IN THE COURT OF APPEALS OF IOWA

No. 1-618 / 10-0394
Filed November 9, 2011

113TH AVENUE ROAD FUND ASSOCIATION and SANDRA K. MOORE,
Plaintiffs-Appellees,

vs.

I & R PROPERTIES, INC.,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Charles H. Pelton, Judge.

I & R Properties, Inc. appeals from the order granting declaratory judgment in favor of the plaintiffs. **AFFIRMED IN PART AND VACATED IN PART.**

Ryan D. Gerling of Cray, Goddard, Miller, Taylor & Chelf, L.L.P., Burlington, and Stephen P. Wing of Dwyer & Wing, P.C., Davenport, for appellant.

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for appellees.

Heard by Danilson, P.J., and Tabor and Mullins, JJ.

TABOR, J.

This appeal involves a road maintenance and use agreement signed by the owners of lots bordering 113th Avenue in unincorporated Scott County. An association of approximately twenty-five homeowners filed a petition for declaratory judgment seeking the right to blockade 113th Avenue from the north and west to limit the traffic from residents of a nearby trailer park. The homeowners allege I & R Properties, the trailer park managers, violated the 1986 agreement by allowing occupants of approximately 235 trailer homes to use the private road to gain access to its business office and as a shortcut to their trailer lots. The district court ruled in favor of the home owners' association. I & R appeals, claiming the association did not show a change in the road's use after the 1986 agreement.

Because we find—and the association concedes—that the agreement does not restrict the use of Lots 13, 14, and 15, we reverse the district court on that ground. We affirm the district court's decree in all other respects because the lot owners who signed the 1986 agreement contemplated that the "private road" be limited to their "residential use."

I. Background Facts and Proceedings

Plaintiff 113th Avenue Road Fund Association (the association) is a voluntary, unincorporated group of lot owners in a subdivision called BJ Mahoney's Second Subdivision (the subdivision) in Scott County. Plaintiff Sandra K. Moore is the former association president and owns Lot 1 in the subdivision.

The defendant is named as I & R Properties, Inc. (I & R). The association contends I & R owns lots 13, 14, and 15 in the subdivision and operates a trailer park—the Lake Canyada Mobile Home Park—"partially on, and adjacent to, the subdivision." But in its answer, I & R denied owning the lots and affirmatively stated that Lake Canyada L.L.C. is the record title holder of the property. As the district court observed, "the legal relationship between I & R Properties and Lake Canyada is not clear. . . . [but] I & R Properties is at least the resident manager and authorized agent of Lake Canyada L.L.C."

113th Avenue, which stands at the center of the dispute, is located in an unincorporated area west of Davenport. The private gravel and asphalt road runs north and south for a distance of approximately 960 feet. Approximately twenty-five single-family residences line both sides of 113th Avenue. The southernmost end of the road intersects 140th Street, which runs east to west and is a frontage road for Highway 61. The Lake Canyada Mobile Home Park lies at the north end of 113th Avenue and also extends west of the private road.

I & R and Lake Canyada use residential buildings on lots 13 and 14, located on 113th Avenue, as an office for the mobile home park and as a residence for the park's manager. Several mobile home residents use 113th Avenue as their ingress and egress to their mobile homes. In addition, I & R cut a roadway through lot 15, which connects with 113th Avenue. The crude roadway provides the occupants of approximately 235 trailer lots with a shortcut to 113th Avenue so that they may access Lake Canyada's business office.

The sixty-six-foot-wide roadway was first recorded in a 1948 plat of the B.J. Mahoney's Second Subdivision. The Mahoneys recorded an affidavit in 1964 reaffirming their dedication of the roadway for the use of "all of the owners of lots" in the 1948 plat. On June 30, 1986, the owners of the land adjoining the road signed an agreement for continued maintenance and access to and from their properties. That agreement stated that 113th Avenue

> is designated as a private road for residential use for all owners and residents of the Lots in said Auditor's Plat of B.J. Mahoney's Subdivision and B.J. Mahoney's 2nd Subdivision.
>
> The owners of the following adjoining lots to the described road state that each party has the right to use the described road for residential use to Ingress and Regress. This agreement runs with the land, also that the road is maintained by the adjoining property owners and all costs are jointly shared.
>
> This is a recorded perpetual agreement "running with the land" for continued maintenance and safe and suitable vehicular access to and from the property at all times. This road is a private street access and private street maintenance.

In 1986, Dean Harding managed Hawkeye Real Estate Investments and signed the agreement for Lots 13, 14, and 15.

Friction existed between the association and the trailer park management. The district court found that as early as 1994, the association

> placed several four-foot square cement blocks at the north end of the roadway blocking its ingress and egress from that direction and on a short road on the west side, both of which went into the mobile home park.

In July 2006, the association filed a small claims action seeking recovery of road maintenance expenses from Lake Canyada L.L.C. The trailer park management filed a counterclaim to be reimbursed for snow removal and road surface repair. In a March 30, 2007 ruling, a Scott County magistrate interpreted

the agreement as a "private road easement and obligation to maintain an easement that is specifically to run with the land." The magistrate awarded each side damages and offset the recoveries. After receiving the order from the magistrate, I & R removed the cement blocks previously placed by the association.[1] In a calendar entry on May 21, 2007, the magistrate clarified: "This judge did not enter any order regarding movement of the cement blocks. Small claims does not have jurisdiction to enter such order." Then association president Moore sent a letter to I & R Properties expressing the association's view that removal of the blocks was "unacceptable" and asserting:

> The road agreement states that 113th Avenue is a private road. It is for entering and exiting for the owners and residents of 113th Ave. Nowhere in the agreement does it state that this also includes residents of the mobile home park that you own.

Residents living on 113th Avenue noted a significant increase in traffic after the removal of the cement blocks. The association and its former president, Moore, petitioned for declaratory judgment, requesting that the court enter a decree declaring the association had the right under the 1986 agreement to prevent the ingress to and egress over 113th Avenue from the northernmost lots. They further requested the court enter an order permanently enjoining removal of the concrete blocks and enjoining I & R from taking any measures to allow non-residents the use of the road in any way.

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[1] I & R likely removed the barricades based on this language in the magistrate's ruling:

> Clearly the Road Fund has been violating the easement rights of lots 13, 14, and 15 by placement of the large cement cubes and maintaining of such cubes as a means to block frontage access by what is now Lake Canyada LLC.

The district court held a hearing on the declaratory judgment petition on October 13, 2009. Homeowners testified the removal of the barricades opened the road up to more speeding vehicles, causing dust, noise, and increased wear and tear on the roadway. I & R offered evidence that fire department and ambulance services could respond more quickly to emergencies with the barriers removed on 113th Avenue.

On November 20, 2009, the district court entered an order concluding "I & R Properties and Lake Canyada L.L.C. violated 113th Road's legally enforceable covenants in several respects." Specifically, the court stated as follows:

> Their first violation is by using a residence for a commercial purpose rather than a residential use as required by the covenant. Their second violation is that they overuse their right of ingress and egress . . . by inviting renters of 235 lots to conduct their business on 113th Avenue Road. The third violation is that they have constructed another access road for their tenants to use 113th Avenue Road. Their fourth violation is that the resulting heavy traffic use far exceeds their proportionate share of the maintenance expenses of the road. The fifth violation is the heavy use violates the covenant's terms to provide safe and suitable vehicular access to and from the property at all times. The sixth violation is their opening of the north end of 113th Avenue Road to residents of the mobile home park.
>
> The court entered the following orders that:
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> I & R Properties and Lake Canyada L.L.C. (1) should not use their lots 13, 14, and 15 for commercial purposes, but only residential use; (2) their roadway on lot 15 should be closed to through traffic to 113th Avenue; (3) the north end of 113th Avenue should be closed to access to and from the mobile home park; and (4) they should be prohibited from interfering with the Association's enforcement of the covenants declared herein.

The court declined to enter an injunction against the defendants "because it is an extraordinary remedy and may not be necessary, but it could be done if necessary to enforce this Decree."

I & R filed a motion to enlarge or expand the district court's findings under Iowa Rule of Civil Procedure 1.904. Among other contentions, I & R challenged the court's interpretation that "the road use and maintenance agreement . . . creat[ed] a restrictive easement applicable to the use of the lots in the subdivision." The company contends the association's

> Exhibit 2 clearly applies only to the 66 foot road easement . . . and in no way purports to apply any restrictive covenants as to the land use by the owners of individual lots and specifically fails to forbid commercial or the combined residential and commercial use of said lots.

The company argued that neither party raised this issue and it was "unnecessary for the court, in resolving the dispute over the placement of the concrete blocks, to address this issue." The company requested the court "vacate any findings of fact and orders which pertain to the permissible use of Lots 13, 14 or 15 as they are unnecessary for the resolution of the matter which was brought before the court for trial."

On February 4, 2010, the court ruled on the rule 1.904 motion, concluding that the "decision in this declaratory judgment is within the perimeters of the prayer requested by Plaintiff" and denying the defendant's motion. I & R appeals.

II. Scope & Standard of Review

The parties agree the district court tried this matter in equity and our review is de novo. Iowa R. App. P. 6.907. Our review of a declaratory relief action is determined by the manner in which the action was tried to the district court. *SDG Macerich Properties, L.P. v. Stanek Inc*., 648 N.W.2d 581, 584 (Iowa 2002). In our de novo review, we examine the facts as well as the law and decide the issues anew. *Id.* In doing so, we give weight to the district court's findings of fact, but we are not bound by them. *Id.*

III. Analysis

Our task is to interpret the 1986 road agreement. Interpretation is a search for the meaning of the agreement's terms. *See Cline v. Richardson*, 526 N.W.2d 166, 168 (Iowa Ct. App. 1994). "Our object is to ascertain the meaning and intention of the parties as expressed by the language used." *Id*.

A. Did the agreement restrict use of I & R's lots?

I & R argues the district court erred when it construed the 1986 agreement as a restrictive covenant placing limits on lot owners' use of their property. It maintains the "primary purpose of the agreement is to serve as a road maintenance agreement" that identifies "the obligations of the parties who benefit from the [113th Avenue] roadway." I & R contends the district court did not need to reach this issue to resolve the dispute. It asks us to vacate the decision to the extent it applies the terms of the 1986 agreement as "restrictive and protective covenants" to the lots in the subdivision. The company cites *Iowa Realty Co., Inc. v. Jochims*, 503 N.W.2d 385, 386 (Iowa 1993), for the proposition that Iowa

courts construe restrictions on the free use of property strictly against the party seeking to enforce them.

The attorney for the association acknowledged at oral argument that the district court's declaration that I & R and Lake Canyada "should not use their residential properties on Lots 13, 14 and 15 for commercial purposes" was not necessary to the ruling and exceeded the relief requested.

We agree the district court went too far in reading the 1986 agreement to create restrictions on the use of lots in the subdivision separate from the use of the roadway. The association members did not argue the agreement limited the use of the lots to residential purposes. If the trailer park is able to operate its business office with access from a public roadway, that use would not be prohibited by the agreement. Accordingly, we vacate the portion of the district court's decree restricting the use of Lots 13, 14, and 15.

B. Does the association have the right to restrict access to the road?

In a second assignment of error, I & R asserts the district court assumed without proof the association had the right to erect blockades that interfere with a lot owner's use of the road. The company asserts the association is asking the court to reform the 1986 document, and because the association requests reformation, its burden is "by clear, satisfactory and convincing proof." I & R invokes contract principles by stating that "'[a] contract may be reformed where, due to mistake, the contract does not reflect the actual intent of the parties,'" and arguing that because the parties presented "[n]o evidence as to the actual intent

of the parties [entering the 1986 agreement]," the association failed to meet its burden of proof.

I & R recognizes the 1986 agreement added a reference to "residential use" of the road, but argues that phrase "cannot fairly be construed to ban traffic related to the operation of the park as a place where persons reside." We disagree the association is requesting reformation of the 1986 agreement. The association argues the road agreement is an express easement and I & R's use of the easement is beyond its original scope. The association reasons that I & R Properties "had no right to materially increase the servitude on the other owners in the subdivision."

"An easement is a liberty, privilege or advantage in land without profit, existing distinct from ownership." *Hawk v. Rice*, 325 N.W.2d 97, 98 (Iowa 1982). An easement benefits the dominant estate and burdens the servient estate. *See generally Gray v. Osborn*, 739 N.W.2d 855, 861-62 (Iowa 2007). Under Iowa law governing easements, the dominant estate acquires no greater use than the parties intended when an easement was created. *Schwob v. Green,* 215 N.W.2d 240, 243 (Iowa 1974). But ordinarily where the easement involves ingress and egress, "a mere increase in the frequency of use will not constitute an additional burden." *Id.* We recognize a difference between a mere increase in use and a change in use that could not have been contemplated by the parties when the original easement was granted. *See Stew-Mc Dev., Inc. v. Fischer*, 770 N.W.2d 839, 847 (Iowa 2009).

The association relies on *Schwob* for the proposition that lot owners may restrict use of a private road to residential purposes when commercial use was not contemplated by the original grant of an easement. In *Schwob*, the property at issue was originally owned by a hunting club for private purposes. *Schwob*, 215 N.W.2d at 242. The club never had more than twelve members. *Id*. When the club disbanded, lots were platted for private homes for the members. *Id*. Some property remained which was not suitable for residential subdivision. *Id*. The eventual purchaser of the remaining property developed it into cabin sites rented to campers and vacationers. *Id*. This development of the property greatly increased the use of the private roads maintained by the private home owners. *Id*. Our supreme court held:

> The notion that this property would be developed into a commercial camping ground which would subject the roads to an entirely different type of use in furtherance of a business venture cannot be reasonably inferred as having been the intention of the parties when the subdivision was platted and the lots were conveyed to plaintiffs or their predecessors.

Schwob, 215 N.W.2d at 243. The court stated: "[W]e are not faced only with increased use of the easement; we are faced rather with its use for a purpose totally different than that for which it was granted." *Id*.

I & R tries to distinguish *Schwob* as follows:

> In *Schwob* it was clear that the parties did not intend to develop the property for use other than the residential lots divided among the former members of the club, where in this case there was already an existing use as a mobile home park of which all parties to the agreement were fully aware before entering into it.

I & R contends *Goss v. Johnson*, 243 N.W.2d 590 (Iowa 1976), is the more helpful precedent. In *Goss*, two residents of a subdivision brought an

action against the association acting on behalf of other residents to prevent the association from barricading certain streets which allowed non-residents to enter the subdivision. 243 N.W.2d at 591. In holding the association was not entitled to impede the plaintiffs' use of common easements, our supreme court observed "[a]n owner in common of an easement may not alter the land so as to render the easement appreciably less convenient for one of his co-owners." *Id*. at 595.

We find the circumstances in *Schwob* more closely aligned with the instant facts. The testimony about 113th Avenue reveals that the lots adjoining the private road were held and used by about twenty people for their own residences as opposed to any commercial or business endeavors. The notion that more than two-hundred occupants of mobile homes may use I & R's easement to transact business at the manager's office and to gain a quicker connection to a public road was not contemplated by the lot owners who signed the 1986 agreement for access and maintenance of the private road.

I & R claims this case differs from *Schwob* because the trailer park existed before the 1986 agreement. We do not find the preexistence of the trailer park allows I & R to avoid the express language of the 1986 agreement when the previous trailer park owners signed that agreement. The 1986 agreement designated 113th Avenue as "a private road for residential use" and granted an easement to the owners of lots adjoining 113th Avenue "for residential use to Ingress and Regress." The 1986 agreement was a "recorded perpetual agreement 'running with the land' for continued maintenance and safe and

suitable vehicular access to and from the property at all times." All costs of the maintenance were to be "jointly shared."

Unlike the plaintiffs in *Goss*, I & R—through their predecessors in interest—agreed to the terms of the 1986 document. The agreement did not contemplate that I & R could open the private road to hundreds of customers who rented trailer lots from the company. That commercial use of the road by non-residents has created an unintended burden on common holders of the easement. *See Schwob*, 215 N.W.2d at 243. The agreement's reference to proportional responsibility for the maintenance costs also supports the conclusion that the signatories did not anticipate opening 113th Avenue to non-residents who would benefit from their use of the private road without contributing to its upkeep. *Cf. Keokuk Junction Ry. Co. v. IES Industries, Inc*, 618 N.W.2d 352, 362 (Iowa 2000) (finding it inequitable to allow third party to derive a benefit from an easement without first paying for it).

Like the district court, we find I & R has violated the 1986 agreement by allowing the different type of use of 113th Avenue by their tenants. We affirm the district court's declaration I & R's roadway on Lot 15 should be closed to through traffic to 113th Avenue, the north end of 113th Avenue should be closed to access from the mobile home park, and I & R should be prohibited from interfering with the association's enforcement of the agreement.

Finally, I & R argues installing blockades is not a proper enforcement mechanism. The company asserts the association has "offered no evidence to justify the placement of the blocks or to establish the right to place them pursuant

to the 1986 road agreement." We do not express an opinion on precisely how the 1986 agreement should be enforced. The district court declined to enter an injunction against I & R, but left open the possibility that such a remedy "could be done if necessary to enforce this Decree." We do not disturb that finding on appeal.

AFFIRMED IN PART AND VACATED IN PART.