IN THE COURT OF APPEALS OF IOWA

No. 6-218 / 05-0231
Filed May 24, 2006

RICK GATES,
Plaintiff-Appellant,

vs.

IOWA COUNTY, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Iowa County, Denver D. Dillard, Judge.

Plaintiff landowner appeals from a district court decision denying his petition for a declaratory judgment that he owns a portion of a county road. **AFFIRMED**.

Patrick M. Roby and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant.

Rebecca Claypool of Claypool & Claypool, Williamsburg, and Lewis McMeen, County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Rick Gates appeals from a district court decision denying his petition for a declaratory judgment that he owns a portion of a county road. We affirm the district court.

I. Background Facts and Proceedings.

At issue in this matter is title to a portion of a county road, LL Avenue, also known as the Marengo to Blairstown Road. The road, created by Iowa County in 1857, ran south from Highway F15, across the Iowa River, and into Marengo. LL Avenue was partially vacated in 1958, after a new north/south highway was built. The LL Avenue bridge trellis was removed, and 1300 feet of the road was vacated from Marengo north to and across the Iowa River and for some distance north of the river.

The remaining, non-vacated portion of LL Avenue continued to be listed on the county's road inventory. In 1982, the Iowa County Board of Supervisors adopted an ordinance establishing two classifications of roads: "Area Service System A" and "Area Service System B." While the former were to be maintained in conformance with state law, "[o]nly the minimum effort, expense, and attention will be provided to keep area service system B roads open to traffic." The ordinance provided that a number of basic maintenance tasks, including tree removal and regular inspections, would not be performed, and others, such as blading and road repair, would not be performed on a regular basis.

In 1985 LL Avenue was designated as a Level B road. The county accordingly erected signs on LL Avenue stating "CAUTION MINIMUM

MAINTENANCE ROAD" and "LEVEL B SERVICE ENTER AT YOUR OWN RISK." These signs remained in place until at least 1993. Although the county did not authorize their removal, by 2003 the signs were no longer in place.

The Gates family has owned property north of Highway F15 since the 1950s. Beginning in the 1970s they began to acquire the majority of the property south of Highway F15, between the highway and the river, on either side of LL Avenue. They purchased all the land directly east of LL Avenue. They also acquired all but two areas of land directly west of LL Avenue: (1) forty acres of land owned by Lee Koenig, and (2) a sixteen-foot-wide strip of land that connected LL Avenue with approximately ninety-seven acres of land located to the west of the Gates and Koenig lands, which was owned by Lloyd Simmons. The Koenig and Simmons properties were largely undeveloped, wooded areas used primarily for recreational pursuits and hunting.

Rick Gates eventually acquired title to all of the Gates family land, and in 2001 also acquired the Koenig property. He did not, however, acquire the Simmons property. In 1985 Simmons's estate conveyed to Iowa County both the ninety-seven acres and the sixteen-foot-wide strip running easterly from the ninety-seven acres to LL Avenue.[1]

Although Gates[2] initially farmed some of his land, he eventually switched to a cattle operation. He treated LL Avenue as his part of his property, even

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[1] Although Gates describes this strip of land as an easement, and asserts he in fact owns the land upon which it lies, the deed conveying the Simmons property to the county appears to convey fee title in both the ninety-seven acres and the sixteen foot access. Moreover, county plats, as supported by the testimony of the county auditor, indicate the land is in fact owned by Iowa County.

[2] The record is not always clear as to which actions were taken by Rick Gates, and which were taken by his father, Maynard. For ease of reference, when it is appropriate to do so, we will refer to Maynard and Rick collectively as "Gates."

before acquiring the Koenig land. In the late 1970s or early 1980s he built a fence, including a gate across the northern portion of LL Avenue, which allowed his cattle free range on both sides of the road. The gate and fence were visible from Highway F15. He also made improvements to his land on either side of LL Avenue, and improved the grade and drainage alongside LL Avenue. In the early 1990s Gates erected signs on LL Avenue reading "no trespassing, keep out" and "biosecurity area, do not enter." He confronted some members of the public who attempted to use LL Avenue, and told them to leave. While some individuals were dissuaded, others continued to use the road despite Gates's objections.

The current matter arose in 2003, after the county sent a notice to Gates directing him to remove all obstructions from the north end of LL Avenue. Gates filed a petition for declaratory judgment, asking the district court to declare he had acquired title to LL Avenue by virtue of adverse possession or equitable estoppel.[3] The matter proceeded to trial before the district court in January 2005.

Following trial, the court entered a declaratory judgment denying Gates's petition and entering judgment in favor of the county. After noting a party cannot obtain title to governmental land by virtue of adverse possession alone, the court determined Gates had not established title by virtue of equitable estoppel. The court concluded that, even assuming Gates had established adverse possession as a element of equitable estoppel, he failed to show that the county had

[3] The petition also sought a temporary and permanent injunction barring the county from removing the gate across LL Avenue. However, Gates did not further pursued an injunction, and none was ever issued.

abandoned its interest in LL Avenue, or that he would be unfairly damaged if the county was allowed to assert its ownership interest.

Gates appeals. He asserts he established the necessary elements of equitable estoppel, and thus the district court erred in denying his request for a declaratory judgment.

II. Scope and Standard of Review.

We generally look to the pleadings, the relief sought, and the nature of the case to determine whether a declaratory judgment action is legal or equitable in nature. *Nelson v. Agro Globe Eng'g, Inc*., 578 N.W.2d 659, 661 (Iowa 1998). Here, the petition was docketed as a law action. In addition, the district court ruled on the handful of objections made by counsel, which is the "hallmark" of a legal action. *See Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980).

However, the relief Gates sought was title to property through equitable means, and the parties appear to agree this matter was tried as an equitable proceeding. Further, the parties agree our review is de novo. We accordingly conduct a de novo review of the district court's decision. Iowa R. App. P. 6.4; *Molo Oil Co. v. City Of Dubuque*, 692 N.W.2d 686, 690 (Iowa 2005) (providing review is governed by how the case was tried in district court); see *also Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811 (Iowa 2000). Although not bound by the court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(*g*).

III. Discussion.

Gates seeks to establish title to the non-vacated portion of LL Avenue under the doctrine of equitable estoppel. The doctrine, which must be proved by

clear and convincing evidence, has three elements. *Fencl*, 620 N.W.2d at 816. Gates must establish (1) "conduct on the part of the [county] indicating an abandonment of its interest," (2) a claim of ownership of the road through adverse possession, and (3) that he would be unfairly damaged if the county was allowed to assert its ownership interest in the road. *Id*.

We agree with the district court's conclusion that Gates failed to demonstrate a right to title of the non-vacated portion of LL Avenue by virtue of equitable estoppel. Specifically, we agree he has failed to present clear and convincing evidence of the county's abandonment of LL Avenue.

As a threshold matter, abandonment requires proof the county has not used the road for at least ten years. *Id*. However, nonuse alone is insufficient to establish abandonment. *Id*. "[N]onuse must be 'coupled with affirmative evidence of a clear determination to abandon.'" *Id*. (citing *Allamakee County v. Collins Trust*, 599 N.W.2d 448, 452 (Iowa 1999)). "'[A]ctual acts of relinquishment accompanied by an intention to abandon must be shown.'" *Stecklein v. City of Cascade*, 693 N.W.2d 335, 340 (Iowa 2005) (same).[4] A review of the record in this matter does not reveal clear and convincing evidence of such acts and intention on the part of the county.

[4] Gates asserts the showing for abandonment in the context of an equitable estoppel claim must be less than that for a "pure abandonment" claim: while the later requires proof of actual intent to abandon the property, the former requires only a showing of conduct from which such intent can be inferred. He asserts that requiring a party to show an actual intent to abandon in order to establish the abandonment element of an equitable estoppel claim renders the second and third elements of the estoppel claim meaningless. Although Gates's claim has undoubted logical appeal, we are bound by the equitable estoppel test as set forth by the supreme court in *Fencl* and *Stecklein*. In those cases the court expressly characterized the "conduct on the part of the [city or county] indicating an abandonment of its interest" element as requiring a showing of "affirmative evidence of a clear determination to abandon" or "actual acts of relinquishment accompanied by an intention to abandon . . . ." *Stecklein*, 693 N.W.2d at 340 (citation omitted); *Fencl*, 620 N.W.2d at 816 (same).

As noted by the county, it continuously listed the non-vacated portion of LL Avenue in its inventory of roads, it placed cautionary road signs at the road's entrance,[5] and both the previous and current county engineer testified that LL Avenue had always been and continues to be the property of Iowa County. Although Gates may have physically treated the road as if it were his property, there is no evidence LL Avenue was included in Gates's property tax statements, or that Gates paid property taxes on the road.

Moreover, there is evidence that members of the public continued to use LL Avenue, despite the presence of the gate and, in some instances, despite confrontations with Gates himself. We find it significant that LL Avenue is the only county road that currently provides access to the land Simmons's estate conveyed to the county. While Gates makes much of the road's current unmaintained state, it appears that state can be easily remedied and is in fact consistent with LL Avenue's classification as a Level B road.

Gates points out that LL Avenue has not been maintained by the county since 1982. However, the record demonstrates maintenance ceased because the county worker assigned to blade LL Avenue was confused by the gate across the road, did not know whether he would "get into trouble" for opening the gate, and decided that he would stop blading the road because he "thought . . . somebody [else] is going to be taking care of it . . . ." Gates does not direct us to

[5] We place little weight on the fact the road signs were removed sometime in 1993 or later. The district court specifically found Gates removed the signs at about the same time he erected his own signs, which were intended to keep members of the public from using LL Avenue. While the record does not clearly demonstrate that Gates removed the county's signs, we find this scenario more plausible than Gates's intimation that the signs were removed by county.

any evidence that the county approved the worker's actions or knew of his decision to stop maintenance on LL Avenue.

Gates also relies on the fact that, sometime in the early 1990s, a county supervisor asked Gates for permission to access the Iowa River in order to clear a log jam. Gates emphasizes the supervisor did not believe the county had a right of access to any portion of LL Avenue, whether vacated or not. However, the former county engineer testified the county was seeking permission because it needed to use the vacated portion of LL Avenue abutting the river, and because it wanted to use part of Gates's property to store debris taken from the river. In light of this testimony, the supervisor's belief is insufficient to demonstrate an intent to abandon by the county.

Finally, Gates relies on the fact that his fence and gate enclosed the non-vacated portion of LL Avenue for some twenty years, without objection by the county. He asserts that, in such a long period of time, the visible obstruction must have come to the county's attention, and that the county's acquiescence in the obstruction is evidence of an intent to abandon the road. However, the only county employee shown to have affirmative knowledge of the obstruction, prior to 2003, was the maintenance worker. Again, there is no indication his knowledge was passed on to the county itself, through the county engineer or otherwise. However, even if other county employees were aware of the gate and fence, we cannot conclude this knowledge is sufficient to demonstrate a clear determination by the county to abandon its interest in LL Avenue.

There is no doubt Gates has presented some evidence that might support abandonment. However, it simply does not rise to the level of clear and

convincing evidence of an actual intent on the part of the county to abandon its interest in the non-vacated portion of LL Avenue. Because Gates has not established the first element of his equitable estoppel claim, we find it unnecessary to consider whether he established either the adverse possession or unfair damage element. The district court decision is accordingly affirmed.

AFFIRMED.