IN THE COURT OF APPEALS OF IOWA

No. 2-850 / 12-0490
Filed October 31, 2012

ROBERTS EQUIPMENT DIVISION, INC.,
Plaintiff-Appellant/Cross-Appellee,

vs.

SILVER LAKE FARMS, CORP.,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Washington County, Myron L. Gookin, Judge.

Roberts Equipment Division, Inc. appeals from the district court ruling reforming deeds and quieting title in Silver Lake Farms, Corp. Silver Lake Farms, Corp. cross-appeals, seeking costs and attorney fees. **AFFIRMED.**

Timothy D. Roberts of Anderson, Roberts, Porth & Wallace, P.L.C., Burlington, for appellant.

Michael C. Vance of Vance Law Offices, Mt. Pleasant, for appellee.

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

POTTERFIELD, P.J.

Roberts Equipment Division, Inc. (Roberts) appeals from the proceedings quieting title in Silver Lake Farms, Corp. (Silver) and reforming both parties' deeds. Roberts first contends the court inequitably reformed the deeds to conform to the property line stated at auction and incorrectly quieted title in Silver. It next contends the assessment of surveyor costs by the district court was inequitable. Finally, Roberts asserts the court erred in its assessment of damages. Silver cross-appeals, contending the district court erred in failing to assess certain costs and attorney fees to Roberts. Silver also requests appellate attorney fees. We affirm the district court, finding the reformation of deeds equitable, the denial of trial attorney fees appropriate, appellate attorney fees inappropriate, and the assessment of costs equitable.

I. Facts and Proceedings

Roberts and Silver bought adjoining parcels of farmland from the William H. Edgar Trust (the Trust). The land historically consisted of two separate tracts, farmed by two different farmers—the one on the east grew beans, the west grew corn. These fields were divided by a narrow cattle path full of weeds and sporadically placed fence posts. While owned as one large property, the Trust land was to be sold in two parcels, divided in accordance with how it had been farmed. A purchase agreement was drafted on behalf of the trustee for both tracts including the language "exact description to be taken from the abstract."

The day before the auction, the Roberts brothers (owners of Roberts) visited the property. They toured the eastern tract, walking the north and part of the western perimeter. This included the intersection with the north boundary of

the western tract. The Roberts brothers expected the division of the two parcels to align with the "quarter-section line," which was a straight geographic line splitting the two parcels. During their walk, however, they noticed the division of property between the bean crops and corn crops did not align with the quarter-section line as expected. The line between the two crop types was jagged, with an unexpected "wobble," unlike the quarter-section line which was perfectly straight.

At the time of the auction, a single lath adorned with a pink ribbon was set up near the crop line between the two fields to indicate the division between the properties. Papers were handed out to the attendees, including the sale bill, a crop contract, a United States Department of Agriculture Farm Services Agency (USDA/FSA) aerial photo with a drawn map for each of the tracts, and an assessor's tax description card. The USDA/FSA handout appeared to show a straight line which would track more in accordance with the quarter-section line Roberts wanted. The sale bill noted all representations at auction would take precedence over any prior representations about the land.

The auctioneer made an announcement before the bidding began. This announcement restated the bill of sale information with the addition that the boundary line was the division between the corn on the west and beans on the east. He indicated the lath with the pink ribbon marked the approximate boundary between the properties. After this announcement, the west tract was

sold to Silver. Just before the sale of the east tract was about to begin,[1] one of the Roberts brothers approached the auctioneer, requesting clarification on the boundary line. The auctioneer then asked Jim Edgar—son of the settlor, William H. Edgar, and farmer of one of the tracts—for clarification.

Edgar clarified that the boundary was the crop line where the properties had been farmed, that it may follow three old fence posts to the north which were not visible at auction. Edgar's clarification was in accordance with the auctioneer's earlier announcement; the auctioneer never announced the quarter-section line would be used. Roberts alleges, though the district court did not find, that the auctioneer, while announcing the boundary as the crop line, also said something to the effect that the line would be established. Roberts then successfully bid on tract 2. At closing, despite the auctioneer's assertions to the contrary, the abstract and deeds were written to track the quarter-section line as the boundary between the two tracts. Neither party objected. The quarter-section line boundary resulted in about an acre more of land for Roberts.

In 2008, after two years of peaceful coexistence despite uncertainty regarding the boundary, Roberts and Silver came to an impasse. After some moving of posts and an exchange of letters, Roberts filed an action under Iowa Code sections 646 (2009), 650, and in common law quiet title in favor of the deeds. Silver answered and counterclaimed, requesting a remedy sounding in quiet title in its favor. Roberts requested the appointment of Robert Bauer as the court-appointed surveyor under Iowa Code sections 650.6 and 650.7. Silver did

[1] While there is discrepancy in the record regarding the sequence of these events, we give weight to the trial court's credibility decisions and find them supported here. *See Kendall v. Lowther*, 356 N.W.2d 181, 183 (Iowa 1984).

not resist, but requested broader duties for Bauer. His report opined the proper boundary was the quarter-line.

At the end of trial, the district court found Roberts did not fulfill its burden of proof under Iowa Code section 650 and granted Silver's counterclaim, quieting title in favor of Silver and reforming the deeds. It also assessed Bauer's fees equally to both parties. The court declined to award attorney fees to Silver. Roberts appeals the deed reformation and expert fee division provisions of the district court's decision. Silver cross-appeals regarding Bauer's fees and the denial of attorney fees.

II. Analysis

A. Quiet Title and Deed Reformation

As this case was decided in equity, our review is de novo. *Orr v. Mortvedt*, 735 N.W.2d 610, 612 (Iowa 2007). We examine the whole record, adjudicating anew rights on the properly presented issue. *Kufer v. Carson*, 230 N.W.2d 500, 503 (Iowa 1975). We give weight to, but are not bound by, the findings of the trial court. *Id.*

Roberts contends the district court erred in finding it had the burden of proof to establish its claim to title of the disputed property. It also contends there was no mutual mistake as required to reform a deed, rather, it knew and agreed to the use of the quarter-section line in the deed.[2]

We note first that the trial court was within its power to provide the remedy of deed reformation, though the action was characterized as one of quiet title on

[2] We note Roberts does not contend it was an innocent third party purchaser to the Silver-Trust transaction. *See Mortvedt*, 735 N.W.2d at 615.

the part of both parties. Our supreme court encountered a similar scenario in *Kessler v. Terrel*, 185 N.W. 15 (Iowa 1921), where the defendant filed a cross-petition in quiet title. There the court stated:

> Upon his own evidence, a court of equity would have been warranted in reforming the deed to correct the misdescription of the premises. This proceeding to quiet the title is in effect no more than an action for reformation of the deed in regard to the description of the property.

Id. at 17. This quote also speaks to the burden of proof in this case. "Upon his own evidence . . . warranted in reforming the deed" places the burden of reformation on the party who seeks the remedy. *See id.* Silver's answer invokes the court's power to fashion an equitable remedy. While the burden of proof in the initial quiet title action lies with Roberts, Silver's counterclaim sounds in quiet title as well, requesting "the Court establish the Defendant's estate and ownership" of the disputed premises. It was Silver's burden to prove its counterclaim and to establish grounds for reformation of the deeds.

"The party seeking reformation has the burden of establishing its contention by clear, satisfactory, and convincing proof. In reforming an instrument a court does not change an agreement between the parties but changes a drafted instrument to conform to the parties' real agreement." *Hosteng Concrete & Gravel, Inc. v. Tullar*, 524 N.W.2d 445, 448 (Iowa Ct. App. 1994) (citations omitted). This remedy lies within the equity court's discretion and depends on whether the facts and circumstances are "sufficiently compelling to constitute an effectual appeal to the conscience of the court and prompt it to interfere by reformation to mitigate the rigorous rules of law." *Id.*

> When the understanding of the parties was not correctly expressed in the written contract, equity exists to reform the contract to properly express the intent of the parties. Furthermore, it normally makes no difference if the mistake is mutual or unilateral. This is because the operative mistake is the belief of the parties that the contract correctly expresses the agreement. Thus, reformation is needed to give effect to the intention of the parties and to prevent unjust enrichment. Without reformation, the party benefited by this mistake would receive a benefit not provided for under the agreement which the written contract was meant to express.

State, Dept. of Human Services ex rel. Palmer v. Unisys Corp. 637 N.W.2d 142, 151 (Iowa, 2001) (internal citations omitted); *accord Kufer v. Carson*, 230 N.W.2d 500, 504 (Iowa 1975) (stating reformation of a deed is proper where it fails to express the "true agreement of the parties").

Roberts contends no mutual mistake existed here, as it expected the lots to be divided by the quarter-line. Silver disagrees, stating the two were bound by the representations made by the auctioneer at auction, and that the deeds, as written, improperly failed to reflect these representations. We agree with the district court that the evidence clearly shows the Trust intended to locate the boundary at the crop line. Therefore, we find Silver carried its burden of proof on its counterclaim.

At auction, the seller and buyer of property are bound by the sale conditions stated by the auctioneer. *Skubal v. Meeker*, 279 N.W.2d 23, 27 (Iowa 1979). In *Skubal*, our supreme court considered a real estate contract which was written prior to auction that failed to incorporate a term announced at auction. *Id.* at 25. The court reformed the contract, noting the term's "material nature and inclusion at the time of the auction, with the acquiescence of the parties to the sale, make it an element of the contract of sale." *Id.* at 27. This, along with the

term's nonexistence at the time of the drafting of the contract, constituted clear and convincing evidence the written contract between the parties did not reflect the parties' true agreement. *Id.* The court therefore reformed the contract to include the auctioneer's representations. *Id.*

Similarly, here, the purchase agreements were written based upon the bills of sale, both of which were drafted prior to auction. This included the number of acres per parcel, more or less, and the phrase "exact description to be taken from the abstract" in lieu of an exact legal description of the property. These agreements were given to the Trust's attorney, who was not present at the auction, for preparation of all closing documents. The resulting deeds mistakenly described the tracts with a boundary of the quarter-section line.

It is clear from the testimony that the representation was made at auction that the boundary line was between the corn and bean fields. Silver won its bid under this understanding. Further, despite Roberts' request for clarification, the auctioneer again stated the boundary would be the crop line and Roberts bid on the parcel.[3] The boundary line was a material term, included at the time of the auction, with the acquiescence of the parties. *See id.*

Silver must also have shown "that the true intention of the parties which would be reflected in a reformed document constituted an undertaking that the parties had the power and capacity to perform." *Kendall v. Lowther*, 356 N.W.2d 181, 187 (Iowa 1984). This is true here, where both parties were buying the

[3] The district court made no finding that the auctioneer also said something like, "the line will be determined," and only Roberts recalled that phrase. In any event, the auctioneer clearly stated that the boundary was the crop line, and Roberts is bound by that representation.

parcels at the same time. Therefore, we find clear and convincing evidence exists that reformation of the deeds is equitable in this case due to the mistake in the legal descriptions which did not incorporate the representations made by the auctioneer.

Roberts argues that it understood the legal descriptions to draw the boundary at the quarter-section line and so was not mistaken. This does not defeat the court's remedy of reformation. Roberts understood at the auction the boundary was the crop line and not the quarter-section line, bid on the property, and bought it knowing where the boundary was. While Roberts later attempted to exploit the error made in the legal descriptions by filing this action, this does not retroactively change the terms to which it agreed and invalidate the district court's reformation of the deeds. The reformed state of the deeds reflects the true intention of the parties at the time of agreement.[4]

B. Assessment of Costs

Roberts and Silver both contend the costs of surveyor Robert Bauer were improperly assessed equally to both parties. This surveyor was requested by Roberts to be the court-appointed assessor under section 650 of the Code of Iowa. We review the assessment of costs in this equity action de novo. *Id.* at 189. Roberts alleges Silver's requests in its resistance to Robert's motion expanded the scope of Bauer's report providing the benefit of a full land survey,

[4] We note Roberts also appeals the district court's declaration of the metes and bounds of the properties under Iowa Code section 650. Claims under this section are a special action, heard on appeal as an ordinary action at law. *Tewes v. Pine Lane Farms, Inc.,* 522 N.W.2d 801, 804 (Iowa 1994). Our review is for errors of law, meaning the district court's decision has the effect of a jury verdict. *Id*. As our decision has already affirmed the district court in its deed reformation on the much less deferential de novo standard, we need not address the section 650 claim here.

thus increasing costs. Silver contends Robert's request for the appointment of Bauer makes it responsible for Bauer's shortcomings and unexpectedly high costs. As our remedy is in equity, we find the equal division of Bauer's fees equitable in light of the responsibility of both parties for the surveyor's actions.

C. Award of Damages

Roberts claims it was entitled to damages for its loss of use of the contested land between the quarter-section line and the crop line boundary. As we found the court properly reformed the deeds and quieted title in favor of Silver, we need not address this claim.

D. Cross-Appeal: Attorney Fees

Attorney fees are not generally allowable unless authorized by statute or contractual agreement. *FNBC Iowa, Inc. v. Jennessey Group, L.L.C.*, 759 N.W.2d 808, 810 (Iowa Ct. App. 2008). "Under Iowa Code section 625.22, an express provision in a contract *between parties* authorizing the payment of attorney fees and litigation expenses is an authorization to a court *in an action based on that contract* to add attorney fees and litigation expenses to a favorable judgment." *EFCO Corp. v. Norman Highway Constructors, Inc.*, 606 N.W.2d 297, 301 (Iowa 2000) (emphasis added). The action at hand stems from two contracts entered into separately by the two parties with the Trust. No breach of contract or warranty was asserted. Instead, it was an action for quiet title. Further, the provision referenced by appellees in their request for attorney fees, while broadly written, is under the subheading in the real estate contract of "remedies of the parties" which solely references buyer and seller. The Trust

was the seller and is not involved in the quiet title action. The district court correctly declined to award attorney fees in this case.

E. Cross-Appeal: Appellate Attorney Fees

Silver also requests appellate attorney fees of up to $7000. Where payment of attorney fees is authorized by contract, appellate attorney fees may be found authorized as well. *See Beckman v. Kitchen,* 599 N.W.2d 699, 702 (Iowa 1999). However, we found the award of attorney fees was not based in contract. Further, Silver fails to cite authority to support its claim to appellate attorney fees. Iowa R. App. P. 6.903(2)(g)(3). We therefore decline to award appellate attorney fees.

AFFIRMED.