

**IN THE COURT OF APPEALS OF IOWA**

No. 9-631 / 08-1423

Filed May 12, 2010

**ARTHUR D. STREIGLE and  
LORETTA L. STREIGLE,**  
Petitioners-Appellants,

**vs.**

**SIGOURNEY BUILDERS, INC.,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Keokuk County, James Q. Blomgren, Judge.

Petitioners appeal from the district court's order with regard to their petition for declaratory judgment. **AFFIRMED AS MODIFIED.**

Natalie K. Ditmars and Adam S. Tarr of Bradley & Riley, P.C., Cedar Rapids, for appellant.

John Wehr, Sigourney, and Eric D. Tindal of Nidey, Peterson, Erdahl & Tindal, Williamsburg, for appellee.

Considered by Vogel, P.J., Potterfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**HUITINK, S.J.**

Petitioners Arthur D. Streigle and Loretta L. Streigle (Streigles) appeal from the district court order dismissing their petition for declaratory judgment. The petition sought a ruling declaring that the estate of the respondent, Sigourney Builders, is subject to an easement for ingress and egress. The Streigles contend the district court erred in finding that (1) the Streigles had sold the dominant estate and were no longer real parties in interest, and (2) Sigourney Builders had extinguished the easement by adverse possession.

This dispute involves what was once a one-hundred-foot railroad right-of-way. In 1991, the Streigles purchased some pastureland that adjoined the right-of-way and, in a separate conveyance, purchased the portion of the right-of-way that abutted the property. The deed to the right-of-way portion of the property also conveyed an easement for ingress and egress across a portion of the right-of-way that lies to the southwest of the Streigles' property.

Sigourney Builders purchased the servient real estate property adjacent to the Streigles' dominant property in 1996. When Sigourney Builders purchased its real estate, the property was overgrown and in poor condition. There was no evidence of use of the property for ingress and egress. Over the course of the next several years, Sigourney Builders spent more than \$20,000 making improvements to its property in order to expand the trailer park that existed on the property.

On July 19, 2007, the Streigles filed a petition for declaratory judgment, seeking a ruling declaring Sigourney Builders's property is subject to the

easement for ingress and egress. In its answer, Sigourney Builders counterclaimed for adverse possession, contending the Streigles had not used the easement for ten years. Following a trial on May 22, 2008, the district court denied the Streigles relief, determining the Streigles were not the real parties in interest because they'd sold the property before trial and that they did not have any easement rights.

We first must determine whether this is an interlocutory appeal of a non-final order, or whether the district court's ruling was final for purposes of appeal. See Iowa R. App. P. 6.1, 6.2 (2009). The district court did not expressly rule on the counterclaim filed by Sigourney Builders; however, the court did address the issue raised by Sigourney Builders (adverse possession) in its ruling on the Streigles' petition for declaratory judgment. We therefore treat the district court's ruling as final for purposes of this appeal. When an action is tried in equity, our review is de novo. Iowa R. App. P. 6.4; see *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.14(6)(g); *Owens*, 610 N.W.2d at 865.

We next consider the Streigles' claim that the court erred in finding they were not the real parties in interest because they had sold the property at issue. At trial, Arthur Streigle testified he and Loretta sold the property at issue. On limited remand, the record was reopened in regard to this issue. The evidence shows the Streigles sold the pastureland property on December 7, 2007, and the deed was recorded on May 28, 2008. They are still in possession of their

portion of the right-of-way and the easement that was assigned with it. Accordingly, the Streigles are the real parties in interest. See *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 434 (Iowa 2008) (“A real party in interest . . . is the person who is the true owner of the right sought to be enforced.”).

Finally, we turn to the Streigles’ claim the court erred in finding they lost their easement through adverse possession. The elements of title by adverse possession are open, notorious, continuous, actual, and hostile possession under a 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, 16 (Iowa 1988). In its ruling, the district court stated in pertinent part:

Mr. Streigle was aware of the work being done by Sigourney Builders when they put in place the trailer or mobile home which currently is approximately 4 feet from the center of the right-of-way line. He watched them attach utilities and pour concrete but did not make any complaint at the time or make a claim for an easement. It also appears the claimed easement on the south side of the center line of the right-of-way has not been used and was not ever used by the Streigles. In fact, it would be impossible to drive a vehicle on the south side of the right-of-way because of the location of the trailer home and two foundations placed in the ground by Sigourney Builders, Inc. . . .

Sigourney Builders, Inc., bought its interest in the south half of the railroad right-of-way for a distance of 224.44 feet in 1996. At that time, there were only two trailers in the trailer park, and the former railroad right-of-way was unimproved and weed covered. Sigourney Builders filled a drainage ditch, put in sewer lines, and poured concrete all in the spring of 1997. Mr. Holm at that time said something to Mr. Heisdorffer, the primary shareholder of Sigourney Builders, Inc., regarding an easement over the right-of-way, and Mr. Heisdorffer told him there was no easement and he was the owner of that property.

. . . Mr. Heisdorffer indicated no one ever operated any motor vehicles on his portion of the railroad right-of-way and he saw no one utilizing it. This position was reinforced by Mr. William Davis, who has resided next to the contested property since 1965. He indicated the trailer park had been there more than 10 years

and until the last few months, there had been no traffic at all on the right of way. . . .

. . . .  
In this instance, Sigourney Builders has had open, hostile, actual, exclusive, and continuous possession of the disputed portion of the former railroad right-of-way under color of title. More than ten years ago, foundations were constructed and a mobile home placed on the property now claimed. The Streigles did not use the property, as indicated by Sigourney Builders, Inc., and the neighbor who testified he had seen no one utilizing the property over a period greater than ten years other than Sigourney Builders, Inc. In addition, Mr. Heisdorffer, on behalf of Sigourney Builders, had openly taken the position he was the owner of the real estate and no one had any easement rights across the property.

Upon our de novo review, we conclude the Streigles' claim to the easement is without merit because Sigourney Builders have acquired full and complete title by adverse possession. The evidence shows that in the ten years following Sigourney Builders's acquisition of the property, it installed a trailer across the entire fifty-foot right-of way, as well as cement pads that impeded the use of the land for ingress and egress. Heisdorffer maintained he owned the land and denied there was any easement over the property. The Streigles were aware of Sigourney Builders's hostile possession of the land and took no action for over a decade. Because the elements of adverse possession have been proved by a preponderance of the evidence, we affirm.

**AFFIRMED AS MODIFIED.**