IN THE COURT OF APPEALS OF IOWA

No. 8-084 / 07-0995
Filed March 14, 2008

STEPHEN KROEZE and GLORIA KROEZE, husband and wife, and as Individuals,
Plaintiffs-Appellants,

vs.

LOWELL E. SCOTT and TAMARA SCOTT, husband and wife, and as Individuals,
Defendants-Appellees.

Appeal from the Iowa District Court for Warren County, Gary G. Kimes, Judge.

Stephen and Gloria Kroeze appeal the district court's ruling dismissing their petition to quiet title and quieting title to certain real estate in Lowell and Tamara Scott. **AFFIRMED.**

Joseph A. Nugent, West Des Moines, for appellants.

Michael W. O'Malley of Connolly, O'Malley, Lillis, Hansen & Olson L.L.P., Des Moines, for appellees.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

HUITINK, P.J.

Stephen and Gloria Kroeze appeal the district court's ruling dismissing their petition to quiet title and quieting title to certain real estate in Lowell and Tamara Scott. We affirm.

I. Background Facts and Proceedings

This case involves a dispute between Stephen and Gloria Kroeze and Lowell and Tamara Scott over who owns certain real estate, legally described as "Parcel T, being part of the Northeast 1/4 of the Southeast 1/4 of Section 34, Township 77 North, Range 25 West of the 5th P.M., Warren County, Iowa. . . ."

In 1976 the Kroezes purchased real estate and built a house on land north of Parcel T. A deep ravine traverses a portion of their land, and they can access the other portion only via foot, tractor, or using the driveway located on Parcel T. In 1984 the Scotts purchased a house and real estate south of Parcel T. The driveway to the Scotts' house is partially located on Parcel T. Both the Kroezes and the Scotts thought they owned Parcel T. The Kroezes claimed they owned it based on representations made to them, their payment of property taxes, and their use of the property. The Scotts claimed they owned it based on representations made to them, their use of the property, their maintenance of the property, and improvements they made to the property. In fact, neither party's deed encompasses Parcel T. In 2003 the Kroezes desired to use the driveway on Parcel T to construct a pole barn on the land-locked portion of their property. The Scotts objected. In 2004 the Kroezes acquired a quit claim deed to Parcel T from Patrick and Catherine Hickey.

On August 26, 2005, the Kroezes filed a petition to quiet title to Parcel T. On October 3, 2005, the Scotts filed an answer, affirmative defenses, and counterclaim for adverse possession. On October 27, 2005, the Kroezes filed an answer to the counterclaim.

The matter proceeded to trial. The district court's January 17, 2007 "Findings of Fact, Conclusions of Law and Ruling" found the Scotts had sustained their burden of proving they owned Parcel T by adverse possession. It also found the Kroezes had failed to show an easement giving them use of the driveway on Parcel T to access their property. Therefore, the district court dismissed Kroezes' petition and quieted title to Parcel T in the Scotts' favor.

The Scotts filed an Iowa Rule of Civil Procedure 1.904(2) motion on January 26, 2007, and the Kroezes filed a similar motion on January 29, 2007. The district court granted the Scotts' motion and denied the Kroezes' motion on May 11, 2007.

On appeal, the Kroezes claim the district court erred in denying their ownership of Parcel T or, in the alternative, in denying an easement by necessity giving them use of the driveway on Parcel T to access their property.

II. Standard of Review

Actions to quiet title lie in equity. Iowa Code § 649.6 (2005); *Rouse v. Union Twp.*, 530 N.W.2d 714, 716 (Iowa 1995). Therefore, our review is de novo. Iowa R. App. P. 6.4. In equity cases, we give weight to the district court's findings of fact, especially those involving witness credibility, but we are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Title by Adverse Possession

The doctrine of adverse possession is premised upon the ten-year statute of limitations for recovering real property. *Hallett Constr. Co. v. Meister*, 713 N.W.2d 225, 232 (Iowa 2006). To prevail, the party claiming title via adverse possession must show "hostile, actual, open, exclusive and continuous possession, under claim of right or color of title for at least ten years." *C.H. Moore Trust Estate v. City of Storm Lake*, 423 N.W.2d 13, 15 (Iowa 1988). Proof of these requirements must be "clear and positive." *Mitchell v. Daniels*, 509 N.W.2d 497, 499 (Iowa Ct. App. 1993). Because the law presumes possession is under regular title, the doctrine is strictly construed. *Garrett v. Huster*, 684 N.W.2d 250, 253 (Iowa 2004).

Adverse possession does not necessarily require the party to live on the land, to enclose it with fences, to stand guard at all times on its borders to oppose the entry of trespassers or hostile claimants, or to pay taxes on the land. *Grosvenor v. Olson*, 199 N.W.2d 50, 51 (Iowa 1972); *Clear Lake Amusement Corp. v. Lewis*, 236 Iowa 132, 138, 18 N.W.2d 192, 195 (1945). It is enough if the person pleading the doctrine takes and maintains such possession and exercises such open dominion as ordinarily marks the conduct of owners in general in holding, managing, and caring for property of like nature and condition. *Clear Lake Amusement Corp.*, 236 Iowa at 138, 18 N.W.2d at 195. In other words, the party's conduct must clearly indicate ownership. *I-80 Assocs., Inc. v. Chicago, Rock Island & Pacific R.R. Co.*, 224 N.W.2d 8, 11 (Iowa 1974). Acts of ownership include occupying, maintaining, and improving the land. *Council*

Bluffs Sav. Bank v. Simmons, 243 N.W.2d 634, 636 (Iowa 1976); *Lynch v. Lynch*, 239 Iowa 1245, 1255, 34 N.W.2d 485, 490-91 (1948).

Like the district court, we find the Scotts have proven ownership of Parcel T by adverse possession. The Scotts and their predecessors have shown hostile, actual, open, exclusive, and continuous possession, under claim of right for more than ten years. Since 1953 the Scotts and their predecessors testified that they believed they owned Parcel T based on representations made to them. They have used the driveway on Parcel T to access their property. They have maintained Parcel T, including mowing, clearing snow off the driveway, trimming the trees, and mending and replacing the fences bordering Parcel T. They have also made valuable improvements to Parcel T, including installing a security gate at the end of the driveway, rocking the driveway and eventually grading and paving the driveway, and installing utilities along the driveway.

Prior to 2004, the Kroezes' belief that they owned Parcel T was not reasonable. The Kroezes testified they were familiar with the plat of survey of the land they purchased in 1976, which clearly does not encompass Parcel T. In addition, the Scotts and their predecessors testified no access has been given to the Kroezes, except for a short time in 1991 when the Scotts gave the Kroezes permission to remove a six-foot section of the fence separating the Kroezes' property and Parcel T. In 2003 the Kroezes requested an easement giving them use of the driveway to build a pole barn. The Scotts objected and patched up the six foot section of fence. Then, the Kroezes took out a twelve-foot section of fence. In response, the Scotts permanently locked the gate to the driveway. In 2004 the Kroezes acquired a quit claim deed to Parcel T from the Hickeys. The

Hickeys testified they were not aware that they were transferring Scotts' driveway to the Kroezes. The Hickeys did not intend to convey the driveway because they believed the Scotts owned it. Finally, the Kroezes' payment of property taxes on Parcel T is not dispositive. *See Grosvenor*, 199 N.W.2d at 51.

IV. Easement by Necessity

An easement is "a liberty, privilege, or advantage in land without profit existing distinct from ownership of the soil. . . ." *Indepenent Sch. Dist. of Ionia v. De Wilde*, 243 Iowa 685, 692, 53 N.W.2d 256, 261 (1952). The party claiming an easement by necessity exists must show: "(1) unity of title to the dominant and servient estates at some point prior to severance, (2) severance of title, and (3) necessity of the easement." *Nichols v. City of Evansdale*, 687 N.W.2d 562, 568 (Iowa 2004). The doctrine generally applies "when a landowner parcels out a landlocked portion of his or her land and conveys it to another." *Id.* "Under these circumstances, courts may imply an easement by necessity across the seller's land to provide the purchaser of the landlocked parcel with access to a public road." *Id.* Our supreme court has held that strict necessity is not required but mere inconvenience is not enough. *Schwob v. Green*, 215 N.W.2d 240, 244 (Iowa 1974). "What is required is the easement must be reasonably essential to the use and enjoyment of the dominant estate as it existed at the time of conveyance of the servient portion." *Rank v. Frame*, 522 N.W.2d 848, 851 (Iowa Ct. App. 1994).

Like the district court, we conclude the Kroezes have failed to show entitlement to an easement by necessity giving them use of the driveway on Parcel T to access their property. We find no unity of ownership between the

Kroezes' property and Parcel T. Indeed, Parcel T was specifically excluded and was never part of the land purchased by the Kroezes. Therefore, the first two elements have not been proven. Also, the Kroezes have access by foot or tractor to their property. Therefore, the third element has not been met.

We conclude the district court correctly dismissed the Kroezes' petition to quiet title and quieted title to Parcel T in the Scotts and accordingly affirm.

AFFIRMED.