IN THE COURT OF APPEALS OF IOWA

No. 6-255 / 05-1492
Filed June 28, 2006

CARL M. BINZ and BARBARA S. BINZ,
Petitioners-Appellants,

vs.

PATRICK EINARSEN and LYNNE A. EINARSEN,
Respondents-Appellees.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

The Binzes appeal the district court's denial of their request for injunctive relief. **REVERSED AND REMANDED.**

David A. Lemanski, Dubuque, for appellants.

John D. Freund of Kane, Norby & Reddick, P.C., Dubuque, for appellees.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Carl and Barbara Binz lost their bid to enjoin their neighbors from retaining a corner of their basketball court within an easement between the properties. On appeal, they argue the district court's ruling was inequitable. We reverse and remand.

I. Background Facts and Proceedings

The Binzes and the Einarsens own adjacent properties in a Dubuque subdivision. Their properties are subject to the following restrictive covenant:

> 18. A 5' easement is reserved along each rear lot line and side lot line of said lots for drainage of surface water. Within these easements, no structure, planting, fill or other material shall be placed or permitted to remain which may interfere with the free flowage of the surface water or which may change the force or direction of the flow.

The Einarsens built a basketball court that encroached slightly[1] on the easement.[2] The Binzes responded by filing a petition for injunctive relief.[3] Following a hearing, the district court ruled against the Binzes, as follows:

> The court hereby finds that the Plaintiffs have failed to establish entitlement to an injunction as a result of no showing of irreparable harm. Additionally, the court finds that it is inequitable to require the removal of the basketball court and other plantings as it has not been shown that the structure and the plantings create a detrimental effect on the flow of the water drainage.

The court also denied the Binzes' motion for enlarged findings and conclusions.

On appeal, the Binzes contend the district court acted inequitably in requiring them to show irreparable harm. Alternately, they argue that, even if this

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[1] The Binzes' expert testified that the basketball court encroached "about 7 1/4 inches" at one end and "about one foot four-and-a-half inches" at the other end.

[2] They also planted some shrubbery within the easement, but removed the shrubbery before trial.

[3] The Binzes also sought other relief which is not at issue on appeal.

standard applies, they satisfied it. The Einarsens respond that we need not reach the question of irreparable harm because the covenant was not violated in the first instance. They also argue that the Binzes could not obtain the relief they requested because they came to this proceeding with unclean hands. We will begin with the Einarsens' contention that the covenant was not violated.

II. Violation of Covenant

As noted, the covenant prohibits the placement of structures or plantings within the easement "which may interfere with the free flowage of surface water or which may change the force or direction of the flow." The Einarsens concede they placed structures or plantings within the easement but contend their actions "did not interfere with the free flow or change the force or direction of the flow." (Emphasis in original). On our de novo review of the record, we disagree.

Carl Binz testified he never had any difficulties with water flow prior to the installation of the basketball court. After the installation, he stated there was "ponding." While there is scant evidence that the pooling of water occurred on the Binzes' property, expert testimony supports the finding that there was a change in flow. First, the Binzes' expert explained that the basketball court was higher than the adjacent ground by between five and nine inches. In his opinion, this higher grade blocked the water flow and, together with shrubs and other debris, acted "as a small dam." Second, although the Einarsens' expert had a contrary opinion, she conceded that her initial landscaping plan for the Einarsens' property contained a recommendation to cut a corner of the cement basketball court, perhaps to direct the flow of water.

Notably, the district court found a change in flow. The court stated the cement created "a path for water drainage to follow, not in its usual course, though." We give weight to this finding. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 566 (Iowa 2004). We believe this finding mandates a conclusion that the installation of the basketball court and shrubbery violated the restrictive covenant.

III. Irreparable Harm

We turn to the Binzes' claim that they were not required to show irreparable harm. "It is well settled, the fact defendants have violated a covenant does not automatically entitle plaintiff to injunctive relief." *Fischer v. Driesen*, 446 N.W.2d 84, 87 (Iowa Ct. App. 1989) (citing *Johnson v. Pattison*, 185 N.W.2d 790, 797 (Iowa 1971)). "Equity usually invokes its extraordinary injunctive power only when necessary to prevent irreparable harm or when the complaining party is otherwise without an effective remedy." *Johnson,* 185 N.W.2d at 797. The focus is on the parties' relative injuries. *Id.*

The Binzes argue that their yard is now "subject to flooding." The primary exhibit on which they rely is a picture of the basketball court surrounded by standing water. The picture shows a temporary deflection wall erected by the Binzes to keep water away from their property. The wall is evidence of the Binzes' attempt to avoid irreparable harm. Although the absence of standing water on the Binzes' side of the wall suggests the wall was serving its purpose, this does not mean an injunction was unnecessary. The picture was taken following a period of moderate rainfall. The Binzes' expert testified that, in the

event of "severe" rainfall in a "short period of time," there would be a "tremendous amount of water" relative to the amount reflected in the photograph.

We compare this projected harm of flooding with the "hardship or loss" to the Einarsens from the issuance of an injunction. *Fischer*, 446 N.W.2d at 87-88. Although the Binzes sought removal of the entire basketball court, they were only entitled to removal of the small portion that encroached on the easement. According to trial testimony, it would have taken less than half a day for the Einarsens to excise and re-grade this portion.

We conclude the Binzes are entitled to an injunction prohibiting the maintenance of any portion of the basketball court within the easement, unless the doctrine of unclean hands warrants the denial of the Binzes' injunction request.

IV. Unclean Hands

The Einarsens contend that the Binzes have no right to challenge the encroachment of the basketball court into the easement because the Binzes' temporary deflection wall and driveway also encroach upon the easement. This argument implicates the doctrine of unclean hands. *See General Car & Truck Leasing System, Inc. v. Lane & Waterman*, 557 N.W.2d 274, 279 (Iowa 1996) ("The doctrine of unclean hands considers whether the party seeking relief has engaged in inequitable conduct that has harmed the party against whom he seeks relief.").

The Binzes' erected the temporary deflection wall to prevent water from flowing into their yard. There is little, if any, evidence that the wall harmed the Einarsens. As for the Binzes' driveway, the district court noted that this structure

could not serve as the basis for a claim of unclean hands because it did not abut the Einarsens' property. We agree with this analysis. Accordingly, we conclude the Binzes' encroachments into the easement do not warrant the denial of their request for injunctive relief.

V. Disposition

We reverse the district court's denial of injunctive relief and remand for entry of an injunction that is consistent with this opinion.

REVERSED AND REMANDED.