IN THE COURT OF APPEALS OF IOWA

No. 8-1052 / 08-0932
Filed February 19, 2009

VETERANS OF FOREIGN WARS POST 6792 (A Domestic Non-Profit Corporation),
Plaintiff-Appellant,

vs.

DENNIS LITTERER,
Defendant-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Todd A. Greer, Judge.

Veterans of Foreign Wars Post 6792 (the VFW) appeals from the district court's ruling following a bench trial on its claims of trespass against Dennis Litterer and request for an injunction. **AFFIRMED.**

David H. Skilton of Cronin, Skilton & Skilton, Nashua, for appellant.

David M. Engelbrecht of Englebrecht, Ackerman & Hassman, Waverly, for appellee.

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

EISENHAUER, J.

Veterans of Foreign Wars Post 6792 (the VFW) appeals from the district court's ruling following a bench trial on its claims of trespass against Dennis Litterer and request for an injunction. The VFW presents the following issues:

> 1. Whether the Court erred in applying equitable precepts to a case involving the law determination of real estate?
> 2. Whether the Court erred in allowing credence to the assistance given by a volunteer and a business client of the Appellee who had no authority to act for the Corporation?
> 3. Whether the Court erred in assessing court costs and denying trial attorney fees to the Appellant?

These are the only issues raised and therefore the only issues we address.

The VFW and Litterer are owners of adjoining buildings in downtown Nashua, Iowa. In May 2006, Litterer extended the height of the roof on his building and replaced the roof. In its petition and amended petition, the VFW argued that there is no "common wall" between the buildings, but rather there are two separate walls and support systems. The VFW claimed that when Litterer reconstructed the roof of his building, he trespassed onto its property without permission. The VFW sought monetary damages for the trespass, as well as an injunction to remove the roof from Litterer's building.

Following a bench trial, the district court concluded that the buildings shared a "common wall." The court then applied the provisions of Iowa Code section 563.6 (2005), which states a co-proprietor of a common wall may increase the height of the wall at their sole expense and be responsible for repair and keep of the part of the wall above the part held in common. The court noted that while section 563.10 required consent be obtained from the owner before

attaching any work or structure on a common wall, the VFW's knowledge of the roof reconstruction and its failure to object until after completion indicated it had given implied consent. The court awarded the VFW $166.49 in damages to cover the costs the VFW incurred when it had to extend its chimney. The court also ordered the removal of any of the 29-gauge metal skirting that extended below the previous wall cap. It overruled the VFW's request for attorney fees. The court overruled the VFW's motion to reconsider and specifically found, the case was tried at law and the plaintiff failed to rebut the presumption of a common wall. In a separate order, the court found, "[T]here was no damage to plaintiff's building and accordingly the court awarded no damages for any alleged trespass."

The VFW first contends the court erred in applying equitable precepts to a case that was tried in equity. We reject this claim. Although the district court used the word "equitable" in its ruling, we find the case was tried at law and no equitable precepts were applied. Because this case was tried at law, our review is for correction of errors at law. *Bricker v. Maytag Co*., 450 N.W.2d 839, 840-41 (Iowa 1990). In a case tried at law, the findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 6.141(6)(*a*). Substantial evidence supports the court's finding that the buildings are joined by a common wall.

The VFW next contends the court erred in "allowing credence to the assistance given by a volunteer and a business client of the Appellee who had no authority to act for the Corporation." While it is difficult to determine exactly what

the VFW is objecting to, we believe it thinks the court erred in finding it impliedly consented to extending the wall. The court made findings that members of the VFW knew of the roof work, at least two members of the VFW assisted with the construction during its early stages, and the VFW was thus aware of the construction and made no objection. However, the issue of consent is only pertinent when an owner of a common wall affixes a structure to the wall, pursuant to section 563.10. Section 563.6, which applies to extending the height of a common wall, does not require consent from the co-owner. Accordingly, notice to the VFW does not affect the outcome of the case.

Finally, the VFW contends the court erred in denying it an award of attorney fees. A party generally has no claim for attorney fees as damages in the absence of a statutory or written contractual provision allowing such an award. *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993). Courts have recognized a rare exception to this general rule when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Id.* Because the circumstances of the case, with the VFW largely unsuccessful in its claims, do not warrant an award of attorney fees, we affirm.

AFFIRMED.