IN THE COURT OF APPEALS OF IOWA

No. 2-768 / 11-2071
Filed October 31, 2012

**MARK A. BARZ and DALENA A. BARZ,
PAUL F. HASEL and PATRICIA A. HASEL,
RICHARD L. BRUNER and JEAN I. BRUNER,
PETER W. BURK and MARY ANN BURK,
KENT E. THOE and JENNIFER S. THOE,
LONNY L. BOLLER and KATHRYN A.
BOLLER, BEVERLY A. ANDERSON,
ALLEN J. BEHNING and LAURA J.
BEHNING, DALLAS F. SHEAR JR. and
SANDRA K. SHEAR, JOEL J. WHITEHURST
and JULIE J. WHITEHURST-SMITH,
THOMAS C. RENNER and JANELLE K.
RENNER, and WILLIAM F. WREGHITT
and LORI L. WREGHITT,**
Plaintiffs-Appellees,
vs.

STATE OF IOWA,
Defendant-Appellant.

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

The State appeals a district court judgment quieting title to plaintiffs in a strip of property along the shore of Clear Lake in Ventura Heights, Iowa. **AFFIRMED.**

Thomas J. Miller, Attorney General, David R. Sheridan, Assistant Attorney General, and David L. Dorff, Assistant Attorney General, Environmental Law Division, for appellant.

David C. Laudner of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellees.

Considered by Danilson, P.J., Mullins, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

I. Background Facts & Proceedings

In 1910, Hugh Shepard owned land on the south shore of Clear Lake in Cerro Gordo County, Iowa. He had a surveyor prepare a plat subdividing the land into lots for the purpose of establishing the town of Ventura Heights. The plat map showed a strip of land between the lake and the numbered lots as "Lake Front." The plat map also showed three parcels of land that were not subdivided, and these were designated as Outlots 1, 2, and 3. Only Outlot 2 was on the lakeshore, and this was northwest of the "Lake Front."

This case involves the area designated as "Lake Front." This area involves about 900 feet of shoreline, and ranges in width from eleven feet at the westerly end to sixty-seven feet at the easterly end. This area is very steep, and rises from the lake about fifteen to twenty feet. The area is subject to erosion, and so over time it has been primarily left in its natural state.

On January 24, 1910, Shepard and his wife signed a document stating, "And I hereby dedicate the streets and alleys and park as shown on the within plat, to public use as such forever." The only land specifically marked on the plat map as a park was a small triangular piece of land south of Outlot 3.

Shepard engaged in efforts to sell the lots in Ventura Heights. A newspaper article in the July 9, 1910 edition of The Mason City Times had the caption, "*Hugh H. Shepard's Story of Ventura Heights*." The article stated:

> Lake Front Park is 1000 feet long and from 70 to 80 feet wide. While Picnic Point Park in the Northwest corner of Ventura Heights is a beautifully timbered tract of one and a half acres, designated on the map as Outlot 2. These three parks have been

> dedicated to public use forever and will be a perennial delight to the fortunate purchasers of lots at Ventura Heights.

A handbill was prepared to advertise the sale of lots on July 14, 1910. The handbill contained a plat map. On the bottom of the handbill was printed, "THREE FINE PUBLIC PARKS: Picnic Point Park 1 1/2 acres; Lake Front Park 1000 feet long and Athletic Park of 2 acres." None of these parks were specifically designated on the plat map found on the handbill.

A pamphlet was also created. It is not clear who wrote the pamphlet or when it was printed. Under a heading, "Personal Note," was written, "The five acre park system has been reserved for public use." The pamphlet contained a picture with the caption, "Lake Front Park – 1,000 feet long." It also contained the statement, "The lake frontage of one thousand feet on the sloping banks of Ventura Heights is reserved as a park for the use and enjoyment of all lot owners in Ventura Heights."

On June 8, 1927, Shepard and his wife signed a warranty deed stating, "in consideration of the representations heretofore made to purchasers of lots at Ventura Heights and in order to furnish an adequate and commodious park for the benefit of the owners of lots and cottages in the plat of Ventura Heights and for the public in general," they granted to the public Outlot 2. The deed also stated, "In making this conveyance the grantors herein trust that the property will be suitably maintained forever as a public park and that the management thereof may be assumed by the Park Commission of the State of Iowa."

On October 31, 1946, Shepard and his wife signed a quit claim deed transferring the most easterly portion of the "Lake Front" to the Winnebago

Council of the Boy Scouts of America. The deed provided, "This conveyance is also subject to the rights of owners of remaining lots in Ventura Heights for the use of the portion of the Lake Front and of the streets that are described in this deed." This deed was recorded on February 4, 1947.

In 1977 the Iowa legislature amended what is now Iowa Code section 461A.11[1] to provide:

> Any land adjacent to a meandered lake or a meandered stream which has been conveyed by gift, dedication or other means to the public, but has not been conveyed to the jurisdiction of a specific state agency or political subdivision, shall be subject to the jurisdiction of the commission and to the rules promulgated pursuant to this chapter.

On September 1, 1981, the Cerro Gordo County Board of Supervisors entered an order vacating a public road,[2] which was described as the "Lake Front" property. That same day, the County issued quit claim deeds to each property owner whose lot bordered the south side of the "Lake Front." The order and deeds were recorded on September 15, 1981. A March 3, 1983 letter from the Director of the Iowa Conservation Commission to an Iowa Assistant Attorney General indicates that staff of the commission and staff of the attorney general objected to the County's action.

In November 1981, the successors in interest to Shepard, Robert Shepard and John Shepard, joined by their spouses, signed quit claim deeds transferring their interest in the "Lake Front" to the property owners whose lots bordered the

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[1] This section was formerly section 111.11(1), and became effective January 1, 1978. The statute then referred to the state conservation commission. Iowa Code § 111.1 (1979). The commission referred to is now the Natural Resources Commission. Iowa Code § 461A.1(1) (2009).

[2] There is no evidence there was ever a road on the "Lake Front."

south side of the "Lake Front." These deeds were recorded on November 19, 1981.

At some time prior to March 3, 1983, the State, through the Department of Natural Resources (DNR), exercised jurisdiction over the area by creating a dock management area. Also, at some point signs were placed on the property designating it as State property and signs were placed designating the dock management area. The State engaged in negotiations with the bordering lot owners, many of whom had installed stairs and docks on the "Lake Front" in front of their homes in order to give them access to the lake, to determine if they would purchase the property as a group. A proposed sale to the bordering lot owners fell through due to disagreements about price.

On July 14, 2009, the bordering lot owners (hereinafter referred to as plaintiffs) brought an action against the State seeking to quiet title to the "Lake Front" property. After a trial, the court entered a decision quieting title in the property to the plaintiffs against the State. The court found the State had failed to show Shepard had dedicated the "Lake Front" to the general public. The court found that while some evidence supported the State's position, it was not sufficient to show Shepard had an unmistakable intention to permanently abandon the property to the public. The State appeals the decision of the district court.

II. Standard of Review

An action to quiet title is an equitable proceeding. *City of Marquette v. Gaede*, 672 N.W.2d 829, 833 (Iowa 2003). Our review of a district court ruling in

a quiet title action is de novo. *Stecklein v. City of Cascade*, 693 N.W.2d 335, 336 (Iowa 2005). While we give weight to the district court's factual findings, we are not bound by them. *Schaefer v. Schaefer*, 795 N.W.2d 494, 497 (Iowa 2011).

III. Dedication of Land

The State contends there was sufficient evidence in the record to show Shepard dedicated the "Lake Front" property to the public. The State asserts the newspaper article, handbill, and pamphlet show Shepard's intent to dedicate the land to the public at the time he was selling lots to the public. The State claims the 1927 and 1946 deeds are irrelevant because the evidence of Shepard's intent must be determined at the time of the alleged dedication in 1910.

"'Dedication' is 'the setting aside of land for public use.'" *State v. Hutchison*, 721 N.W.2d 776, 781 (Iowa 2006) (citation omitted). Three elements are required to show dedication: (1) an intent to dedicate, (2) dedication, and (3) acceptance by the public or the party to whom the dedication is made. *Id.* at 782. A dedication must be proven by clear, satisfactory, and convincing evidence. *Merritt v. Peet*, 24 N.W.2d 757, 762 (Iowa 1946). A party claiming there has been a dedication has the burden to prove it. *Marksbury v. State*, 322 N.W.2d 281, 284 (Iowa 1982).

A dedication may be either express or implied. *Sons of the Union Veterans of the Civil War v. Griswold Am. Legion Post 508*, 641 N.W.2d 729, 734 (Iowa 2002). An express dedication may be shown by an explicit or positive declaration, or manifestation of intent to dedicate the land to the public. *Id.* An implied dedication is shown "by some act or course of conduct on the part of the

owner from which a reasonable inference of intent may be drawn." *Id.* Whether a dedication is express or implied, the intent to dedicate "must be unmistakable in its purpose." *Merritt*, 24 N.W.2d at 762. "There can be no dedication unless there is a present intent to appropriate the land to public use." *De Castello v. City of Cedar Rapids*, 153 N.W. 353, 356 (Iowa 1915).

The intent alone, however, is not sufficient. *Schmidt v. Town of Battle Creek*, 175 N.W. 517, 519 (Iowa 1919). "There must be a parting with the use of the property to the public, made in praesenti, manifested by some unequivocal act, indicating clearly an intent that it be so devoted." *Id.* A dedication "may not be predicated on anything short of deliberate, unequivocal, and decisive acts and declarations of the owner, manifesting a positive and unmistakable intention to permanently abandon his property to the specific public use." *Culver v. Converse*, 224 N.W. 834, 835 (Iowa 1929). Furthermore, "the acts proved must not be consistent with any other construction than that of dedication." *Id.*

The district court found there was uncertainty in the record regarding Shepard's intention at the time of the dedication. The original dedication in 1910 provided, "And I hereby dedicate the streets and alleys and *park* as shown on the within plat, to public use as such forever." (Emphasis added). The dedication clearly refers to only a singular park, and the plat map shows one area of land designated as a park—a small triangular piece of land south of Outlot 3.

Other evidence from 1910, however, shows Shepard may have had an intent to create a park for public use on the "Lake Front" property.[3] The newspaper article refers to three parks, including "Lake Front Park," and states, "These three parks have been dedicated to public use forever."[4] The pamphlet states, "The five acre park system has been reserved for public use." Also, the handbill refers to "THREE FINE PUBLIC PARKS," including a Lake Front Park. These references to a Lake Front Park clearly refer to the property designated on the plat map as "Lake Front."

We agree with the district court that while the State presented some evidence to show Shepard intended to dedicate the "Lake Front" property to the public at the time of the 1910 dedication, that evidence did not "manifest[ ] a positive and unmistakable intention to permanently abandon his property to the specific public use." *See Culver*, 224 N.W. at 835. Any intent to dedicate the property by Shepard was not "unmistakable in its purpose." *See Merritt*, 24 N.W.2d at 762. We conclude the State has not proven an intent to dedicate the property by clear, satisfactory, and convincing evidence. *See id.*

Even if we found the State had presented sufficient evidence of an intent by Shepard to dedicate the property to public use, the evidence does not show

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[3] The district court could properly consider this extrinsic evidence because the dedication was not subject to only one interpretation. *See Marksbury*, 322 N.W.2d at 285.

[4] The newspaper article also states the parks "will be a perennial delight to the fortunate purchasers of lots at Ventura Heights." Additionally, the pamphlet states the lake frontage was "reserved as a park for the use and enjoyment of all lots owners in Ventura Heights." In general, however, we presume a dedication for public use is a dedication to the public at large. *Marksbury*, 322 N.W.2d at 285. "Properly speaking, there can be no dedication to private uses or for a purpose bearing an interest or profit in the land." *Id.* (quoting 23 Am. Jur. 2d *Dedication* § 5, at 6-7 (1965)).

an unequivocal act by Shepard to dedicate the property. *See Schmidt*, 175 N.W. at 519. The State has not shown "deliberate, unequivocal, and decisive acts and declarations of the owner," which were also "not . . . consistent with any other construction than that of dedication." *See Culver*, 224 N.W. at 835. In fact, the 1927 warranty deed conveying Outlot 2 to the public shows that Shepard believed he still had clear title to Outlot 2 and that further action was required to dedicate land to the public that had not been expressly dedicated in the original 1910 plat. Outlot 2 is referred to as Picnic Point Park in the newspaper article and handbill. The park is referred to, but not by a specific name, in the pamphlet. Thus, this evidence tends to show that Shepard did not intend the representations in the newspaper, handbill, or pamphlet to dedicate the land to the public.[5] The State has not shown an act of dedication by clear, satisfactory, and convincing evidence. *See Merritt*, 24 N.W.2d at 762.

Because the State has not sufficiently shown an intent to dedicate, or an act of dedication, we do not address the element of acceptance by the public. We concur in the district court's conclusion that the State has failed to show the property had been dedicated for public use.

IV. Quiet Title

The State asserts the plaintiffs did not meet their initial burden to show they had ownership and possession of the "Lake Front" property. The plaintiffs in a quiet title action have the burden to prove their title by a preponderance of the

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[5] Further, the 1946 quit-claim deed shows that Shepard apparently believed he still owned the "Lake Front" and was able to convey a portion of it to the Winnebago Council of the Boy Scouts of America.

evidence. *State ex rel. Iowa Dep't of Natural Res. v. Burlington Basket Co.*, 651 N.W.2d 29, 34 (Iowa 2002). "[O]ne seeking to quiet title must do so on the strength of his own title and not rely on the weakness of another's." *State v. Simmons*, 290 N.W.2d 589, 592 (Iowa 1980). "The presumption of ownership which follows legal title can be overcome only by evidence which is clear and convincing." *Shine v. State*, 458 N.W.2d 864, 866 (Iowa Ct. App. 1990). "Possession is incident to ownership and, in the absence of evidence, is presumed to be in the owner." *Id.*

Plaintiffs claim title to the property through the 1981 deeds from Shepard's successors in interest. The State asserts that in 1981 these successors did not have any interest to convey because the State had already assumed jurisdiction over the property under section 461A.11. Section 461A.11 applies to land adjacent to a meandered lake which has been "conveyed by gift, dedication or other means to the public." "[T]he State's claim under section 461A.11 depends on its ability to prove the public's right to . . . [the] property." *Larman v. State*, 552 N.W.2d 158, 163 (Iowa 1996). "This statute does not *create* ownership rights in the public, but merely provides for jurisdiction by the natural resource commission when property owned by the public has not been conveyed to a specific governmental body." *Id.*

As the district court noted, the State's only claim to ownership of the property is through dedication. We have already determined the State did not sufficiently show Shepard dedicated the property for public use in 1910. Because the State has failed to show the public's right to the property, it does not

have jurisdiction of the property under section 461A.11. The plaintiffs have adequately shown their ownership interest through the 1981 deeds from Shepard's successors in interest.

We affirm the judgment of the district court.

AFFIRMED.