IN THE COURT OF APPEALS OF IOWA

No. 8-655 / 07-1264
Filed October 1, 2008

CRAIG CLARK and MICHELE HICKS CLARK,
Plaintiffs-Appellants,

vs.

THOMAS R. SIEGWORTH and NINA L. SIEGWORTH,
Defendants-Appellees.

Appeal from the Iowa District Court for Dubuque County, Margaret L. Lingreen, Judge.

Plaintiffs appeal from a district court ruling entering permanent injunctions regarding their use of an easement across defendants' land. **AFFIRMED AS MODIFIED.**

Francis J. Lange of Lange & Neuwoehner, Dubuque, for appellants.

John D. Freund of Drake & Freund, P.C., Dubuque, for appellees.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Craig Clark and Michele Hicks Clark appeal from a district court ruling entering permanent injunctions (1) enjoining their neighbors, Thomas and Nina Siegworth, from maintaining or building any speed bumps higher than three inches across an easement the Clarks use to access their land, and (2) enjoining the Clarks from driving off of the gravel roadway located on the easement. We affirm the judgment of the district court as modified.

I. BACKGROUND FACTS AND PROCEEDINGS.

The Clarks own two tracts of land that are accessed through an easement across land owned by the Siegworths. When Craig Clark and his brother purchased the land now owned by the Clarks from the Siegworths' predecessors in interest, George and Jean Westercamp, an easement agreement was executed, which provided:

> The parties acknowledge that the plat of Lot 1 and Lot 2 of "Westercamp Place" in Section 3, Table Mound Township, Dubuque County, Iowa, contains a 33 foot Easement "A" for driveway purposes named "Westercamp Drive."
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> It is further acknowledged that located on this Easement "A" is a gravel roadway which presently services both the Westercamp Property and the Clark Property for the ingress and egress of passenger vehicles, trucks, farm implements and business and commercial implements.

North Cascade Road is a public road that lies to the south of the Siegworths' property and perpendicular to the easement. It provides access to the Siegworths' property but not to the Clarks' property, which is located to the north of the land owned by the Siegworths. The easement lies on the western edge of the parties' properties, running north from the southern edge of the

Siegworths' land to the Clarks' property. As the easement agreement acknowledges, a gravel roadway located on the easement serves as a driveway for both parties. The gravel roadway is narrower than the width of platted easement. The Clarks rely on the easement as the only access to their land.

In June 2006, following a dispute regarding the parties' property lines, the Siegworths constructed a six-inch high gravel speed bump across the gravel roadway. The Siegworths have young children who play near the roadway. They claimed to have installed the speed bump due to their concern about the speed at which the Clarks and their guests drove on the roadway.

The Siegworths do not have to travel over the speed bump when entering or exiting their property because it is located near the northern edge of their garage. For vehicle traveling south away from the Clarks' property the speed bump is on an upward incline in the gravel roadway. When there are heavy rains, run-off from the garage washes away some of the gravel from the speed bump, creating a "ditch-like area on the topside of" the bump. In order to avoid the speed bump, the Clarks drove off of the gravel roadway onto the grass within the easement.

On July 13, 2006, the Clarks filed a petition in equity requesting in relevant part temporary and permanent injunctions enjoining the Siegworths from maintaining or building a speed bump across the gravel roadway. An ex parte temporary injunction was entered that same day granting their requested relief. The Siegworths responded by filing a motion to dissolve the temporary injunction, in addition to an answer and counterclaim. The counterclaim sought in relevant

part temporary and permanent injunctions enjoining the Clarks from intentionally driving off of the gravel roadway near the Siegworths' home.

Following a hearing, the district court entered an order in August 2006 modifying the ex parte temporary injunction to prohibit the Siegworths "from maintaining or building up any 'speed bumps' across Westercamp Drive higher than 3 inches or without the same signage as would be required if the speed bump were on a public street or highway." A hearing on the parties' requests for permanent injunctions was subsequently held in May 2007. After that hearing, the district court concluded the temporary injunction, as modified by the court in August 2006, should be made permanent. The court further concluded that the Siegworths' request for a permanent injunction enjoining the Clarks from driving off of the gravel roadway as it traverses the Siegworths' real estate should be granted.

The Clarks appeal. They claim the district court erred in denying their request for a permanent injunction prohibiting the Siegworths from maintaining or building a speed bump across the gravel roadway. They further claim the court erred in granting the Siegworths' request for a permanent injunction prohibiting them from traveling off of the gravel roadway.

II. SCOPE AND STANDARDS OF REVIEW.

Our review of actions for injunctive relief is de novo. *Skow v. Goforth*, 618 N.W.2d 275, 277 (Iowa 2000).[1] This de novo review is based upon the equitable

[1] We reject the Siegworths' argument that we should review the district court's issuance of the permanent injunction in this case for an abuse of discretion based on *PIC USA v. North Carolina Farm Partnership*, 672 N.W.2d 718, 722 (Iowa 2003). In *PIC USA*, our supreme court recognized that although the issuance of injunctions is generally reviewed

jurisdiction of the court to issue injunctions. *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 180 (Iowa 2001). We accordingly "give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them." *Fettkether v. City of Readlyn*, 595 N.W.2d 807, 811 (Iowa Ct. App. 1999).

III. MERITS.

Injunctive relief is an extraordinary remedy that is granted with caution and only when required to avoid irreparable damage. *Skow*, 618 N.W.2d at 277-78. "A party seeking an injunction must establish (1) an invasion or threatened invasion of a right, (2) substantial injury or damages will result unless an injunction is granted, and (3) no adequate legal remedy is available." *Id.* at 278.

A. The Clarks' Request for a Permanent Injunction.

The Clarks claim they established entitlement to an injunction preventing the Siegworths from maintaining or building a speed bump across the gravel roadway because the presence of such an obstruction impermissibly interferes with their use and enjoyment of their easement across the Siegworths' land. We do not completely agree.

It is true that neither party to an easement may interfere with the rights of the other. *Krogh v. Clark*, 213 N.W.2d 503, 506 (Iowa 1973). "The one who enjoys the easement must use it according to its terms; the one who has granted it must not interfere with the rights conferred." *Id.*; *see also Skow*, 618 N.W.2d at

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de novo, "the decision to issue or refuse 'a *temporary injunction* rests largely [within] the sound discretion of the [district] court.'" 627 N.W.2d at 722 (citations omitted) (emphasis added). Here, the Clarks are appealing from the district court's issuance of a permanent injunction. We therefore believe we have articulated the correct scope of review applicable to this case. *See Skow*, 618 N.W.2d at 277.

278 ("[W]hile the dominant tenement owner has the right to use the servient tenement according to the terms of the easement, the fee owner retains whatever uses do not interfere with the rights of the dominant owner."). Thus, the holder of the estate burdened by an easement is entitled to make any use of the servient estate that does not unreasonably interfere with the enjoyment of the easement for its intended purpose. *Skow*, 618 N.W.2d at 279. Our courts, along with courts in other states, have recognized that injunctive relief is typically appropriate "only in cases where an interference with or obstruction of the easement substantially changes or unreasonably interferes with the owner's use of its easement." *Fettkether*, 595 N.W.2d at 812; *see also Skow*, 618 N.W.2d at 279.

The main purpose of the easement in this case, as stated in the easement agreement, was to create rights of ingress and egress for the Clarks. Our de novo review of the record reveals that while neither the presence nor the three-inch height of the speed bump unreasonably interferes with the Clarks' ability to use the easement for its intended purpose, the location of the speed bump does. *Cf. Skow*, 618 N.W.2d at 281 (holding plaintiffs were not entitled to injunctive relief where defendants constructed a fence encroaching on three inches of plaintiffs' easement); *C&M Prop. Mgmt. Co. v. Bluffs U.P. Employees Credit Union*, 486 N.W.2d 596, 598 (Iowa Ct. App. 1992) (concluding servient estate owner did not interfere with dominant estate owner's easement for ingress and egress by installing concrete parking stops along major portion of boundary between properties); *Marsh v. Pullen*, 623 P.2d 1078, 1079 (Or. Ct. App. 1981)

(finding seven-inch high speed bump did not unreasonably interfere with the servient tenement owner's use of easement).

At the hearing on the permanent injunctions, Craig Clark testified that when the speed bump was six inches high, the "semi tractor" that he drove for his employment would get "hung up" on it when he attempted to exit his property. On one occasion, he had to use another vehicle to pull his "semi tractor" over the bump. The Clarks further testified that several of their smaller low-clearance vehicles were damaged "from being dragged over the speed bump" at its six-inch height. Once the speed bump was reduced in height, the Clarks acknowledged that they no longer experienced those same problems. They did, however, continue to encounter difficulty when exiting their property due to the location of the speed bump.

Water run-off from the Siegworths' garage occasionally erodes the "top hillside of the speed bump" and creates a "ditch-like area on the topside" of the bump, which makes it difficult "for people trying to go uphill and south." The Clarks also experienced difficulty exiting their property in the winter because the speed bump is located on an "uphill grade." Craig testified that "when you're going uphill in the winter, you like to get a little speed up to get up the driveway." But "if you slow up to get over the bump, then you have to spin to get moving again." Michele likewise testified that "[i]n the wintertime, I have fishtailed it trying to get up there . . . and if you do not clear the bump the first time, you're going to have to back down and that's hard to do."[2]

[2] In addition to these difficulties in exiting their property, Michele testified that going over the speed bump, even at its height of three inches, aggravated her preexisting back

The Clarks suggested at the hearing on the permanent injunctions that the speed bump be relocated "to a place south of [the Siegworths'] parking pad . . . in front of [their] front door" in order to avoid the difficulties detailed above. The Siegworths were willing to move the speed bump to that location. The Clarks ask for the same alternative relief on appeal. We accordingly modify the permanent injunction entered by the district court in favor of the Clarks to require the Siegworths to move the three-inch speed bump to south of their garage, an area that has a more gradual slope in the gravel roadway. The remaining portion of that injunction is affirmed in all other respects.

B. The Siegworths' Request for a Permanent Injunction.

We must next determine whether the district court erred in granting the Siegworths' request for a permanent injunction prohibiting the Clarks from driving off of the gravel roadway as it traverses the Siegworths' property. The Clarks claim that the court erred in finding "that the entire 33 foot width of the easement was not intended as a right-of-way." We conclude otherwise.

As the district court recognized, "a grant or reservation of a right-of-way over a particular area, strip, or parcel of ground is not ordinarily to be construed as providing for a way as broad as the ground referred to." 28A C.J.S. *Easements* § 200, at 411 (2007); *see also Flynn v. Michigan-Wisconsin Pipeline*

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problems. However, based upon our de novo review of the record, we agree with the district court that the "[e]vidence offered at trial does not establish that the speed bump is the cause of any pain Michele Clark reports experiencing." We also reject the Clarks' argument that the presence of the speed bump has lowered the value of their property in light of Craig's testimony that the value of their land had actually increased for tax purposes. Finally, we do not believe that testimony that some of the Clarks' friends no longer visit their home due to the speed bump establishes that the bump unreasonably interferes with the Clarks' use of the easement for ingress and egress.

Co., 161 N.W.2d 56, 61 (Iowa 1968) (stating the scope of an easement is only that which "is reasonably necessary and convenient for the purpose for which it was created"). The parties' easement agreement expressly states the gravel roadway located on the Clarks' thirty-three foot driveway easement is "for the ingress and egress of passenger vehicles, trucks, farm implements and business and commercial implements." Our goal in construing an express easement agreement is to effectuate the intent of the parties. *Weigmann v. Baier*, 203 N.W.2d 204, 208 (Iowa 1972). We conclude the district court did not err in concluding that "the entire 33 feet of the easement was not intended to serve as a roadway; rather, the roadway is limited to the existing gravel road."

We further conclude the district court did not err in entering an injunction prohibiting the Clarks from traveling off of the gravel roadway as it traverses the Siegworths' land. "Generally, the servient estate is not to be burdened to a greater extent than was contemplated at the time of the creation of the easement." *C&M Prop. Mgmt.*, 486 N.W.2d at 597. The injunctive relief granted by the court was warranted due to the Clarks' actions in driving off of the gravel roadway to avoid the speed bump, even though they did not engage in such activity after the speed bump was reduced in height.[3] *See Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993) (finding injunctive relief warranted where defendants persistently violated

[3] This holding should not be construed as mandating a shrinking of the Clarks' easement. Instead, it means only that the Clarks may not drive off of the gravel roadway onto the grass within the easement until they can show a reasonable need to use that portion of the easement in order to exercise their rights of ingress and egress. If, in the future, impediment of the right of ingress and egress becomes a reality, the Clarks or their successors in interest will be able to seek an appropriate remedy at that time. *See Skow*, 618 N.W.2d at 281.

agreement and made no assurances they would not do so in the future); *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639-40 (Iowa 1991) ("Generally, an injunction will lie to restrain repeated trespasses so as to prevent irreparable injury and a multiplicity of suits.").

IV. CONCLUSION.

Based upon our de novo review of the record, we conclude the permanent injunction entered by the district court in favor of the Clarks should be modified to require the Siegworths to move the three-inch speed bump to the more gradual slope on the gravel roadway south of their garage. The remaining portion of that injunction is affirmed in all other respects. We reject the Clarks' claim that the district court erred in granting the Siegworths' request for a permanent injunction prohibiting the Clarks from driving off of the gravel roadway as it traverses the Siegworths' property. The judgment of the district court is accordingly affirmed as modified. The costs of the appeal are to be divided equally between the parties.

AFFIRMED AS MODIFIED.