

**IN THE COURT OF APPEALS OF IOWA**

No. 7-687 / 06-1436  
Filed October 12, 2007

**FRANK A. SCAGLIONE and MELBA L.  
SCAGLIONE,**  
Plaintiffs-Appellants,

**vs.**

**LAMAR COMPANY, LLC, d/b/a LAMAR  
OUTDOOR ADVERTISING,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Dallas County, John D. Lloyd,  
Judge.

Appeal from the ruling in a declaratory judgment action concerning a lease  
for a billboard on farm land. **AFFIRMED.**

Patrick O'Bryan, Des Moines, and V. Phillip Watson of Phil Watson, P.C.,  
Des Moines, for appellants.

Stephen Doohen of Whitfield & Eddy, P.L.C., Des Moines, and Aimee  
Haley, Omaha, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

Plaintiffs appeal from the ruling in a declaratory judgment action involving a lease relating to the ownership, operation, and maintenance of a billboard on their agricultural land. They contend the court erred in finding they were not good faith purchasers for value without actual notice of an unrecorded lease. We affirm.

**I. Background.**

Carl Davis owned farm land along both sides of Interstate 80 in Dallas County. In 1971 he entered into a recorded lease with National Advertising for a billboard on his property south of Interstate 80. The lease term was for ten years and from year to year thereafter unless terminated on sixty days written notice. The diagram showing the location of the leased land on the south side of the interstate indicates its location compared with the location of a “Stuckey’s” billboard on the north side of the interstate. Harold Davis, Carl’s son, inherited the property in 1992. In 1995, Harold entered into a lease with Whitco Outdoor Advertising for a billboard on his property north of Interstate 80. Defendant is a successor in interest to Whitco Outdoor Advertising. The lease term was for ten years with two additional ten-year optional renewal periods. This lease was not recorded.

Plaintiffs purchased the land north of Interstate 80 from Harold Davis in 1998 on contract. Prior to the purchase, the land was surveyed and a title opinion done. The title opinion indicated the existence of the 1971 lease, but not

its present status. Plaintiffs also were aware of a billboard on the land.<sup>1</sup> Plaintiffs accepted lease payments from the Whitco lease in 1999, 2000, 2001, 2002, and 2004. They returned the 2003 lease payment because of a dispute about crop damage from maintenance around the billboard. In 2004 plaintiffs paid off the purchase contract early and received a warranty deed.

In October of 2004, defendant gave notice of its intent to exercise its option to renew the lease for the two additional ten-year periods. Plaintiffs filed this declaratory judgment action in November, asking the court to declare the lease null and void. Defendant filed its counterclaim seeking damages and asking the court to declare the lease valid, enforceable, and binding. The court overruled the parties' motions for summary judgment in 2005.

Following a two-day trial to the court in 2006, the district court concluded plaintiffs failed to meet their burden to prove lack of notice. Citing Iowa Code section 558.44 (2005), the court concluded failure to record the lease did not make it unenforceable. It decreed the Whitco lease was valid and enforceable "on the parties to this action as though executed by them." With no lease provision for attorney fees and costs and no evidence of damages, the court declined to award any damages.

## **II. Scope and Standards of Review.**

Our review of equitable actions is de novo. Iowa R. App. P. 6.4. We give weight to the findings of the district court, especially concerning credibility, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

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<sup>1</sup> The billboard at issue is approximately seventy-two feet long and "would be visible on even the most casual inspection of the property."

### III. Discussion.

Plaintiffs contend the district court erred in concluding they were not good faith purchasers for value without notice because they had actual notice. They argue they had neither constructive nor actual notice. “A land purchaser has the burden to establish the status of bona fide purchaser. To do so, the purchaser must show the purchase was made without either actual or constructive notice of existing rights in the property.” *Sun Valley Iowa Lake Ass’n v. Anderson*, 551 N.W.2d 621, 638 (Iowa 1996). A person who purchases land with knowledge of facts that would put a prudent person upon inquiry that, pursued with ordinary diligence, would lead to actual notice of rights claimed adversely by another, is chargeable with actual notice. *Nat’l Properties Corp. v. Polk County*, 351 N.W.2d 509, 511 (Iowa 1984).

Frank Scaglione testified he owned the land next to the Davis land for years and was aware of the sign on the property. Before contracting to buy the land, he had a title opinion prepared that indicated the existence of a sign lease noting, “The Abstract does not report the present status of this Lease. You should confirm that the existence of this Lease does not interfere with the intended use or development of the Property.” The title opinion also advised that the opinion was subject to “rights or claims of parties in possession not shown by the public records.” Plaintiff testified he did nothing to investigate the lease. Had he done so, he would have discovered the lease was not for the sign on the land he was buying. He would have discovered the rights of the party in possession of the land containing the sign were not shown in the public records.

Harold Davis produced a letter he sent to the sign company at the time of the sale, notifying the company of the sale and that he had informed the purchaser of the lease. Plaintiff testified Davis did not inform him of the lease before he purchased the land. Davis's testimony at trial was equivocal. The district court gave more weight to the contemporaneous writing than to the testimony of either party.

We find plaintiffs had "knowledge of sufficient facts to charge the[m] with a duty to make inquiry that would reveal the existence of such rights." *Id.* They "may not act in contravention to the dictates of reasonable prudence, or refuse to inquire when the propriety of the inquiry is naturally suggested by circumstances known to" them. *Raub v. Gen. Income Sponsors*, 176 N.W.2d 216, 220 (Iowa 1970). We conclude plaintiffs failed to prove their status as good faith purchasers without notice.

**AFFIRMED.**