STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1915

Timothy P. Rajkowski,
Appellant,

vs.

Melissa Christensen, et al.,
Respondents,

Central Minnesota Federal Credit Union,
Respondent.

Filed September 30, 2008
Affirmed
Schellhas, Judge

Benton County District Court
File No. 05-CV-05-768

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Central Minnesota Federal Credit Union, 20 South Fourth Avenue East, P.O. Box 160, Melrose, MN 56352 (respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges the district court's ruling that he was not entitled to a prescriptive easement over land adjacent to his. Because the district court's decision was substantially supported by the evidence and the court did not abuse its discretion in denying appellant the equitable remedy of prescriptive easement, we affirm.

FACTS

Appellant Timothy P. Rajkowski is the record owner of a 40-acre parcel of landlocked property in Benton County. Appellant's initial interest in the parcel was as security for a loan made to Brian Stofflet. The parcel was transferred to appellant in March 2001, through a quitclaim deed executed by Stofflet. Appellant then reconveyed the parcel to Stofflet on a contract for deed. Stofflet eventually defaulted on the loan, and appellant canceled the contract for deed and took possession of the land in February 2003. Appellant's attorney drafted both the quitclaim deed and contract for deed, and neither document contains any reference to an easement over adjacent land for access to the parcel.

Respondents Melissa Christensen and Kelly Winkelman are the record owners of a 20-acre parcel of property that is adjacent to the western and northern boundaries of appellant's parcel. Respondents purchased their property from Stofflet's mother in December 2004. Respondent Central Minnesota Federal Credit Union has a mortgage interest in respondents' land. Another parcel, west of respondents' land, contains

wetlands.[1] The public road closest, but not adjacent, to appellant's parcel is Duelm Road, which is located north of appellant's land. Duelm Road is separated from appellant's parcel by respondents' property and the parcel containing wetlands. An unimproved field road that crosses respondents' property has sporadically been used by appellant to access Duelm Road from his parcel.

Appellant brought a quiet title action, seeking an easement by necessity over the unimproved field road going northerly to Duelm Road across respondents' property. The district court found that the use of the field road was necessary to the enjoyment of appellant's parcel but that there was no evidence that the field road was used consistently between 1996 and March 22, 2001, the date on which title to appellant's and respondents' parcels was severed. The court denied appellant an easement by necessity to use the field road sometimes located on respondents' property. Appellant moved for a new trial on the basis that the district court's decision was not justified by the evidence and was contrary to law. The district court denied appellant's motion for a new trial, and this appeal follows.

D E C I S I O N

When a motion for a new trial is denied, we review questions of law de novo. *Dostal v. Curran*, 679 N.W.2d 192, 194 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). We review the district court's factual findings for clear error. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). We will not disturb a district court's

[1] Although the district court consistently refers to the parcel containing the wetlands as being east of respondents' land, the record reflects that this parcel is situated west of respondents' land.

findings of fact unless they are not reasonably supported by the evidence and the reviewing court is "left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

"An easement by necessity falls within the general category of implied easements, which arise only in specific fact situations." *Niehaus v. City of Litchfield*, 529 N.W.2d 410, 412 (Minn. App. 1995). The elements that create an implied easement by necessity are (1) a common title to the parcels at issue at the time of the use of the easement, (2) a severance of the common title, (3) "the use which gives rise to the easement must have been so long continued and so apparent as to show it was intended to be permanent," and (4) the easement must be necessary to the beneficial enjoyment of the land granted. *Nunnelee v. Schuna*, 431 N.W.2d 144, 148 (Minn. App. 1988), *review denied* (Minn. Dec. 30, 1988).

Appellant challenges the district court's finding that the use of the field road was not continuous and apparent when common title to the parcels was severed on March 21, 2001.[2] The district court found that "the use of the sporadic field road . . . was not so long continued and apparent . . . so as to show that the use was intended to be permanent." The district court based its finding on testimony it found to be credible. A previous owner of appellant's parcel, who sold it to Stofflet's father in 1996, testified that

[2] Appellant argues that the time of severance was actually February 3, 2003, when he took possession of the land after canceling Stofflet's contract for deed. Appellant did not raise this argument at trial, and therefore we will not consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that a reviewing court generally will not consider issues that were not raised in the district court).

the field road was not visible every year. Respondent Winkelman testified that from 1975 to approximately 1993, and from 1996 to the present, he rented and helped farm the parcel that he and respondent Christensen eventually purchased. Winkelman testified that when the field road existed, it was in a cultivated field, was used incident to his farming operation, was often covered by crops or vegetation, and did not reach appellant's land. Winkelman's brother, Thomas Winkelman, testified that during the same time period, he helped farm respondents' land and the field road existed only intermittently and was regularly plowed over and used to grow crops. The district court found that appellant's testimony and evidence, which included photographs of the field road taken approximately three years after severance, failed to establish that the use of the field road was apparent and continued for so long as to be intended permanent. Due regard must be given to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01. The evidence reasonably supports the district court's findings, and we therefore refuse to disturb them.

Appellant further argues that even if, at the time of severance, the use of the field road was not so long continued and so apparent as to show it was meant to be permanent, he was nonetheless entitled to equitable relief from the district court. *See Olson v. Mullen*, 244 Minn. 31, 40, 68 N.W.2d 640, 647 (1955) (stating that of the factors that create an easement by necessity, only necessity itself is required, the other factors being only aids in determining whether an implied easement exists). Here, the district court found that the use of the field road was necessary to the enjoyment of appellant's parcel. Appellant argues that because the sole requirement for an easement by necessity is

satisfied, the district court erred in concluding that appellant was not entitled to the equitable remedy of easement by necessity.

The decision to grant equitable relief is within the sound discretion of the district court and will be upheld unless there has been a clear abuse of that discretion. *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979). In exercising its discretion to deny appellant's request for an easement by necessity, the district court noted that appellant knew that the parcel was landlocked when he acquired it. The district court also found that appellant is a "sophisticated and knowledgeable business owner" with a construction business and a cell tower leasing business and that appellant failed to take advantage of his opportunity to create an easement when his attorney drafted the purchase documents. An implied easement is an equitable doctrine, and equity does not favor an appellant who knew he was buying a landlocked parcel at the expense of a purchaser who was not a party to the transaction. *Lake George Park, L.L.C. v. IBM Mid-America Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998). We conclude that the district court did not abuse its discretion in denying appellant's claim for an easement by necessity.

Affirmed.