IN THE COURT OF APPEALS OF IOWA

No. 7-265 / 06-0754
Filed August 8, 2007

CITY OF EMMETSBURG,
Plaintiff-Appellee,

vs.

KARAN A. MCSHEA, RONALD D. SEAMAN, OSCAR KALLESTAD, LEORA KALLESTAD, KENNETH A. EWEN, II, RICHARD S. DEE, TERESA A. DEE, CAROL J. ANDERSON, DONALD C. NAUSS, LEON BLANCHET, LAURA BLANCHET, RICHARD LEE HENRICH, SHIRLEY ANN ROBERTS, ETHELYN HENRICH, JAMES L. KIBBIE, KATHERINE J. KIBBIE, JANE M. WENTZEL, MICHAEL L. WENTZEL, ROBERT L. WENTZEL, KELLY J. WENTZEL, VENDELL C. REZABEK, RITA M. REZABEK, DONALD C. NAUSS, FLORA ANN S. NAUSS, a/k/a FLORANNE S. NAUSS a/k/a FLORA ANNE NAUSS, RODNEY A. HILL, NORA C. HILL, JOHN M. REICHERT, ROBERT J. BOES, ELAINE L. BOES, JEFFREY J. KERBER, ROBIN LEWIS KERBER, SHARON A. HOOBLER and JAMES A. HOOBLER,
Defendants-Appellants,

MICHAEL A. OLSON and KRISTIE A. OLSON, et al.,
Defendants.

Appeal from the Iowa District Court for Palo Alto County, Don E. Courtney, Judge.

Appellants challenge a district court decision that quieted title in the State to shoreline created with fill dredged from Five Island Lake in the early part of the twentieth century. Appellants contend this land became their property as successors in interest to the original riparian owners. **REVERSED AND REMANDED.**

David P. Jennett, Storm Lake, for appellants.

Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott, Spencer, for appellee.

Heard by Sackett, C.J., and Vogel and Baker, JJ., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SACKETT, C.J.

This action was brought by the City of Emmetsburg, Iowa,[1] seeking to quiet title in the City to shoreline property located on Five Island Lake, formerly known as Medium Lake. The questioned land from the South Bay between the trestle bridge on the north and Soper Park on the south, was created with fill dredged from the lake in the early part of the twentieth century. The dredging followed the passage by the General Assembly of Iowa in 1909 of a Special Act for the Preservation and Improvement of Medium Lake (Special Act). The defendants-appellants[2] contend the northeast side of the lake dredge fill as it relates to the property in Ormsby's Trust Addition became and continues to be the property of the riparian owners on the shoreline and, as successors in title, these owners contend the questioned land is theirs. The district court found the State of Iowa to be the record title holder.

Appellants contend (1) the 1909 Special Act preserved the title of the riparian owners to the shoreline, (2) the district court's finding the placement of the land had an independently reasonable and substantial relationship to a navigational or other paramount public purpose was erroneous, (3) neither the City nor the State demonstrated they acquired title to the land by adverse possession, and (4) the district court erred in not considering that the lot owners had an easement by implication.

The City contends (1) the Special Act established the dredge fill as public land, (2) the placement of the dredge fill had a public purpose beyond navigation, (3) the evidence shows the shoreline in question has been used as public

[1] The State of Iowa appeared and specifically concurred in the relief sought by the City.
[2] A number of other defendants were in default or did not appeal the ruling.

property for over fifty years and any interest the riparian owners may claim to it was lost through adverse possession. We reverse and remand.

SCOPE OF REVIEW. The purpose of a declaratory judgment is to resolve uncertainties and controversies before obligations are repudiated, rights are invaded, or wrongs are committed. *Dubuque Policemen's Protective Ass'n v. City of Dubuque*, 553 N.W.2d 603, 607 (Iowa 1996). Our review of an action for declaratory relief is determined by the manner in which the action was tried to the district court. *SDG Macerich Props, L.P. v. Stanek, Inc.*, 648 N.W.2d 581, 584 (Iowa 2002) (citing *Walsh v. Nelson*, 622 N.W.2d 499, 502 (Iowa 2001)). This case was filed in equity and, to the extent we are to determine whether or not it is appropriate to grant equitable relief, our review is de novo. *Johnson v. Kaster*, 637 N.W.2d 174, 177 (Iowa 2001). We must examine the facts as well as the law and decide the issues anew. *Id.* In doing so, we give weight to the district court's findings of fact, but we are not bound by these findings. *Id.* However as to review of issues involving the interpretation of a statute or special acts we review for the correction of errors at law. Iowa R. App. P. 6.4; *State v. Carpenter*, 616 N.W.2d 540, 542 (Iowa 2000); *State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999). We are not bound by the district court's application of legal principles. *Schultz*, 604 N.W.2d at 62.

HISTORY. Emmetsburg, the county seat of Palo Alto County, is in northwest Iowa. To the north, Emmet County lies between Palo Alto County and the Minnesota border. To the west Clay, O'Brien, and Sioux counties lie between it and the South Dakota border. The Wisconsin glacier covered this area with glacial till about 12,000 to 15,000 years ago and, as a result this part of the state

has a number of swamps, lakes, marshes, and wetlands. In 1850 the federal government transferred ownership of swamp lands to the State, allowing the State to drain the swamps and sell the reclaimed land. Iowa provided that a lake or swamp land could be drained if twenty people residing in the township where the body of water was located and fifty other landowners in the county petitioned to drain it, subject to the approval of the Executive Council of Iowa. For a number of years there was a dispute in Palo Alto County over draining the lake. The farmers seeking more land wanted the lake drained, while the townspeople, looking at Medium Lake for recreational purposes, were against it. At the time Medium Lake was low, the water quality was poor, it was overgrown with reeds and rushes, and was not usable for recreational boating. Other lakes in the area were being drained.

In late 1907 a published notice indicated there was a petition on file seeking authority to drain Medium Lake, contending it was a health hazard. The matter came on for hearing before the Executive Council of Iowa in February of the next year and the petition was denied. Thus began an effort to improve the lake. It would be an awesome task and require substantial funds to accomplish.

In March of 1909, while the collection of funds to support improving the lake was yet in process, the Iowa 33rd General Assembly enacted the Special Act entitled Preservation and Improvement of Medium Lake.[3] The stated

[3] Preservation and Improvement of Medium Lake.

> An act for the preservation and improvement of Medium Lake and the islands therein and placing the same within the jurisdiction of the city of Emmetsburg.
>
> Be it enacted by the General Assembly of the State of Iowa:
>
> Section 1. Reserved for park purposes. That Medium Lake in Palo Alto county, Iowa, and the islands therein belonging to the state, or

purpose of the act was "for the preservation and improvement of Medium Lake and the islands therein and placing same under the jurisdiction of the City of Emmetsburg."

Dredging commenced with funding provided both by the City and private individuals. By 1920 the dredging was completed and the lake was smaller, deeper, and sported a more stable shoreline. Some of the silt removed from the lake was used to enlarge existing islands or construct a new island. Some of the silt was deposited outside the former shoreline. The question quickly arose as to

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> that shall be formed under this act, are hereby reserved from sale or other disposition and dedicated and set apart to the use of the people of the state for public parks and recreation grounds.
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> Section 2. Jurisdiction. The jurisdiction of the city of Emmetsburg is hereby extended so as to include the public waters and public lands within said Medium lake with the like force and effect as if the same were a part of the streets, public grounds and parks of said city, subject to the limitation in this act contained.
>
> Section 3. Improvement authorized. Said city of Emmetsburg is hereby authorized and empowered to provide for the deepening, dredging, improving and beautifying of said Medium lake and public lands therein, and of such portions thereof as it shall determine, and *for the formation of additional islands or of new land along the shore for the disposition of material dredged from the lake and to make such alterations in the shore lines of said lake as may be necessary to accomplish the improvements hereby authorized subject always to the riparian rights of private owners. But said city may authorize the riparian owners to make such necessary alterations and additions at their own expense. Said city is further authorized to lay out, establish and improve streets, parks and boulevards along the shores of said lake or upon such new land.* Said city is further authorized and empowered to provide for the stocking of said lake with fish and for the propagation and preservation thereof. Nothing herein contained shall be construed as excepting said lake from the operation of the general fish and game laws of the state.
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> Section 4. In effect. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Register and Leader, a newspaper published at Des Moines, Iowa, and the Palo Alto Reporter, Emmetsburg Democrat and Palo Alto Tribune, newspapers published at Emmetsburg, Iowa, without expense to the state.
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> Approved February 13, A.D. 1909
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> Publication certified (Emphasis supplied).

who owned the new shoreline, a question that continued to plague the riparian property owners, the City, and the State over the next many decades and is the question that faces us in this appeal.[4]

PROCEEDINGS. In 2004, the City filed the petition for declaratory judgment that leads to this appeal, seeking to quiet title to the disputed dredge fill land. Many defendants, including the appellants, filed answers and counterclaims. Some did not appear and were found in default.

Following trial, the district court quieted title in the property in the State of Iowa. The court held the Special Act was clear in its intent and the dredge fill was placed along the lakeshore for a public purpose. The court, while finding title to the property was in the State, further found jurisdiction over the lake's development, including the challenged property, was in the City under the terms of the 1909 Special Act. The court concluded the defendants' riparian rights were subject to the City's jurisdiction and subservient to the use of the dredge fill land for a public purpose. The court distinguished this case from other Iowa cases addressing dredging and accretion, reasoning the Special Act specifically addressed dredging, and jurisdiction over the dredge fill only as to this specific lake. The court determined the land was public property, subject to riparian rights rather than private property subject to public access. The court noted the private property owners were guaranteed continued right of access to the lake by the City. The court further held the placement of the dredge fill had an

[4] In tracing the history, the parties and district court have relied on a plaintiff's exhibit, James L. Coffey, *Saving Glacier's Creation, Five Island Lake Restoration Projects* (McMillen Publishing 2003).

independently reasonable and substantial relationship to the same public purpose to which the riparian rights were subservient.

THE 1909 SPECIAL ACT. Our goal in interpreting statutes is to determine legislative intent. *State v. Wagner*, 596 N.W.2d 83, 87 (Iowa 1999). We determine the intent from what the legislature said, not from what it might or should have said. *See* Iowa R. App. P. 6.14(6)(*m*). If the language is clear and unambiguous, we apply a plain and rational meaning in light of the subject matter of the statute. *City of Waukee v. City Dev. Bd.*, 590 N.W.2d 712, 717 (Iowa 1999). However, if reasonable minds could disagree over the meaning of a word or phrase of a statute, the statute is ambiguous and we resort to the rules of statutory construction. *Id*. When construing the statute, we read the language used, and give effect to every word. *State v. Osmundson*, 546 N.W.2d 907, 910 (Iowa 1996). We apply all relevant doctrines of construction in determining intent.

Defendants contend the 1909 Special Act preserved the title of the riparian owners to the shoreline. They contend it is clear from the Special Act that the legislature did not attempt to restrict the riparian right of private owners. Defendants argue the legislature intended to qualify the right of the City to establish parks and streets on the shore on public land, including State owned land, but did not extend to the City the right to establish parks and streets on riparian land held by private persons. They point out that while the Special Act makes provision for the disposition of the material dredged to make alteration in the shoreline to accomplish the authorized purpose, it specifically provides the authorization is “subject always to the riparian rights of private owners.”

The City contends that while the riparian rights of private owners are referenced in the Special Act, it does not specifically grant ownership or jurisdiction to private owners having riparian rights. The City argues that if the General Assembly intended to grant title to the dredge fill to abutting landowners it could certainly have so provided.

The City points out that before the dredge fill the riparian owners had a right of access to the lake which was then a slough or swamp, and after the fill the City recognized that the riparian owners continued to have access to the lake and, among other things, allowed docks to be constructed along the shoreline. The defendants contend this is no more than the minimal access available to the general public and they are entitled to the access of riparian owners. They point us to *Robert's River Rides, Inc. v. Steamboat Dev. Corp*., 440 N.W. 2d 884, 889 (Iowa 1998). There the court noted that owners of land adjacent to navigable waters possess certain common law rights, apart from those of the general public, which are incidents of riparian ownership, which right is subject to the right of the government to maintain and promote navigation by whatever reasonable means. *Id*.

RELATIONSHIP TO NAVIGATION OR OTHER PUBLIC PURPOSE. The defendants contend the district court erred in finding the placement of the land had an independent reasonable and substantial relationship to a navigational or to other public purpose. They argue that the City failed to prove that the placement of the fill had a navigational or public purpose to which the riparian owners' right of access was made subservient. The City contends the placement of the fill had a public purpose beyond navigation.

This distinction is important for it is relevant to determining who has rights to an accretion that results from an addition to the shore line. *See Nielsen v. Stratbucke*, 325 N.W.2d 391, 392 (Iowa 1982). The right to accreted land is the same whether it results from natural causes or from artificial means over which the owner of the land has no control. *C.H. Moore Trust Estate by Warner v. City of Storm Lake*, 423 N.W.2d. 13, 13 (Iowa 1988); *Lakeside Boating & Bathing, Inc. v. State*, 344 N.W. 2d 217, 221 (Iowa 1984). In the case of artificial depositing of land as we have here, the riparian owner will become the owner of the additional land unless the dredging operation is reasonably necessary for navigational or other paramount state purposes. *Moore Trust*, 423 N.W.2d at 14; *see Lakeside*, 344 N.W.2d at 221-22; *see also Park Commission v. Taylor*, 133 Iowa 454, 461-62 (1907). There the Iowa court recognized cases from other jurisdictions that held accretions that may have been due to artificial causes inures to the benefit of the riparian owner while finding that riparian owners had no rights to extension of their lots to the river where encroachment was the result of lot owners placing fill along the bank.

The defendants argue that the district court, in interpreting the Special Act, ignored the language of *Lakeside*, 344 N.W.2d at 221-22. There the court was asked to determine ownership of dredge fill to the shore line of Storm Lake in Buena Vista County. The Iowa Supreme Court said:

> [T]he State's purpose in dredging a lake to enhance recreational navigation, for example, will not automatically give the State title to dredge fill that it deposits against the shore. For the State to have title to the new land, *the dredge fill's particular placement must independently have a reasonable and substantial relationship to the same or different navigational or other public purpose to which the riparian owner's right of access is made subservient by law.* Otherwise a taking would occur. Thus, if the particular placement

> of dredge fill does not independently serve a recognized paramount governmental purpose, the riparian owner acquires title to the made land as if it had been deposited against the shore by accretion.

Id. (emphasis supplied).

The defendants note the district court here concluded that the particular placement of the fill at Five Island Lake did have an independently reasonable and substantial relationship to the same or different navigational and/or other public purpose to which the riparian owners' right of access is subservient because the Special Act allowed the City jurisdiction to dredge. They argue that for the district court to reach this conclusion, it had to find the paramount public purpose of the Special Act was for creation of parks and streets.

The City argues that because the dredging of Five Island Lake was under the authority of the Special Act and the dredge fill was created by the Special Act, the Five Island Lake situation is different from the Storm Lake situation. It argues, as the district court found, that the Special Act as to Five Island Lake specifically providing authority for "parks and boulevards upon the *new land,*" shows a clear legislative intent that the jurisdiction be in the City, the parkway be treated like other city parks, and the General Assembly did not recognize the riparian rights of the abutting property owners. (Emphasis supplied).

The City also argues the navigational reason was apparent because prior to the dredging, the lake was a swamp and was not navigable. The defendants' discount this argument, advancing that the need to dredge a lake does not give the State the right to deposit the fill on the shoreline and in effect move private land away from the lake shore. Defendants argue this is why the Special Act

referenced riparian rights and authorized the creation of islands in the lake, so no title problems would be created.

It is not a taking of private property for the State to make changes in a lake bed when reasonably necessary in aid of navigation, even though the changes have the effect of cutting off a riparian owner's access to the lake. *Lakeside*, 344 N.W.2d at 221; *Peck v. Alfred Olsen Constr. Co.,* 216 Iowa 519, 525-33, 245 N.W.2d 131, 134-37 (1932). However, the related project is immune from private rights only when it is so related to a project under the acknowledged public powers in the navigable waters that enjoyment of the latter project would be substantially impaired without the creation of the former. *See Lakeside*, 344 N.W.2d at 220 (citing *Michaelson v. Silver Beach Improvement Ass'n*, 173 N.E.2d 273, 277 (Mass. 1961)). There is not a taking if a navigational purpose existed in the made land. *See Lakeside*, 344 N.W.2d at 221. In *Michaelson* the court found where the state placed dredge fill from a harbor improvement project along plaintiffs' private beach that the creation of the beach was not necessary for the enjoyment of the dredged channel. *Michaelson*, 173 N.E.2d at 277-78. While the City here has shown that dredging may have been necessary for navigation, including recreational navigation, there is no showing that the placement of the dredge fill on the shoreline was necessary to enjoying the navigational enhancement of the lake. The City has failed to show that the placement of the fill was subject to the dominant right of the State to improve navigation. Furthermore, there was no showing the placement of parks and roadways were necessary to enjoying the navigational enhancements of the lake. We reverse the district court's contrary findings.

The question therefore becomes whether the provisions of the Special Act created, as the district court found, an exception to the general rule. That is, did the provisions of the Special Act deprive the riparian owners of the right to the dredge fill to which they would otherwise have been entitled. We find it did not.

The City was authorized to dredge and form additional islands or new land along the shore, but the authority was "subject always to the riparian rights of private owners." And while we agree that the City was authorized to lay out, establish, and improve streets, parks and boulevards "along the shore of the lake or on new land," nothing in this language modified the rights of the riparian owners, which were affirmed in a prior paragraph. We reverse the district court's finding that the Special Act divested the riparian land owners of title to the fill.

ADVERSE POSSESSION. Defendants contend that at all times they have used the property as riparian owners and the State and/or City cannot claim the land by adverse possession. The City contends that the record supports a finding the land was used as public property and this is sufficient evidence to support a finding they took it by adverse possession.

We find that the City has established a prescriptive easement for a roadway between the fill and the original shoreline, but it has failed to prove it or the State are entitled to acquire the balance of the property through adverse possession.

1. Prescriptive Easement.

An easement by prescription is created under Iowa law 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. *Larman v. State*, 552 N.W.2d

158, 161 (Iowa 1996); *Simonsen v. Todd*, 261 Iowa 485, 489, 154 N.W.2d 730, 732 (1967); *see also* Iowa Code § 564.1 (2005). It is based on the principle of estoppel and is similar to the concept of adverse possession. *Webb v. Arterburn*, 246 Iowa 363, 378, 67 N.W.2d 504, 513 (1954). We apply the principles of adverse possession to establish a prescriptive easement and use adverse possession to describe an easement by prescription. *Collins Trust v. Bd. of Sup'rs*, 599 N.W.2d 460, 463 (Iowa 1999). The fundamental distinction between the two doctrines is an easement by prescription concerns the use of property, while adverse possession deals with the acquisition of title to property by possession. *Id*. The mere use of land does not, by lapse of time, ripen into an easement. *Schaller v. State*, 537 N.W.2d 738, 742 (Iowa 1995). A party claiming an easement by prescription must prove, independent of use, the easement was claimed as a matter of right. Iowa Code § 564.1; *Simonsen*, 261 Iowa at 496, 154 N.W.2d at 736. The public has been found to be acting under a claim of right where a road had been legally established, used and improved. *See Barnes v. Robertson*, 156 Iowa 730, 733-34, 137 N.W. 1018, 1019 (1912); *Collins Trust*, 599 N.W.2d at 463. The road has been established and improved for more than fifty years. The public has a prescriptive easement to it.

A party claiming title by adverse possession must establish hostile, actual, open, exclusive, and continuous possession, under claim of right or color of title for at least ten years. *C.H. Moore Trust Estate v. City of Storm Lake*, 423 N.W.2d 13, 15 (Iowa 1988). Proof of these elements must be "clear and positive." *Id.*; *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). Because the law presumes possession is under regular title, the doctrine of adverse

possession is strictly construed. *Mitchell v. Daniels*, 509 N.W.2d 497, 499 (Iowa Ct. App. 1993).

The City admits that the owners put docks out and used the land, but argues that there are docks in Iowa extending from public land and that fails to refute the State's claim of adverse possession. The City further argues there was no dispute about ownership until a bike trial was proposed in 1996, the landowners participated in a public improvement bond issue in 1990, and the City required them to remove their items left in the area.

Defendants contend the lot owners' testimony supports a finding that they continuously used the dredge fill as their own property. They challenge the City's assertion that the bond issue of 1990 was evidence of adverse possession and note that when the City proposed a bike trail in 1996, the lot owners objected and the trail was not constructed. Various lot owners testified to making improvements on the property, cleaning up and maintaining the property, putting docks out from the property, rip rapping along the shore line, putting field stone along the shore line, trimming and planting trees in the area, putting in dirt and planting grass and wild grasses, pulling out an old stump, mowing the area, taking bushes out, bringing in sand, storing things there, planting perennials, putting a fire pit on the property, installing a bench for storage, installing an irrigation pump, planting flowers and setting up an American flag.

The ownership of the land has been disputed since it was created. The defendants and the City have exercised certain ownership rights but neither has used the property to the exclusion of the other. Rather they have each enjoyed a hybrid sort of possession. Yet neither the City nor the State has acted in such a

manner as to clearly indicate a claim of title or absolute ownership. *See Huebner v. Todd*, 387 N.W.2d 144, 146 (Iowa Ct. App. 1986) (dismissing a claim of adverse possession to land that competing parties both mowed and fought over). We construe the special act as not depriving the riparian owners of the right to dredge fill to which they would otherwise be entitled.

We reverse the finding the State is the record titleholder of the shoreline area in question and find that at the time the fill was placed it became the property of the riparian owners. We dismiss defendant's counterclaim, there being insufficient evidence to support their prayer that we quiet title to their properties and decree that they are the absolute owners in fee simple of real estate described in their counterclaim, there being insufficient evidence in the record to make such a determination. We determine that the City has established a prescriptive easement for the public over the existing roadway but has failed to establish a claim to the shoreline area based on adverse possession.

Costs on appeal are taxed two thirds to the City and one third to the property owners.

REVERSED AND REMANDED.