IN THE COURT OF APPEALS OF IOWA

No. 3-870 / 13-0178
Filed October 23, 2013

NATHAN A. TRAPPE,
Plaintiff-Appellant,

vs.

LUANA SAVINGS BANK and MICHAEL C. COOK,
Defendants-Appellees.

Appeal from the Iowa District Court for Clayton County, John J. Bauercamper, Judge.

The plaintiff appeals, and the defendants cross-appeal, from the district court's order issuing an injunction restricting the defendants' use of an easement. **AFFIRMED ON APPEAL; REVERSED ON CROSS-APPEAL.**

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Parrish, Decorah, for appellant.

Dale L. Putnam, Decorah, for appellees.

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

DOYLE, J.

Nathan Trappe appeals, and Luana Savings Bank and Michael Cook ("Cook") cross-appeal, from the district court order interpreting an easement and issuing an injunction restricting Cook's use of the easement. We affirm on appeal, and reverse and remand on cross-appeal.

I. Background Facts and Proceedings

The properties at issue are two century-old adjacent two-story brick commercial buildings located in downtown Monona. The two buildings adjoin on one side, face a city street to the south, and back to an alley to the north.

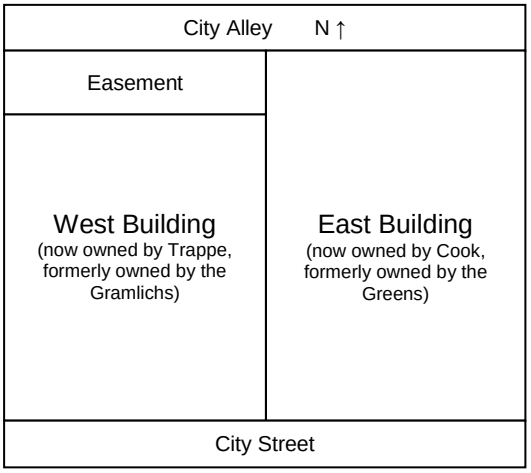
In the 1970s, the two buildings were owned by the Greens (east building) and the Gramlichs (west building). The Greens and Gramlichs operated retail and services businesses on the main floors of the buildings. The back of each building was equipped with a loading dock, and the businesses required access to the alley to unload freight into the rear doors of the buildings.

At some point the Greens and Gramlichs became aware that a strip of land located behind the Gramlichs' building and abutting the alley was actually owned by the Greens. In 1977, they entered into and recorded a quit claim deed and agreement to resolve the potential impediment to the use and value of their properties. The document sets forth legal descriptions of both properties and stated, in relevant part:

> WHEREAS, the two property descriptions shown above overlap, causing confusion and uncertainty as to the correct boundary line.
>
> NOW, THEREFORE, the parties hereby agree as follows.
>
> . . . .
>
> Greens . . . grant to Gramlichs an easement over and across that part of Greens' property lying between the northern boundary

> of Gramlichs' property and the City alley to the North for the purpose of ingress to and egress from the buildings located on Gramlichs' property. Gramlichs agree that said easement will not be used in any manner which will interfere with Greens' use of their property. Specifically, Greens' access to their buildings and loading docks shall not be impeded in any manner.

The below diagram generally depicts the agreement:



For many years, there were residential tenants on the upper floor of the west building. These tenants typically parked vehicles behind the west building on the ground owned by the Greens but subject to the easement. The Greens and their predecessors and successors in title did not object to the west building tenants' parking in that area.

Nathan Trappe purchased the west building in 2005.[1] He leased the first floor to a flooring company and the second floor to residential tenants. The flooring company and the residential tenants regularly used the easement area. The flooring company accessed a storage area for its inventory at the back of the

[1] After these proceedings were initiated, Trappe transferred ownership of his property to his corporation, Allen Rentals Company, L.L.C. Thereafter, Trappe filed a motion for permission to amend his petition to add and substitute Allen Rentals Company, L.L.C. as plaintiff; however, this motion was never addressed by the court. We refer solely to Trappe as the plaintiff and property owner.

building through a service door Trappe installed, and the tenants parked their vehicles behind the building in the easement area. As in years past, the owners of the east building did not object to this use of the easement.

In 2009, Luana Savings Bank obtained title to the east building through a deed in lieu of foreclosure from a bank customer. Luana asserted exclusive rights to use the easement area behind the west building. In 2011, Luana sold the property to Michael Cook on an installment contract.[2] Cook, as Luana had, asserted exclusive rights to use the easement area behind Trappe's building.

In particular, Cook erected signs and began longer term parking of his vehicles and trailers in the easement area with the express purpose of preventing Trappe and his tenants from parking there. Angry exchanges between the parties resulted, as well as calls to the police. Later, Cook began leasing the second floor of his building to residential tenants and claimed the right to use the easement area behind Trappe's building as parking for his tenants.

Trappe's tenants were inconvenienced by this dispute. The flooring company had difficulty moving rolls of flooring into the storage area. Access was not completely blocked, but was less convenient because the rolls of floor covering and other material had to be carried farther and around parked vehicles to enter the storage area.

These events eventually prompted Trappe to file a petition in equity[3] against Cook and Luana (collectively, Cook) seeking to establish a boundary by acquiescence under Iowa Code section 650.14 (2011) ("If it is found that the

[2] When the contract is paid in full, Cook will obtain a deed from Luana for the property.
[3] Trappe's initial petition named only Cook as defendant; he subsequently filed an amended petition naming both Cook and Luana.

boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.").

Cook filed an answer and affirmative defense, claiming Trappe "is estopped from bringing this action as [his] predecessor received an easement to the property in question."

Trappe filed an amended petition, acknowledging the easement and claiming, "The Defendants . . . have failed and refused to honor the terms of the easement and that they have permitted and demanded the right to park in such ways as to interfere with the ingress and egress of the buildings on Plaintiff's property." Trappe requested the court issue a temporary and permanent injunction restraining Cook from "interference" with his use of the easement.

Following a two-day trial, the district court entered a decree, finding (1) Trappe had "no right to use the easement area as permanent parking for his residential tenants," (2) Cook had "placed unreasonable restrictions upon [Trappe]'s use of the easement for access," and (3) "a permanent injunction is necessary to insure [Trappe] will have full use of the easement without unreasonable interference by [Cook]." The court ordered:

> A permanent writ of injunction, valid for a period of 10 years from the date of this decree, shall be issued by the clerk of court, restraining and enjoining the defendants, Luana Savings Bank and Michael C. Cook, or their successors and assigns, from parking vehicles or placing containers or barriers of any kind on the easement area granted for ingress and egress for the benefit of the plaintiff, Nathan A. Trappe, or his successors and assigns, per the agreement filed for record in the office of the Clayton County Recorder on June 2, 1977, in Book 69 at pages 372-373. This injunction specifically requires the defendants to keep an area 8 feet wide, extending from the existing, larger rear door behind the

> plaintiff's building to the city alley behind that building, open and clear, from 7:00 a.m. central time to 7:00 p.m. central time, Monday through Saturday of each week.

The decree resulted in the filing of a flurry of motions by the parties. In one motion, Cook stated the court's order "does seem to be somewhat ambiguous," and requested the court "to clarify that the restriction of parking vehicles or placing containers or barriers of any kind on the easement area relates to the 8 foot wide area as designated by the Court." In another motion, Trappe took issue with the "time restrictions" set forth in the injunction, and stated, "The Court's attempt at reaching a compromise over the use of the easement is not supported by the evidence of its actual use and is more confusing than it is helpful." Trappe further claimed the easement was "intended to cover tenant parking" and requested the court set aside its finding that the easement does not include parking rights. Both parties questioned the location of the door the court referenced as "the larger rear door" in the decree.

Following a hearing, the district court entered a ruling denying the parties' motions, and revising the decree "to provide that the reference in the permanent writ of injunction to 'larger rear door' is corrected to refer to 'west rear door.'" The court also explained its prior judgment and decree, stating:

> The court concluded in its ruling that this suit is solely an action for a permanent injunction. No temporary injunction was ever granted by the trial court, although one had been requested. The court also concluded that it was necessary to interpret and construe an existing, express easement, in order for it to decide whether an injunction should issue.
>
> The injunction issued by the court is not a limitation on the plaintiff Trappe's easement rights, but is merely the remedy the court has granted to the plaintiff to provide relief from the prior misconduct by the defendant, Michael C. Cook, who unreasonably interfered with the plaintiff's rights of ingress and egress. Because

> the parties cannot peaceably agree on joint use of this area, the court determined that there should be some minimal level of access guaranteed to Trappe, and that minimum level of access in included in the injunction.
>
> This decree does not prevent Trappe and his tenants from traveling across the balance of the defendant's property which is subject to the easement, so long as they do not use it for a parking lot.
>
> The court limited the duration of the injunction to 10 years for several reasons. First, the court hopes that the parties will make reasonable accommodations with each other in the future for the joint use of this area and an injunction will no longer be needed. Second, if problems persist, a subsequent application for injunction may be filed. Third, establishing a procedure which will remain workable in perpetuity requires the use of a crystal ball, which the original scrivener of the easement and this judge both lack.

Trappe appeals and Cook cross-appeals.

II. Scope and Standard of Review

Our review of the trial court's order issuing a permanent injunction is de novo. *See* Iowa R. App. P. 6.907; *Opat v*. *Ludeking*, 666 N.W.2d 597, 603 (Iowa 2003). "Although the trial court's factual findings are not binding, we give weight to the court's assessment of the credibility of the witnesses." *Opat*, 666 N.W.2d at 603.

III. Trappe's Appeal

On appeal, Trappe claims the easement should be interpreted so as to provide "unlimited access, including parking" to the dominant estate. According to Trappe, the "extrinsic circumstances that existed in 1977," including the "original intention of the parties to the agreement," must be considered in determining the scope of the easement. Trappe requests this court reverse the district court's ruling declaring he had no right to use the easement area for parking.

Cook responds, alleging Trappe is asking us "to judicially construct 'ingress' and 'egress' beyond their plain, ordinary meaning." Cook claims "[n]othing in the terms of the express easement lends support to an argument that the original parties intended anything other than the ordinary meaning of the terms." As Cook further states, "Without showing ambiguity in the express easement itself, the circumstances and extrinsic evidence of some other intent are irrelevant."

"The cardinal rule of contract interpretation is to determine what the intent of the parties was at the time they entered into the contract." *Pillsbury Co*., *Inc*. *v*. *Wells Dairy*, *Inc*., 752 N.W.2d 430, 436 (Iowa 2008). Except in cases of ambiguity, we determine such intent from what the contract says. *Am*. *Soil Processing*, *Inc*. *v*. *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd*., 586 N.W.2d 325, 329 (Iowa 1998). "Thus, if the parties' intent is clear and unambiguous from the words of the contract, we enforce the contract as written." *Id.*

Here, the contract at issue is an express easement, written and recorded, granting Trappe an easement "*over and across* [the property at issue between his building and the City alley] for the purpose of *ingress to and egress from* [his building]." (Emphasis added.) The agreement further provides "that said easement will not be used in any manner which will interfere with [Cook]'s use of their property," and "[s]pecifically, [Cook's] access to their buildings and loading docks shall not be impeded in any manner."

We conclude, as did the district court, the easement is plain and unambiguous and the intent of the contracting parties can be gleaned from what

the easement says—namely, an easement to Trappe "over and across" Cook's property "for purpose of ingress to and egress from" his building.[4] "[T]he terms ingress, egress, and regress are defined as expressing the right to enter, go upon, and return from the lands in question." *Wendy's of Ft. Wayne, Inc. v. Fagan*, 644 N.E.2d 159, 162 (Ind. Ct. App. 1994). It is essentially a right of access. *See Martinez v. Martinez*, 604 P.2d 366, 367-68 (N.M. 1979). The easement does not allow Trappe, or his tenants, to park in the easement area, or use the easement in any manner other than for ingress to and egress from his property.[5] *See*, *e.g.*, M.O. Regensteiner, Annotation, *Right to Park Vehicles on Private Way*, 37 A.L.R.2d 944 § 2[b] (1954) (observing the dominant estate has "no absolute right to park" on right of way easement and surveying cases on the subject). We affirm on this issue.[6]

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[4] Because we find the easement is unambiguous, we need not consider any extrinsic evidence of another alleged intent for the easement. *See Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001) (observing that where the language of a contract in ambiguous, the resolution of ambiguous language may involve extrinsic evidence).

[5] Although the predecessors in interest to Cook's property may have allowed tenants from the west building to park in the easement area, such use was permissive only and not authorized by the easement. Clearly the situation has changed, and Trappe's use of the easement for tenant parking apparently now interferes with Cook's right to exercise some amount of use of that area. "[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." *Skow v. Goforth*, 618 N.W.2d 275, 278 (Iowa 2000).

> It has been held that under a driveway easement, or a right of way for ingress and egress, the owner of the dominant estate has no absolute right to park his vehicles on the driveway or right of way, but does have a right to park in such a manner *as not to interfere with the use of the property by the owner of the servient estate*.

See M.O. Regensteiner, Annotation, *Right to Park Vehicles on Private Way*, 37 A.L.R.2d 944 § 2[b] (1954).

[6] To be clear, this is not to say we condone Cook's actions during these proceedings. Unfortunately, it seems Cook has acted, at times, with no particular purpose except to frustrate his neighbors. Certainly it would have been more prudent for Cook to take the dispute to the court rather than attempt to take matters in his own hands.

IV. Cook's Cross-Appeal

On cross-appeal, Cook contends "there were insufficient grounds to order injunctive relief and Trappe's petition must be dismissed."[7] For the following reasons, we agree.

Injunctive relief is an extraordinary remedy that is granted with caution and only when required to avoid irreparable damage. *See 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. The dispositive issue in this case is whether Trappe has established a "substantial injury or damages" under the second element.

At the outset, we observe 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 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."). It

[7] As a preliminary issue, Cook claims Trappe's request for an injunction "was not properly before the court" because the court never granted Trappe leave to amend his petition. Trappe counters the issue was tried by consent. *See* Iowa R. Civ. P. 1.457 ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."). In its ruling on the parties' post-trial motions, the district court reiterated, "The court concluded in its ruling that this suit is solely an action for a permanent injunction." And although Cook's counsel noted at trial that the court had not "ruled on" Trappe's application to amend his petition, the parties presented evidence on the issue at trial. We find this issue was raised and decided by the district court, and therefore it is properly before this court. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

follows that 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. *See 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 v. City of Readlyn*, 595 N.W.2d 807, 812 (Iowa Ct. App. 1999); *see also Skow*, 618 N.W.2d at 279.

Trappe claims he established entitlement to an injunction preventing Cook "from parking and permitting vehicles to be parked [behind his building], [and] storing large items and other impediments" there, because the presence of such impediments interferes with his use of the easement across Cook's property.

As set forth above, the purpose of the easement in this case, as stated in the easement agreement, was to create a right of ingress and egress to the back of Trappe's building. Our de novo review of the record reveals that Cook's parking or storing materials in the easement area, so long as Trappe is able to use the easement area for ingress to and egress from his building, does not unreasonably interfere with his ability to use the easement for its intended purpose. *See, e.g.*, *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). B*ut see Wiegmann v. Baier*, 203 N.W.2d 204, 207 (Iowa 1972) (holding a fence constructed by the servient owner on an easement was an unlawful interference with the use of the easement because it "effectively barred access by auto to plaintiffs' garage and parking areas"); *McDonnell v. Sheets*, 15 N.W.2d 252, 256 (Iowa 1944) (concluding the installation of gates at both ends of the easement was not permissible because this was clearly an unreasonable impediment to the dominant owner's use).

At trial, Trappe testified that even when Cook vehicles are parked in the easement area, his tenants are able to "walk from the alley into the door." Moreover, when asked by opposing counsel, "But there is nothing that prevents your people from going across that area with the ingress/egress easement that's been granted, correct?" Trappe responded, "Correct."

Trappe uses the easement to access his buildings; he produced no evidence that Cook's use of the easement area for parking renders it inadequate for ingress and egress.[8] *See Skow*, 618 N.W.2d at 280. Under these facts, and following *Skow*, we conclude Trappe has not established a substantial injury or damages that would entitle him to enjoin Cook's use of the easement.[9] *See id.*;

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[8] Trappe testified at length about the "full access" he and his predecessors had over the easement area for "the last 30 years." For our purposes, however, the congenial use of the easement for the past thirty years—and Cook's unfriendly actions more recently—is irrelevant.

[9] In light of the discord between the parties, we further observe, as the supreme court did in *Skow*, 618 N.W.2d at 281:

> This holding should not be construed as mandating a shrinking of the easement. It means only that, until [Trappe] can show a reasonable need for this strip of land, in order to exercise [his] right[] of ingress and egress, the strip may be used by the defendants in the way they have proposed. If, in the future, impediment of the right of ingress and egress becomes a reality, [Trappe] or [his] successors in interest will be able to seek an appropriate remedy at that time.

Fettkether, 595 N.W.2d at 812 ("Our courts have recognized that an encroachment upon an easement by a neighboring landowner which was not substantial enough to interfere with the use and enjoyment of the premises did not affect rights in the subject property."). No doubt the district court's grant of injunctive relief was well-intentioned. But, in light of Trappe's failure to establish entitlement to injunctive relief, we are obligated to reverse the district court's grant of injunctive relief in this case.[10]

V. Conclusion

We conclude the easement is plain and unambiguous in that it does not allow Trappe to park in the easement area, or use the easement in any manner other than for ingress to and egress from his property. We further conclude Trappe has not established a substantial injury or damages that would entitle him to enjoin Cook's use of the easement.

AFFIRMED ON APPEAL; REVERSED ON CROSS-APPEAL.

[10] "Because we find no merit in any of the grounds for injunction relied on by the trial court, we reverse." *See State ex rel. Clemens v. ToNeCa, Inc.*, 265 N.W.2d 909, 917 (Iowa 1978), superseded on other grounds by *State v. Foster*, 356 N.W.2d 548, 549 (Iowa 1984).