olsens' barn.

then along the east edge of the Olsens' property to the northeast corner of their land.[4] The width between the southeast corner of the barn and the eastern edge of the Olsens' property is 23.4 feet.

From 1990 until 2000 Clarence Uhl placed the property on the east side of the highway in the Conservation Reserve Program (CRP). During this time he did not access the property as often as before, but continued to spray it for weeds and mow it. Clarence Uhl died in 2000. The Olsens had no problems with the easement while Clarence Uhl was alive.

After Clarence Uhl died his grandson, Eric Hennings, took over farming the land on the east side of the highway. Clarence Uhl's wife, Herthel Uhl, placed her property in a trust, with Hennings acting as the trustee. Because the property came out of the CRP program in 2000, there was more traffic over the easement. Hennings took down the eighteen-foot gate in 2001. He uses an eighteen-foot wide tractor, and a twenty-foot wide mower. Additionally, he has an eighteen-foot wide combine.[5] He complained to the Olsens about trees growing near the path of the easement, claiming they impeded his ability to travel with farm machinery through the property.

Previously, the area between the corner of the barn and the boundary of the Olsens' property was 17.1 feet wide. After the addition of the 0.02 acres, the width available for the easement at this point increased to 23.4 feet. In a separate action, the Olsens filed a petition to quiet title to the 0.02 acres under a theory of adverse possession. The quiet title action is addressed in *Olsen v. Hennings*, No. 11-0096 (Iowa Ct. App. April 11, 2012), and affirms the district court's decision in favor of the Olsens.

[4] To access their land on the east side of the highway, at the northeast corner of the Olsens' property, the Uhls would turn to the east and go across DOT property until they reached their own land. This route took them through the underpass of the highway.

[5] The combine was sixteen-feet tall. Hennings asserted that overhanging branches impeded his ability to bring the combine through the easement.

In 2001 and perhaps for a few years thereafter, Hennings at times used an alternate route to access the property on the east side of the highway. Instead of using the easement through the Olsens' property, he went on a route north of their property, traversing property owned by the Uhls, and then across the DOT property surrounding the highway to get to the Uhl property on the far side of the highway. This route was quite steep, however. Hennings testified he was required to back the combines down the hill because of the risk they would tip over.

On May 20, 2009, the Olsens filed a petition for declaratory judgment against Hennings seeking a determination of the rights, status, and other legal relations between the parties concerning the easement. The district court determined the easement should be thirty feet wide and twenty-one feet tall. The court ordered that maintenance and repair costs for the farm lane should be split equally between the parties. However, the cost of maintaining and repairing the easement from the farm turnaround to the point where the easement reaches the northeast corner of the Olsens' property would be the sole responsibility of the defendant.[6] Additionally, the cost of removal and/or trimming trees would be shared equally. The court restricted the use to agriculturally-related tasks.

The Olsens filed a motion for new trial. The court treated the motion as a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), and issued a ruling on March 31, 2011. The court acknowledged that the easement would be a lesser width than thirty feet going between the Olsens' garage and house, and around

[6] The turnaround is the area between, and just beyond, the house and the garage on the Olsens' property.

the barn, because in these areas thirty feet were not available. The court determined it had improperly restricted the use of the easement and stated it was now unwilling to limit the type or frequency of use. The court ruled, "Owners, tenants, lessees, contract workers and others similarly situated may all access, without restriction, the easement. Others may do so as long as they have the written permission of the owner, current tenant or lessee." The Olsens were given permission to place gates across the easement so long as they were operational and not smaller in width or more restrictive in height than the easement. The Olsens appealed the district court's order on April 27, 2011, claiming the court improperly determined the width and the allowable use of the easement.

II. Standard of Review

This case was tried in equity, and our review is de novo. Iowa R. App. P. 6.907. In equity cases, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(*g*).

III. Width of the Easement

The Olsens appeal the district court decision that the easement should be thirty feet wide. They assert that historically the easement was only eighteen feet wide because it could only be accessed by going through the gate that was eighteen feet wide. On appeal, however, they point out that the maximum distance between the corner of the barn and the eastern edge of their property is

23.4 feet. They contend that because the easement cannot be greater than this width going around the barn, it should not be greater than 23.4 feet at any point.

"An easement is a liberty, privilege, or advantage in land without profit, existing distinct from ownership." *Hawk v. Rice*, 325 N.W.2d 97, 98 (Iowa 1982). "The one who enjoys the easement must use it according to its terms; the one who has granted it must not interfere with the rights conferred." *Krogh v. Clark*, 213 N.W.2d 503, 506 (Iowa 1973). An easement may be established by express grant, prescription, or implication. *Cline v. Richardson*, 526 N.W.2d 166, 169 (Iowa Ct. App. 1994).

This case involves an express written easement. Where there is an express easement, the intent of the parties must control the interpretation of the easement, and except in cases of ambiguity, this is determined by the language of the easement itself. *Wiegmann v. Baier*, 203 N.W.2d 204, 208 (Iowa 1972). We consider all of the terms of the easement to determine the intent of the parties. *Koenigs v. Mitchell Cnty. Bd. of Supervisors*, 659 N.W.2d 589, 594 (Iowa 2003). "Our object is to ascertain the meaning and intention of the parties as expressed by the language used." *Cline*, 526 N.W.2d at 168.

The written easement here did not specify a width to the easement, but stated it went "along the existing roadway from and to said points." At that point in time, the easement would not have been more than eighteen feet in width due to the eighteen-foot wide gate near the entrance to the lane. In any event, the easement cannot be more than 23.4 feet as it goes around the corner of the barn. The physical constraints of the Olsens' property limit the width of the

easement. Furthermore, we conclude that a width of 23.4 feet is sufficient for Hennings's needs. *See Skow v. Goforth*, 618 N.W.2d 275, 280 (Iowa 2000) (noting party had not shown width of easement would be inadequate for ingress and egress). Hennings testified he uses an eighteen-foot wide tractor, an eighteen-foot wide combine, and a twenty-foot wide mower.[7]

On our de novo review, and after considering all of the evidence, we conclude the width of the easement should be 23.4 feet. We find it was not the intent of the parties to grant a wider easement than the Olsens' property could provide. Historically, during the twenty-one years the Uhls used the easement while the Olsens' owned the property, the easement was only eighteen feet wide. In addition, there was evidence that there was only 32.8 feet between the house and the garage, and a thirty-foot easement would allow machinery to pass very close to the house. More importantly, at one point only 23.4 feet is available for the easement. We modify the district court's decision to provide that the easement should be of a uniform width of 23.4 feet throughout the length of the easement.[8]

IV. Costs of Grading

In the ruling on the post-trial motion, the district court ordered that on the initial lane the parties would be equally responsible for "grading so as to allow a combine with a corn head to pass through the initial curve without it catching or hanging up on either side." The Olsens claim the court should not have ordered grading because they have never changed the slope of their property, and

[7] Hennings testified he used a twenty-foot wide mower behind the tractor.

[8] On appeal, the Olsens have agreed to remove and/or trim back all trees to clear a 23.4-foot width and to maintain the easement path.

grading is not necessary. Furthermore, if grading is ordered, they believe that they should not be required to contribute to the cost of grading.

Randy Olsen testified the location of the easement remained the same during the time he owned the property. The Olsens have put gravel on the lane. From the record, this is apparently all of the maintenance that was performed on the surface of the easement. Hennings did not present any evidence that the slope of the path of the easement had changed in any way during the time the property was owned by the Olsens. In addition, he did not testify that it was necessary to change the slope of the easement for him to bring any of his farm equipment over the easement. His complaints were about obstacles created by trees.

We conclude the slope of the easement remains the same as when the easement was created. We also conclude Hennings has not shown that it is necessary to change the slope of the easement so that grading is needed. We modify the district court's decision to eliminate the requirement of grading the lane.

V. Use of Easement

The Olsens contend the district court improperly expanded the use of the easement in its post-trial ruling. The court stated:

> The court mentioned in its ruling the easement was for agricultural purposes. The court finds the easement as originally drafted did not contain any restrictions on the type of use or frequency of use of this easement. The court finds it should not now impose a use restriction which may restrict or limit some future use of the property; i.e., hunting preserve, agricultural, or even residential development. The court is unwilling to limit the type or frequency of use.

Generally, a party has the right to reasonable use of an easement, but should not impose burdens on the servient estate greater than those contemplated by the parties at the time of the creation of the easement. *Wiegmann*, 203 N.W.2d at 209; *C & M Prop. Mgmt. Co. v. Bluffs U.P. Emps. Credit Union*, 486 N.W.2d 596, 597 (Iowa Ct. App. 1992). To determine the scope of an easement, we consider: (1) the physical character of past use of the easement; (2) the purpose of the easement; and (3) the additional burden imposed by a proposed use. *See Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 356 (Iowa 2000).

While the district court stated it would not specifically limit the easement to agricultural use, the court did impose some restrictions on the use of the easement. The court ordered that, "[o]wners, tenants, lessees, contract workers and others similarly situated may all access, without restriction, the easement. Others may do so as long as they have the written permission of the owner, current tenant or lessee." Thus, hunters not included in the specified classes of persons, for example, would need the written permission of the Olsens in order to access the easement.[9]

The court ordered that the Olsens could place gates across the easement as long as the gates were operational and not more restrictive in height or narrower in width than the easement. The court ordered, "Defendant may leave the gates open or closed as he finds them except during fieldwork or harvest

[9] The Olsens had expressed concern about unknown people accessing their property, because both their house and their barn had been broken into in the past. Randy Olsen testified they would like to know who was using the easement.

when the gates may be left open if the homestead property is not completely enclosed and utilized for grazing of livestock." The court further ordered the gates could not be locked, however, absent mutual agreement by the parties.

We conclude the district court has sufficiently restricted the use of the easement, and further restrictions at this point in time would be inequitable. Hennings has not proposed any future use of the easement beyond the scope of past use. We make no findings as to whether future use of a different nature would impose an undue burden on the servient estate.

V. Disposition

We affirm the decision of the district court, except that we have modified the width of the easement to 23.4 feet, instead of thirty feet. We have also eliminated the requirement to grade the lane. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.