**IN THE COURT OF APPEALS OF IOWA**

No. 9-790 / 08-1556
Filed February 10, 2010

**THOMAS E. KERSEY and COLLINA F. KERSEY,**
Plaintiffs-Appellants/Cross-Appellees,

**vs.**

**LESLIE BABICH,**
Defendant-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Parties to an easement appeal and cross-appeal from a declaratory judgment ruling concerning the scope of the easement. **AFFIRMED.**

Fred L. Dorr of Wasker, Dorr, Wimmer & Marcouiller, P.C., Des Moines, for appellants.

Alexander R. Rhoads of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., Danilson, J., and Huitink, S.J.*

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

**VAITHESWARAN, P.J.**

Parties to an easement appeal and cross-appeal from a declaratory judgment ruling concerning the scope of the easement.

## *I. Background Facts and Proceedings*

The Kerseys owned a home in West Des Moines, Iowa. Leslie Babich owned an adjacent home. Babich's lot had one driveway serving the front of his home. A second driveway, located on the Kerseys' property, provided access to the garages of both property owners. The second driveway is the subject of this litigation.

Babich and the Kerseys purchased their lots subject to a "Drive and Landscaping Easement" executed by the previous owners. The pertinent language provided that the grantee (now Babich) would have an easement for "driveway and landscaping purposes" over the westernmost thirty feet of the grantor's (now the Kerseys) lot. "Driveway purposes" was defined "as a residential driveway to serve the garage which is located on [Babich's property]." Under the terms of the easement, Babich was responsible for maintaining the driveway and the landscaping around it.

Babich allowed friends, relatives, and home maintenance workers to use the second driveway. The Kerseys disapproved. They sought a declaratory judgment ruling restricting the use of the driveway and requiring Babich to maintain it. They also sought damages for an injured tree along the driveway.

The district court concluded that Babich and his friends, family, and agents had the right to use the driveway to gain access to the residence and garage. The court further concluded that Babich was required to maintain the tree canopy

over the driveway at a height of ten feet and the width of the driveway at ten feet. Babich was also required to pay for repairs to the driveway. The court ordered Babich to pay the Kerseys $325 in damages.

The Kerseys appealed, and Babich cross-appealed. As both parties state that our review is de novo, we will review the entire case de novo. *Skow v. Goforth*, 618 N.W.2d 275, 277 (Iowa 2000).

## *II. Analysis*

### *A. Purpose of Easement*

The Kerseys contend that the easement language unambiguously limited Babich's use of the driveway to himself and to "serving the garage." The district court determined that the easement language was ambiguous and "subject to interpretation." The court rejected the "unduly restrictive" interpretation proffered by the Kerseys, and opted for the "more reasonable" interpretation that "[Babich] or his family, friends, and agents may use the driveway to access the residence/garage all as hereafter set forth."

The overarching goal of contract interpretation is "to determine what the intent of the parties was at the time they entered into the contract." *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008). "Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." *Id.* (quoting *Fausel v. JRJ Enters., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999)). It is for the district court as fact-finder to choose between "reasonable inferences that [could] be drawn from the extrinsic evidence." *Id.*

The court's interpretation was consistent with the essentially undisputed extrinsic evidence showing Babich's expansive use of the second driveway for more than a decade. *See McDonnell v. Sheets*, 234 Iowa 1148, 1153, 15 N.W.2d 252, 255 (1944) ("It does seem that plaintiffs' construction is the one that is most in harmony with the practical construction which the parties placed on this agreement."); *Wiegmann v. Baier*, 203 N.W.2d 204, 209 (Iowa 1972) (noting that, up to a point, the parties acquiesced in unrestricted easement rights). The court's interpretation was also consistent with the absence of limiting language in the easement. *See Wiegmann*, 203 N.W.2d at 208 ("[T]he words relied upon by defendant are words of description and not of limitation."). While the Kerseys argue that the term "garage" limited Babich's use to garage ingress and egress, the easement also characterized the driveway as "residential," a term that suggests a more expansive use. *See McDonnell*, 234 Iowa at 1154, 15 N.W.2d at 255 ("[W]here a right-of-way is granted it may be used for any purpose to which the land accommodated thereby may reasonably be devoted . . . ."). For these reasons, we agree with the court's interpretation concerning the purpose of the easement.

***B. Dimensions of Easement***

Both parties take issue with the ten foot height and width requirements imposed by the district court, with the Kerseys claiming that the dimensions should be reduced to a level that would allow Babich to fit his vehicles into his garage and with Babich arguing that the dimensions of the driveway should be expanded to twelve feet wide by fourteen feet high.

The easement is silent with respect to those driveway dimensions. In such a case, "the grantee is ordinarily entitled to a way of such width as is sufficient to afford reasonable ingress and egress." *Flynn v. Michigan-Wisconsin Pipeline Co.*, 161 N.W.2d 56, 65 (Iowa 1968) (quoting 3 Herbert Tiffany, *Real Property*, § 805, at 332 (3d ed. 1939)). Additionally, "if the way is granted for a particular purpose, what is reasonably necessary for that purpose is to be considered." *Id.* (quoting 3 Herbert Tiffany, *Real Property*, § 805, at 332 (3d ed. 1939)). [1]

We have already concluded that the purpose of the driveway included ingress and egress for maintenance vehicles. With that purpose in mind, we examine Babich's request for a fourteen-foot clearance. An arborist who testified for Babich declined to express an opinion on the appropriate height for the tree canopy over this driveway, stating only that the canopy "should perform at the function that is necessary to access the area." While he stated that the standard height of canopies on arterial streets is fourteen feet and on secondary streets is twelve feet, he testified those were the standards "mostly in our park situation and along our roadways." Additionally, Babich did not indicate that any of the large vehicles he authorized to enter the driveway were more than ten feet high and he acknowledged that his brother's trailer, which gained access via this driveway, was less than ten feet high. *See Skow*, 618 N.W.2d at 280 (noting absence of any evidence, such as dimensions of vehicles or equipment, to

[1] This case is unlike *Flynn*, where the court found "there is no evidence and no factual finding concerning the presently intended necessities of the parties." *Flynn*, 161 N.W.2d at 61. Here, there is an actual controversy between the parties concerning the dimensions and use of the driveway.

support need for additional three inches of passageway). Finally, while Babich testified that fire trucks needed a fourteen-foot clearance, he did not explain why a fire truck could not gain access to his home via his primary driveway in the event of an emergency. In short, there was scant evidence that the stated driveway purpose would be impeded with a ten-foot-high tree canopy.

We turn to the Kerseys' request for clearance of less than ten feet. According to Mr. Kersey, the approximate height of a garage door was seven to eight feet. Had the district court imposed this height restriction, Babich would have been unable to bring his brother's nine foot six inch trailer onto the second driveway, let alone service vehicles of that height. There is no question, therefore, that the driveway purpose would have been impeded at this height.

We are left with the width restriction of ten feet. Again, there was scant evidence that a greater width was necessary for "residential" use of the driveway, including access by service vehicles and trailers. While the back portion of the driveway was twelve feet wide, there was no indication that the rest of the driveway needed to be the same width to serve the purposes outlined by the district court.

We uphold the height and width restrictions imposed by the district court.

***C. Damages***

On cross-appeal, Babich argues that the Kerseys should not have been awarded monetary damages of $325 for tree trimming and tree removal.

The easement provided that Babich had the obligation to maintain the landscaping on an ongoing basis "at [his] sole cost and expense." Based on this language, we conclude the district court acted equitably in awarding damages in

the prescribed amounts. The fact that a portion of the damage award represented an insurance deductible matters little in our view, because the deductible was for a landscaping-related claim made by the Kerseys on their homeowners' insurance policy.

We uphold the damage award entered by the district court.

**AFFIRMED.**