

**IN THE COURT OF APPEALS OF IOWA**

No. 9-504 / 09-0276  
Filed October 7, 2009

**RITA CLANCY and JOHN NUGENT,**  
Plaintiffs-Appellants,

**vs.**

**KENT W. JESSEN and LINDA L.  
JESSEN, LAWRENCE J. LONG and  
ARLENE M. LONG, DAVID F. BOOTH  
and MARTHA BOOTH, JEFFREY CLINE  
and LEANNE CLINE, MERI ANN KLOCKE,  
JERRY HAAS, CHRISTINA M. DRAHOS  
and BARBARA DRAHOS,**  
Defendants-Appellees.

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**JEFFREY CLINE and LEANNE CLINE,**  
Third-Party Plaintiffs-Appellees,

**vs.**

**MISS RIVERVIEW CORPORATION and  
DONALD J. WHITE and BEVERLY  
WHITE,**  
Third-Party Defendants-Appellants.

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Appeal from the Iowa District Court for Clayton County, Thomas N. Bower,  
Judge.

The holders of easements on riverfront property appeal the district court's  
ruling that the owner of that property may build a community dock. **AFFIRMED.**

Jeanne Johnson, Des Moines, for appellants.

James Updegraff, West Union, and Charles Kelly, Postville, for appellees.

Heard by Vaitheswaran, P.J., Mansfield, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MANSFIELD, J.**

This property dispute involves easements that were granted several decades ago by an owner of riverfront property along the Mississippi River. Because we agree with the district court's resolution of the relevant legal and factual questions, we affirm the judgment below.

**I. Facts and Procedural History.**

In 1964 Ray and Meta Kellogg acquired 2.07 acres bordering the Mississippi River just south of the town of McGregor. The property included approximately 198 feet of riverfront. Railroad tracks and a local road ran north-south through the middle of the property and parallel to the river.

In 1967 the Kelloggs surveyed and platted that land into seventeen different lots. As subdivided, the land consisted of a single shoreline lot (Lot 17), six lots to the west of that shoreline lot but east of the tracks (Lots 11-16), and ten lots to the west of the tracks (Lots 1-10). The Kelloggs also platted drives so each interior lot would have vehicular access to Lot 17.

Over the next three years, the Kelloggs sold nine of the ten lots west of the railroad tracks (Lots 1-6, and 8-10). The owners of these lots and their successors became known as the "West Enders." In each of the deeds to these lots, the Kelloggs provided an easement:

Also grantors convey easement to use platted drives, and to travel access and use over and across Lot 17 of Kellogg's Subdivision, to Mississippi River, and use of riverfront adjacent thereto.

In 1975 the Kelloggs sold the six lots east of the railroad tracks to two separate buyers. Both of the two deeds covered three lots, and both contained the following language:

Also grantors convey easement to use platted drives, and to travel access and use over and across Lot 17 of Kellogg's Subdivision, to Mississippi River, and use of riverfront adjacent thereto. Grantors further agree that no buildings of any type shall be allowed on said Lot 17. Permission granted to grantees to install 3 docks for 3 boats on said Lot 17.

The owners of those six lots and their successors became known as the "East Enders."

Historically, there has been a concrete boat ramp on Lot 17 for use by both West Enders and East Enders. In addition, over the years, three docks with room for multiple boats have been in place off of Lot 17. Two have been used by certain East Enders; the other, by certain West Enders. There appears to be general agreement that the "3 docks for 3 boats" language in the East Enders' deeds gives each East Ender a right to have a one-boat dock per lot owned.

In 1986 the Kelloggs sold the shoreline lot (Lot 17) and their retained interior lot (Lot 7) to Meri Ann Klocke. Klocke continues to own those properties. Currently, the East End properties are owned by: Rita Clancy (Lot 14 and part of Lot 15); Clancy's brother John Nugent (Lot 11 and part of Lot 12); Donald and Beverly White (Lot 13 and part of Lot 12); and Miss Riverview Corporation, a company owned by Beverly White's children (Lot 16 and part of Lot 15).

In 2007, after considering several proposals from various landowners in the subdivision, the Army Corps of Engineers approved a new dock plan for Lot 17. The installation of docks requires approval from the Army Corps of

Engineers. See 33 U.S.C. § 403. However, the Corps does not adjudicate property rights; it primarily decides what is feasible and appropriate from a navigation standpoint. See 33 C.F.R. § 320.4(g)(6) (“A DA permit does not convey any property rights, either in real estate or material, or any exclusive privileges . . . . The district engineer will not enter into disputes [and a] dispute over property ownership will not be a factor in the Corps public interest decision.”); see *also* 33 C.F.R. § 322.5(d)(1) (In determining permits for structures for small boats, “[p]articular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public’s use of the waterway and the neighboring proprietors’ access to the waterway.”).

The centerpiece of the 2007 plan approved by the Corps was a large community dock off the middle of Lot 17. This community dock had been proposed by Klocke. It would block, and thus eliminate, the existing boat ramp but would accommodate all the boats of the West Enders.

The Corps-approved plan would also allow a smaller existing dock used by the Whites to remain in place north of the new community dock, and another smaller existing dock used by Clancy to remain in place south of the community dock. Finally, under the Corps plan, both Miss Riverview Corporation and Nugent would be allowed to install small docks at the north end of Lot 17. Because of the presence of rocks and currents off the north end of the riverfront property, this location was considered less desirable but still acceptable by the Corps.

Clancy and her brother Nugent, finding this plan unacceptable, filed for a declaratory judgment against Klocke and the West Enders. In their petition, Clancy and Nugent asserted that the West Enders do not have rights to dock boats. Clancy and Nugent emphasized that only the East Enders' easement rights provide, "Permission granted to grantees to install 3 docks for 3 boats on said Lot 17." Nugent specifically objects that under the Corps-approved plan, because of the size of the planned community dock, he will be relegated to a less desirable north end location, instead of being able to install his own dock on the south end of the property, in front of his sister Clancy's house. Nugent acknowledged that he had been offered space on the community dock, but had declined it. As Nugent put it:

I have the right to put my dock in, that's the way I feel. I don't want anyone talking to me about whether I want to jump in with the group and put in a massive long dock, which wouldn't fit anyway.

Clancy, while supporting her brother's position that there is no room for the large community dock, admitted she already has a dock on the south end of the property, at which two boats and a canoe are kept.

Klocke and the West Enders brought the remaining East Enders, i.e., the Whites and Miss Riverview Corporation, into the case as third-party defendants. Donald White presently has a dock, which can accommodate two boats and which he and his wife would keep under the Corps-approved plan, but he expressed concern about losing the convenience of the boat ramp.<sup>1</sup> Also, White

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<sup>1</sup> White admitted, however, that he currently has only one boat and he takes it out of the water only once a year.

explained that the far north location proposed for the Miss Riverview dock would not be feasible.

Following a bench trial, the district court rejected the plaintiffs' and the third-party defendants' position. It agreed that the East Enders' easement language gave each of them "one dock/one boat per lot." However, so long as these rights were not impaired, Klocke, as the owner of Lot 17, could erect a community dock to the extent she desired to do so and the Corps approved the plan. Furthermore, the easement language did not give Nugent or Miss Riverview a right to a dock in any particular location; the north end location was adequate to meet Klocke's underlying legal obligation to them. Additionally, the court emphasized that there has been a dock for at least some of the West Enders for the past thirty years.<sup>2</sup>

The East Enders—i.e., Clancy, Nugent, the Whites, and Miss Riverview—have appealed.

## **II. Analysis.**

The parties agree this equity action is subject to de novo review in this court. "Whether a declaratory judgment action is considered legal or equitable in nature is determined by the pleadings, the relief sought and the nature of each case." *Gray v. Osborn*, 739 N.W.2d 855, 860 (Iowa 2007). In this case, Clancy and Nugent were effectively seeking equitable relief, i.e., an order that would prevent a dock from being constructed for the benefit of the West Enders. Although the trial court did rule on certain objections, normally an indication of a proceeding at law, the objections were minor and did not have a significant effect

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<sup>2</sup> This dock would be replaced by the new, larger community dock.

in the proceeding such that our review is impossible. See *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980); see also *Howard v. Schildberg Const. Co.*, 528 N.W.2d 550, 552 (Iowa 1995) (“Where . . . no one claims that the trial court improperly excluded evidence, the trial court’s ruling on objections does not prevent a de novo review.”). In light of the foregoing considerations, we will treat this as an equity action subject to de novo review. *Howard*, 528 N.W.2d at 553. We give weight to the district court’s factual findings but are not bound by them. Iowa R. App. P. 6.904(3)(g).

On the central point in this case, we agree with the district court. If the docking privileges granted to the West Enders do not impair the East Enders’ easement rights, then their claims must fail. Klocke may elect to confer on the West Enders more benefits than they are entitled to, but that is no concern of the East Enders unless their rights are adversely affected. See *Schwenker v. Sagers*, 230 N.W.2d 525, 527 (Iowa 1975) (stating an easement owner’s rights are not exclusive, and a servient land owner may use the land subject to the easement for any purpose not inconsistent with the easement).

The East Enders contend there is “no room” for the community dock, but the preponderance of evidence indicates otherwise. While the resulting north end location for Nugent’s and Miss Riverview’s new docks may be somewhat less desirable, the Corps found it acceptable, and it does meet the one dock/one

boat per lot requirement.<sup>3</sup> Nugent, whose property is on the north side, does not have a right to have his dock in front of his sister's lot and home.

In the absence of an agreement, or where an easement is granted in general terms which do not fix its location, the owner of the servient estate has the right to locate the easement. However, the location of the easement must be reasonable to both the dominant and servient estate.

25 Am. Jur. 2d *Easements and Licenses* § 66, at 562-63 (2004). Furthermore, Nugent's sister, Clancy, already has a dock that accommodates two boats and a canoe, more than her entitlement; it would not be affected by the Corps plan. The Whites also have an existing dock capable of harboring two boats that would not be affected by the Corps plan.

The erection of the community dock will eliminate the existing boat ramp. However, the East Enders do not argue that the easement language granting them rights "to use platted drives, and to travel access and use over and across Lot 17 of Kellogg's Subdivision, to Mississippi River, and use of riverfront adjacent thereto" specifically requires a boat ramp to be available.<sup>4</sup> Their concern has to do with the presence of too many docks, not the absence of a boat ramp. In any event, one could certainly argue that a combination of docks and guaranteed access to those docks meets the requirement of "travel access"

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<sup>3</sup> Although the Corps does not adjudicate property rights, the Corps' approval of the north end location for the Nugent and Miss Riverview docks was entitled to consideration as evidence of their feasibility.

<sup>4</sup> One of the East Enders, Donald White, testified as follows:

Q. But your deed doesn't mention anything about a boat ramp or the ability to put a boat in or out on a ramp, does it? A. It just says has access to the river and with the idea of being able to put a dock.



to the river, and “use of riverfront adjacent thereto.”<sup>5</sup> It was also noted at trial that a boat ramp will continue to be available approximately a mile to the north in the town of McGregor itself.

### **III. Conclusion.**

For the foregoing reasons, we affirm the carefully reasoned decision of the district court.

**AFFIRMED.**

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<sup>5</sup> Under that interpretation, the purpose of the additional language in the East Enders’ easements was to assure them that they would receive that use *in the form of* boat docks.