IN THE COURT OF APPEALS OF IOWA

No. 3-825 / 12-1499
Filed November 6, 2013

JAMES SLECHTA,
Plaintiff-Appellee,

vs.

RICHARD JEWETT and NANCY JEWETT,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

The defendants appeal the district court's grant of a declaratory judgment in favor of the plaintiff. **AFFIRMED.**

Bruce Lundy Butler of Bruce Butler Law Office, Des Moines, for appellant.

James A. Pugh of Munro Law Office, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Mullins, JJ.

VAITHESWARAN, P.J.

Richard and Nancy Jewett appeal a district court order declaring that they do not have an easement by prescription or acquiescence over their neighbor's driveway.

I. Background Facts and Proceedings

Richard and Nancy Jewett and James Slechta owned adjacent lots—Lots 26 and 27 respectively. They and their predecessors in title shared a driveway that was situated on Lot 27.

The neighbors' amicable relationship came to an end when the Jewetts' granddaughter, who was living on Lot 26, started parking a car and leaving her children's toys in a turn-around area, impeding Slechta's ability to back out of the driveway. Slechta made comments that the Jewetts perceived as a threat to their granddaughter and her children. Both sides placed temporary barriers that obstructed free use of the driveway.

In 2010, the Jewetts sent Slechta a letter claiming an easement in the driveway. Slechta responded with a petition for a declaratory judgment that "[n]o such easement exists" in favor of the Jewetts. The Jewetts filed an answer and counterclaim, requesting a declaratory judgment that they had an easement by prescription or an easement by acquiescence for ingress and egress over Slechta's property.

Following trial, the district court granted Slechta's request for declaratory judgment and dismissed the Jewetts' counterclaim. The court declared, "[T]he owners of Lot 26 of Day Acres, an Official Plat in the City of Des Moines, Polk

County, Iowa, do not have an easement for ingress and egress over Lot 27 of Day Acres."

The district court summarily denied the Jewetts' motion for enlarged findings and conclusions, and they appealed. Slechta moved to dismiss the appeal stating the Jewetts had since constructed "a permanent cement/concrete driveway" on their property that rendered the appeal "moot and/or frivolous." The supreme court denied the motion "without prejudice to any arguments that may be made on appeal."

II. Mootness

We begin with Slechta's motion to dismiss. *See* Iowa Rs. App. P. 6.1006(1) (allowing an appellate court to dismiss appeal); 6.1006(2) (allowing an appellate court "to affirm the appeal on the ground that the issues raised by the appeal are frivolous"). Slechta contends the construction of the driveway "negated any need to use the Plaintiff's property for access to their garage." The Jewetts counter, in part, that "[n]ecessity is not an element of any of Defendants' causes of actions" and if this court "grants the relief sought by the Defendants, the parties will be in the exact positions as they were prior to the dispute giving rise to the litigation."

An appeal "'is moot if it no longer presents a justiciable controversy because [the contested issue] has become academic or nonexistent.'" *In re D.C.V.*, 569 N.W.2d 489, 494 (Iowa 1997) (citation omitted). As a general rule, this court will dismiss an appeal "'when judgment, if rendered, will have no practical legal effect upon the existing controversy.'" *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001) (citation omitted); *accord Junkins v. Branstad*, 421 N.W.2d 130,

133 (Iowa 1988). "[S]ubsequent events may make an issue involving a court's prior decision moot." *Grefe & Sidney v*. *Watters*, 525 N.W.2d 821, 827 (Iowa 1994).

The Jewetts do not deny that they built their own driveway. The new driveway eliminates the Jewetts' need to traverse the driveway on Slechta's property. For that reason, we have serious doubts about whether there remains a justiciable controversy. But, as the Jewetts point out, necessity is not an element of the declaratory judgment action or counterclaims. *See Nichols v*. *City Of Evansdale*, 687 N.W.2d 562, 568 (Iowa 2004) (discussing various types of easements, including "easement by necessity" which, as the name implies, requires proof of the necessity of the easement). Accordingly, the legal issues raised by the Jewetts remain viable and we will proceed to the merits, reviewing the record de novo. *Brede v. Koop*, 706 N.W.2d 824, 826 (Iowa 2005).

III*. *Prescriptive Easement

The Jewetts contend they are entitled to a prescriptive easement for use of Slechta's driveway. A prescriptive easement is created "when a person uses another's land under a claim of right or color of title, openly, notoriously, continuously, and hostilely for ten years or more." *See Johnson v*. *Kaster*, 637 N.W.2d 174, 178 (Iowa 2001). It must be established that the owner of the land on which the easement is claimed "had express notice of the claim of right, not just the use of the land." *Brede*, 706 N.W.2d at 828.

The district court found this express notice lacking. The court stated,

> There was no express notice of a claim to an easement until 2010, when the Jewetts sent the letter claiming an easement. While there is much evidence of Jewetts' use and maintenance of the driveway,

> they failed to prove this element of their claim for prescriptive easement.

This finding is supported by the record. Specifically, when Nancy Jewett was asked for the basis of the easement claim, she said, "Use. Just using it. I mean, driving in and out of the driveway."[1]

Nor was maintenance of the driveway by the Jewetts and their predecessors sufficient to furnish notice of the easement claim because that maintenance was not independent of the use of the driveway. *Id.* at 829 (stating that addition of gravel or road rock to the surface and grading of surface as necessary were not "independent of the use of the road"). According to Nancy Jewett, her father "repair[ed] potholes, spread white rock, removed snow," retained someone to pave the driveway with gravel and blacktop, and cleaned leaves and mowed the area between the asphalt. Richard Jewett confirmed that holes were filled with gravel and ash, white rock was added, and snow was cleared. He also noted that, after the driveway was paved with concrete, extra concrete was poured to widen the driveway. Significantly, he agreed with Slechta's attorney that these efforts were made to keep the driveway "in a condition so that it could be used basically as a driveway." This acknowledgment confirms that the maintenance of the driveway "was consistent with their permissive use" and was "not sufficient to put [Slechta] on notice that they claimed an easement in the driveway." *See id.*

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[1] The 2010 letter could not serve as the express notice because the lawsuit was filed in 2011, less than ten years after Slechta received actual notice of the claim. *See Brede,* 706 N.W.2d at 829.

The district court next considered a relaxed standard for a prescriptive easement that the Iowa Supreme Court has endorsed "in those situations in which the party claiming the easement has expended substantial amounts of labor or money in reliance upon the servient owner's consent or his oral agreement to use." *See id.* at 828. The district court found that:

> This relaxed standard is also not applicable here, as there is no proof of the servient owner's express consent, or of an oral agreement to the use. Thus, even though the Jewetts and their predecessors in title did expend substantial time and labor in keeping the driveway in passable condition, it was not done so in reliance on servient owner's express consent or agreement.

(Citations omitted.) Again, these findings are supported by the record. Nancy Jewett categorically stated that nobody gave them permission to use the driveway. She also stated that, to her knowledge, Slechta had never made an oral agreement with her or with the predecessor owners to have an easement on his land. These admissions precluded a finding of a prescriptive easement under the relaxed standard.

In sum, we agree with the district court that the Jewetts failed to prove an easement by prescription.

IV. Easement by Acquiescence

The Jewetts contend they are entitled to an easement by acquiescence. The district court concluded that the doctrine of acquiescence is inapplicable where a party is seeking to establish a new easement as opposed to defining the boundaries of an existing easement. We agree with the court's cogent analysis, which we will not duplicate here. It is sufficient to emphasize two points. First, the Iowa Supreme Court has described four ways of creating an easement and

an easement by acquiescence is not one of them. *See Nichols*, 687 N.W.2d at 568. Second, references to "easements by acquiescence" are sparse and, generally, are applied to significantly different fact patterns. *See Skow v. Goforth*, 618 N.W.2d 275, 281 (Iowa 2000) (referring to expansion of easement by prescription or acquiescence); *Mensch v. Netty*, 408 N.W.2d 383, 385 (Iowa 1987) (referring to easement by acquiescence in context of expanding width of existing easement); *Webb v. Arterburn*, 67 N.W.2d 504, 513-515 (Iowa 1954) (stating that plaintiffs' pleading of easement by acquiescence was vague, finding "no evidence that any roadway easement over any part of defendants' land was ever established by mutual acquiescence, prescription, or estoppel," proceeding to analyze establishment of easement by grant, prescription, necessity, or implication, and stating the "decisive factor" was the absence of express notice that the plaintiffs or their predecessor claimed the easement as a matter of right); *Thompson v. Schappert*, 294 N.W. 580, 582 (Iowa 1940) (finding easement by acquiescence where each owner furnished half of the land for a driveway).

The district court nonetheless proceeded to analyze the merits of an easement-by-acquiescence claim, which, at a minimum, requires "the mutual recognition by two adjoining landowners for ten years or more." *See Skow*, 618 N.W.2d at 281. The court found no such easement. Again, the record supports the court's finding. Specifically, Slechta stated that, until the 2010 letter sent by the Jewetts, he discerned no activities indicating that the Jewetts were making a claim to an easement interest in his property. That testimony alone precludes a finding of "mutual" recognition of an easement. *See*, *e.g.*, *Tewes v. Pine Lane Farms*, *Inc.*, 522 N.W.2d 801, 807-08 (Iowa 1994) (stating each of the adjoining

landowners or their grantors must have knowledge of and consented to the asserted property line as the boundary line); *Ashton v. Burken*, 403 N.W.2d 52, 55 (Iowa Ct. App. 1987) (stating "[a]cquiescence means a consent to the conditions, and involves knowledge of the conditions").

V. District Court's Allowance of Amendments to Slechta's Pleadings

The Jewetts finally contend the district court abused its discretion in allowing Slechta to amend his answer to the Jewetts' counterclaim. Given the broad discretion we afford trial courts in ruling on motions to amend, we decline to disturb the court's rulings. *See Whalen v. Connelly*, 545 N.W.2d 284, 293 (Iowa 1996) ("A trial court has considerable discretion in ruling on a motion for leave to amend, and [this court will] reverse only on a clear abuse of discretion.").

VI. Disposition

We affirm the district court's grant of a declaratory judgment finding no easement by prescription or acquiescence over Slechta's property.

AFFIRMED.