IN THE COURT OF APPEALS OF IOWA

No. 7-706 / 07-0152
Filed November 15, 2007

B. J. DOANE, LTD.,
Plaintiff-Appellant,

vs.

CERRO GORDO COUNTY, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge.

Landowner appeals district court's ruling granting Cerro Gordo County a prescriptive easement for a county road on the section line bordering landowner's farmland. **AFFIRMED.**

Thomas Lawler, Lawler & Swanson, P.L.C., Greene, for appellant.

Gregory A. Witke and Douglas A. Fulton, Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

This is an appeal by plaintiff B. J. Doane, Ltd. (Doane) from a judgment awarding Cerro Gordo County (County) a prescriptive easement for a road over Doane's property and denying Doane's request for a quitclaim deed. The issues for our de novo review are whether the County has a prescriptive easement for the road and, if so, the extent of the County's easement.[1]

I. BACKGROUND FACTS AND PROCEEDINGS.

In 1949, Mr. McManus purchased farmland in Cerro Gordo County and lived there until his death. Doane purchased the farmland from the McManus estate in March of 1981. The road at issue, Road 102 (Ulmus) runs adjacent to the boundary of the McManus/Doane farmland between Claybanks Road and Lime Creek and was legally established on February 3, 1874, as a north/south roadway on a section line. However, the road was vacated by the county board of supervisors in 1875. The road was the only access to the McManus homestead.

Despite being vacated, the County has never taxed the land it believed was its road right-of-way. In 1934, the County created Ulmus over the vacated road by grading and installing a culvert. At that time the road's surface was about twenty-five feet wide, with the ditch cuts making a total width of about sixty feet. Since 1934, the County has continually maintained the road to some degree. Another culvert south of the 1934 culvert was installed by the County in 1957 to help drain water from a drainage ditch on the McManus property. Both

[1] The district court found the road at issue was vacated. Since the County did not cross-appeal and assert an error concerning whether the road was vacated, this is not an issue before us.

of these culverts had County culvert markers as warnings to drivers up until the time the old culverts were replaced by the County in 2004.

In the 1970s, the County graded and hauled rock to Ulmus up to the point of the McManus homestead. In 1974, the County installed a dead end sign on Ulmus, which was monitored and repaired in following years.

After Doane's 1981 purchase, the McManus homestead was torn down and Doane put both the old homestead site and its driveway into crop production. After the destruction of the homestead, the 500 foot northern portion of Ulmus was maintained with rock, but the remaining portion continuing to the old homestead area and beyond was not. One exception was the culvert south of the 500 feet of rock road. This culvert would regularly wash out in heavy rains and, over the years, the County would haul in rock and dirt to fill the holes and make the road passable again. In 2000, Doane's tenant farmer, Mr. Neuhring, called the County requesting the washout be fixed so he could get his crops harvested and the County complied. The field entrance to Doane's farmland was at the southern end of Ulmus near Lime Creek and Mr. Neuhring needed the culvert on the northern part of the road fixed to gain entry to the field.

In 1988, the County's board of supervisors voted to downgrade Ulmus to level B, minimum maintenance. County records show a minimum maintenance road sign was installed on Ulmus in 1988, and the sign was repaired and replaced in the following years. After the road downgrade, the County continued to haul rock to the first 500 feet. Past the rocked area, Ulmus was "pack-down" with wheel paths.

In 2003, the County upgraded the classification of Ulmus from level B to level A. Because there were many trees, the County utilized its conservation department to remove them. In addition to tree removal, in the fall of 2004 the County placed stakes on Doane's property to indicate the area assigned for future grading and improvements. The stakes extended approximately twelve rows into Doane's fields. After learning the stakes were placed by the County and were marking an area for future road improvements, Doane did not contact the County to discuss the action of placing the stakes or to question what future improvements were planned. Road grading and construction was completed in 2004 at the approximate cost of $16,500 to the County.

On December 5, 2005, Doane filed a petition to quiet title. On December 4, 2006, the trial court ruled the County had an easement by prescription for the disputed road and Doane appeals.

II. SCOPE AND STANDARDS OF REVIEW.

Because Doane filed an action in equity to quiet title, our review is de novo. *See Brede v. Koop*, 706 N.W.2d 824, 826 (Iowa 2005). Therefore, the trial court's findings of fact are given weight, but are not binding. *Id.*

III. MERITS.

A. Prescriptive Easement.

An easement by prescription "is created when a person uses another's land under a claim of right . . . openly, notoriously, continuously, and hostilely for ten years or more." *Johnson v. Kaster*, 637 N.W.2d 174, 177 (Iowa 2001). This easement is based on the principle of estoppel and "is similar to the concept of adverse possession." *Id.* at 178; *Collins Trust v. Allamakee County Bd.*, 599

N.W.2d 460, 463 (1999). In the County's efforts to establish the easement, the facts it relies upon must be strictly proved and can not be presumed. *See Simonsen v. Todd*, 261 Iowa 485, 495, 154 N.W.2d 730, 736 (Iowa 1967).

B. Claim of Right.

Two elements of prescriptive easement are closely related: hostility and claim of right. *Brede*, 706 N.W.2d at 828; *Collins*, 599 N.W.2d at 464. Hostility does not refer to ill-will, rather it refers to acts revealing a claim of right to use the land. *Collins*, 599 N.W.2d at 464. "Similarly, a claim of right requires evidence showing an easement is claimed as a right." *Id.* Generally, "a claim of right must be shown by evidence independent of the use of the easement." *Brede*, 706 N.W.2d at 828. While "mere use does not constitute hostility or a claim of right, some specific acts or conduct associated with the use will give rise to a claim of right." *Collins*, 599 N.W.2d at 464. Therefore, in some cases "acts of maintaining and improving land can support a claim of ownership and hostility to the true owner." *Id.* The evidence supporting the easement requirements varies, and "ultimately, each case rests on its own particular facts." *Id.*

The *Collins* decision is controlling here. In *Collins*, the county had maintained a curve that was not a part of the original road for several decades and had also installed and maintained a culvert to promote drainage. *Id.* at 464-65. The court concluded: "This type of conduct was more than mere use, but was conduct which an owner of land would perform. It is sufficient to support a finding that the County claimed the curve in the road as a right." *Id.* at 465.

Here, County maintained the road at varying degrees of maintenance since 1934, which included grading and gravel. County expended public funds to

both install (1934 & 1957) and replace (2004) two culverts to promote drainage. County both installed and maintained road signs. As in *Collins*, we conclude County's conduct while spending public money is "more than mere use, but was conduct which an owner of land would perform." *See id.*

C. Express Notice.

The open and notorious prescriptive easement requirements exist to put the true owner of the land on notice of the adverse use of the land by another. *Id.* Iowa statutes specify the true owner is required to have "express notice" of the adverse possession claim. *See* Iowa Code § 564.1 (2005). The notice can either be actual or "from known facts of such nature as to impose a duty to make inquiry which would reveal the existence of an easement." *Collins*, 599 N.W.2d at 465 (quoting *Anderson v. Yearous*, 249 N.W.2d 855, 861 (Iowa 1977)).

Once again, the *Collins* case is controlling. In *Collins*, the express notice required by section 564.1 was met because, "[t]he public expenditure of funds to maintain and repair the curve in the road over the years was known to [the land owner] and were acts of such a nature to support the public's claim of ownership." 599 N.W.2d at 465.

Recently, the Iowa Supreme Court further explained its *Collins* decision:

> We concluded the expenditure of public funds in this manner was "of such a nature to support the public's claim of ownership." This conclusion rested in part on the unique facts of [Collins], namely, that a public body would not devote public money to a private road. That distinctive circumstance supported a finding of a claim of right and notice.

Brede, 706 N.W.2d at 830 (quoting *Collins*, 599 N.W.2d at 465).

As in *Collins*, the County is a public body and, as such, it would not devote public tax money to a private road. Rather, the County has treated Ulmus as its

own road since it created the road in 1934. Doane was aware Ulmus is on a section line and was aware such placement is common for Iowa's county roads. Aerial photos show regular maintenance from 1934 through the 1970s. Mr. McManus was present during the various times when the County brought in rock and graded the road. Additionally, both Doane and Mr. McManus received express notice each time they received a tax statement which excluded Ulmus from the acreage to be taxed.

Although maintenance was reduced after Mr. McManus died, the road did not vanish and Doane was aware the northern portion of Ulmus had gravel at all times. Doane should have seen the road signs installed by the County and maintained at its expense. Additionally, Doane was aware of (1) a culvert under the roadway which drained water off its property; (2) the roadway; and (3) the road's ditches. While Doane eventually plowed up the McManus farmstead and its driveway and turned those areas into row crop production, it did not plow up the roadway area.

Doane knew the property owner to the west was using a portion of Ulmus to gain access to both a Morton building on the better-maintained portion and a field off the less-maintained portion. Doane's tenant, Mr. Nuehring, drove a tractor all the way to the end of Ulmus to utilize a field entrance.

After our de novo review, we agree with the trial court's conclusion that the County has proven a prescriptive easement for Ulmus on the border of the McManus/Doane farmland.

D. Extent of Easement.

Once a road has been created by prescriptive easement, the extent of the easement is limited to the area used as a road. *Bangert v. Osceola County*, 456 N.W.2d 183, 188 (Iowa 1990). "We have long rejected the claim that a county road established by prescription must be normally sixty-six feet wide." *Id.*

We find unpersuasive Doane's arguments the length of the easement must be restricted to the first 500 feet of the road. We agree with and adopt the trial court's discussion determining the width of County's easement for Ulmus.

> The county asks that the easement be established at 66 feet in width. However, there is no evidence to indicate that the county has made use of the easement outside of the width and length originally established in 1874. Mr. Witt testified that in 1934 a typical road right-of-way was 60 feet, including the ditches. There does not appear to be any reference to the width of the road in any of the documents from the 1870's. The court notes that the aerial photographs show [Ulmus] to be slightly narrower than Road 13 (Claybanks) which, presumably, is a 66-foot right-of-way. The court concludes that the county's easement is 60 feet in width.

AFFIRMED.