IN THE COURT OF APPEALS OF IOWA

No. 9-638 / 08-1810
Filed November 12, 2009

MICHAEL A. WITTE,
Plaintiff-Appellee/Cross-Appellant,

vs.

PAIGE SEIDEL and CARTER SEIDEL,
Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Butler County, Christopher C. Foy, Judge.

Paige and Carter Seidel appeal, and Michael Witte cross-appeals, from the district court ruling confirming and quieting title of certain real estate to Witte. **REVERSED AND REMANDED.**

Judith O'Donohoe of Elwood, O'Donohoe, Braun & White, New Hampton, for appellants.

John J. Haney of Hinshaw, Danielson, Kloberdanz & Haney, P.C., Marshalltown, for appellee.

Heard by Eisenhauer, P.J., Potterfield, J.J., and Mahan, S.J.*

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

EISENHAUER, J.

Paige and Carter Seidel appeal, and Michael Witte cross-appeals, from the district court ruling confirming and quieting title of certain real estate to Witte. The Seidels contend they acquired title to the real estate by estoppel. They also contend they are entitled to the property because the deed contains deed back provisions. Witte contends the court erred in finding he did not have an easement across the Seidels' adjoining property. Because the Seidels prevail on their equitable estoppel claim, we reverse and remand for entry of a judgment quieting title to the disputed property in the Seidels.

I. Background Facts and Proceedings. The Seidels are owners of property located in Butler County. The property was passed down through the ancestors of Paige Seidel (hereinafter the Browns), who have been in possession of the property since at least January 1911. At that time, the property consisted of all of the Northeast Quarter of the Southeast Quarter of Section 11 in Pittsford Township.

Between April 1933 and May 1952, Butler County was deeded property from this parcel, which is legally described as:

> Beginning at the Northwest corner of the Southeast Quarter of the Southeast Quarter of Section 11, Township 92 North, Range 18 West of the 5th P.M., Butler County, Iowa, thence North 398.5 feet, thence East 310 feet, thence South 190.5 feet, thence East 0.06 feet, thence South 208 feet, thence West 20.06 feet, thence South 203 feet, thence North 75˚30' West 299.54, thence North 128 feet to the point of beginning, containing 3.938 acres, more or less.

The Browns retained title of the rest of the Northeast Quarter of the Southeast Quarter of Section 11 in Pittsford Township. The deeds provide, "The above

described property is to be used as a rock quarry and the owner of the adjacent property is to provide a roadway to the public highway at the east side of Section 11." They further state, "When the County wishes to dispose of said property, it is to be deeded back to the adjoining property owner."

Butler County conducted quarrying operations on the real estate from 1933 until sometime during the 1950s. Then and thereafter, the Browns and their predecessors used the real estate for recreational purposes. They also rented the land to neighboring farmers as pasture. Paige Seidel estimates that she and members of her family have used the real estate recreationally "hundreds" of times during her lifetime.

On May 26, 2004, Witte contacted Butler County about purchasing the real estate. The county set a hearing to determine whether to dispose of the property, with bidding to take place immediately following the hearing if the board were to decide to dispose of it. Notice was published in three Butler County newspapers. After the hearing, the county accepted sealed bids on the property. Witte's bid of $523 was highest and the property was transferred to him by quitclaim deed on October 5, 2004.

Shortly after the sale, Witte contacted Paige Seidel to inform her of the sale and ask her if she would sell him an easement for access to the property. The Seidels retained an attorney who contacted the county about the sale, alleging they adversely possessed the property. In October 2005, the county issued a second quitclaim deed, this time in favor of the Seidels.

On July 27, 2007, Witte filed an action to quiet title of the property. He also brought a claim against the county for breach of warranty of title, and sought to institute condemnation proceedings to secure a public way over the land. The Seidels answered and counterclaimed to quiet title in the property. Following a May 2008 trial, the court granted Witte's quiet title claim and denied all other claims. Witte filed a motion to enlarge, amend, and modify, which the court granted to add the fact the county did not mail notice of the public hearing to the Seidels and correct a scrivener's error. It denied the motion in all other respects.

On November 13, 2008, the Seidels filed their notice of appeal. Witte filed a notice of appeal the following day.

II. Scope and Standard of Review. Actions to quiet title are in equity and therefore our review is de novo. *Fencl v. City of Harper's Ferry*, 620 N.W.2d 808, 811 (Iowa 2000). "We have the responsibility to examine the facts as well as the law and to decide anew the issues properly presented." *Id.* Although we give weight to the trial court's fact findings, we are not bound by them. *Id.* We are also not bound by the trial court's conclusions of law. *Id.*

First, we examine the basis upon which the trial court rendered its decision and affirm on that ground if possible. *Id.* If we disagree with the basis for the court's ruling, we may still affirm if there is an alternative ground raised that can support the court's decision. *Id.* at 811-12.

III. Equitable Estoppel. The Seidels brought an action to quiet title to the property in question, alleging in their petition they adversely possessed the land. However, the doctrine of adverse possession does not apply to governmental

municipalities in Iowa. *Stecklein v. City of Cascade*, 693 N.W.2d 335, 340 (Iowa 2005). Proof of adverse possession alone will not defeat the county's interest in the property. *Id.* Instead, the district court analyzed the Seidels claim under an equitable estoppel theory.

Witte contends the court erred in making its findings addressing equitable estoppel because the Seidels did not plead the theory in its petition to quiet title. Iowa is a notice-pleading state. *See Adam v. Mt. Pleasant Bank & Trust Co*., 355 N.W.2d 868, 870 (Iowa 1984). A petition need not plead ultimate facts to raise or preserve a claim. *Id*. The petition is sufficient if it "apprises the opposing party of the incident from which the claim arose and the general nature of the action." *Id*. The Seidels' petition alleges the county abandoned the quarry and the Seidels adversely possessed the property for more than forty years. We conclude this is sufficient to apprise Witte of the general nature of the action, the court was correct to address the issue, and the issue is preserved for our review.

In order to succeed on its quiet title claim, the Seidels must prove the following elements of an equitable estoppel claim:

> (1) conduct on the part of the [county] indicating an abandonment of its interest, including actual nonuse for more than ten years; (2) a claim of ownership through adverse possession; and (3) unfair damage to the claimant if the [county] were permitted to assert its interest.

Id. The Seidels have the burden of proving all three elements by clear and convincing evidence. *Fencl*, 620 N.W.2d at 816. Whether to apply the doctrine of equitable estoppel must be considered in the light of its surrounding facts and

circumstances. *Sioux City v. Johnson*, 165 N.W.2d 762, 768 (Iowa 1969). There is no hard and fixed rule for determining when it should be applied. *Id.*

We first examine whether there was conduct on the part of the county that indicated an abandonment of its interest for more than ten years. In addition to the actual relinquishment of the property, an intent to abandon must be shown; mere nonuse is not enough. *Stecklein*, 693 N.W.2d at 340. For instance, mere failure to improve a street does not demonstrate abandonment. *Id.*

We conclude the Seidels proved the county abandoned the property in question. In the deed issued to the county in 1933, as well as in following conveyances, it states the property is "to be used as a rock quarry." The county used it for this purpose until sometime in the 1950s. The county then filled the quarry and has not used the property since. Furthermore, the language of the deeds anticipates the county's use as being temporary, stating, "When the County wishes to dispose of said property, it is to be deeded back to the adjoining property owner." The county acknowledges it has not used the property in over forty years. It only asserted its ownership rights after Witte approached it seeking to buy the property. Under these facts, there is clear and convincing evidence the county abandoned the property when it ceased its quarrying operation.

We then turn to the second element. One claiming an interest in land adverse to a governmental entity under a theory of estoppel must prove "actual and notorious possession of the land . . . as private property under a claim of right." *Id.* at 817. This possession must be such "as ordinarily marks the conduct

of owners in general in holding, managing, and caring for the property of like nature and condition." *Id.* at 818. The emphasis is on the actions and conduct of the party making the claim, although no particular act or series of acts is necessary to demonstrate an intention to claim ownership. *I-80 Associates, Inc. v. Chicago, Rock Island & Pac. R.R. Co.*, 224 N.W.2d 8, 11 (Iowa 1974).

> The actual occupation, use, and improvement of the premises by the claimant, as if he were in fact the owner thereof, without payment of rent or recognition of title in another or disavowal of title in himself, will be sufficient to raise a presumption of his entry and holding as absolute owner, and, unless rebutted, will establish the fact of a claim of right. . . . A claim of ownership may be evidenced by a void deed, *or by receiving the rents, issues, and profits of the property*, or by conveying, devising, leasing, encumbering, or improving it, or by paying for insurance thereon, or laying off the land into town lots.

Id. (emphasis added). This adverse possession must be shown for a period of at least ten years. *Marksbury v. State*, 322 N.W.2d 281, 297 (Iowa 1982).

The actions of the Seidels and their predecessor's show a clear intent to claim ownership. In addition to using the property recreationally over the years, they rented the land to neighboring farmers as pasture for their cattle. To this end, a fence was erected around the property, and under the provisions of the lease agreement, was to be maintained by the renter. The Seidels have rented the property for this purpose since they first took possession of the property in 1993[1], but the history of renting the property extends back over forty years. Such use of the land is consistent with conduct of owners holding property of like nature or condition.

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[1] The property was owned by Paige Seidel's father. He died in the 1970s and left one-third of it to his wife, one-third of it to Paige, and one-third of it to another daughter. In 1993, Paige and her husband, Carter, bought out her mother and sister.

Finally, the Seidels must show unfair damage if the county were to assert its ownership rights. In *Fencl*, our supreme court held, "This element generally requires the claimant to show that he has made some permanent improvement on the tract." *Fencl*, 620 N.W.2d at 816. It is undisputed the only improvement made here is a fence that runs along the boundary of the property. However, the Seidels have established they would be damaged by the loss of their interest in the property. In addition to the sentimental value of the property, it holds monetary value. As stated above, the Seidels rent the property as pasture land and have done so since taking possession of the land. They would be damaged by its loss.

We conclude the Seidels have met their burden of establishing the elements of equitable estoppel by clear and convincing evidence. Accordingly, we need not address their remaining claims or Witte's cross-appeal. We reverse the trial court's contrary conclusion and remand for entry of a judgment quieting title to the disputed property in the Seidels.

REVERSED AND REMANDED.