IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 1-625 / 91-558

IN THE MATTER OF THE ESTATE OF FRANCIS R. CARLSON, SR.,
Deceased.

FRANCIS R. CARLSON, JR., and **RAMONA LOIS JACOBSON,** as
Co-Executors of the Estate of Francis R. Carlson, Sr.,

Appellees,

vs.

R.N. HADE (a/k/a REYNOLD HADE) and **R & M FARMS, INC.,**
An Iowa Corporation,

Appellants.

Appeal from the Iowa District Court for Webster County, Mark S. Cady, Judge.

In this quiet title action to resolve a boundary dispute, one of the affected landowners appeals from an adverse ruling. **AFFIRMED.**

C. Joseph Coleman, Jr. of Mitchell, Perkins, Coleman & Enke, Fort Dodge, for appellants.

James L. Kramer and Dean Erb of Johnson, Erb, Latham, Gibb & Carlson, P.C., Fort Dodge, for appellees.

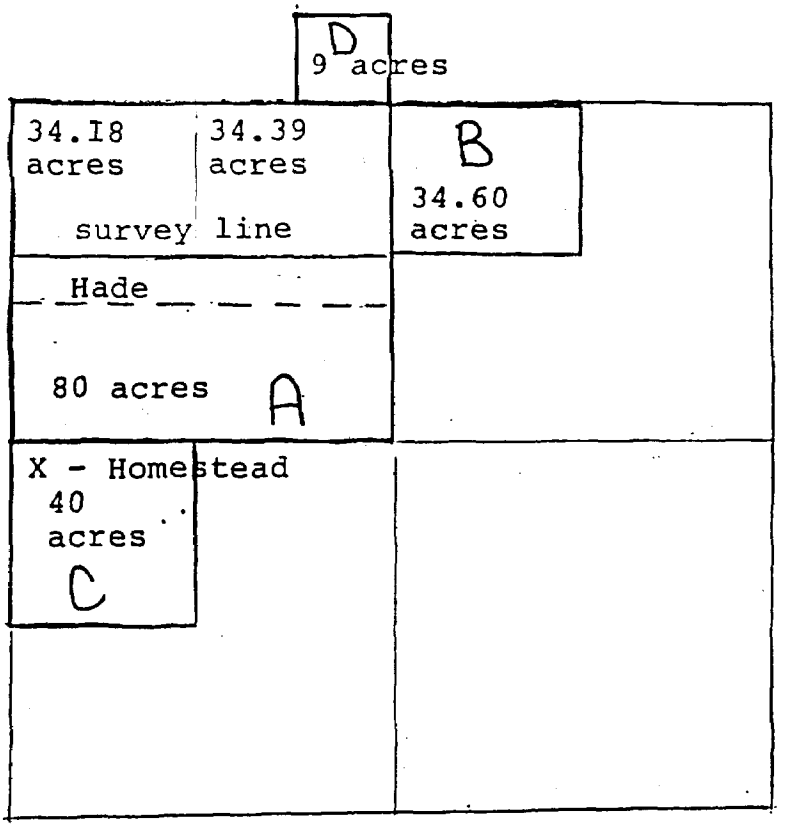
Considered by Oxberger, C.J., and Donielson and Hayden, JJ. Habhab, J., takes no part.

OXBERGER, C.J.

The executors of the estate of Francis R. Carlson, Sr. brought this action to quiet title to certain property. When the estate sought to sell the land, a question arose concerning the location of the boundary between land owned by the estate and land owned by defendant Reynold Hade. The district court found the boundary was along the government survey line. Hade appealed. We affirm.

The property in dispute is in Section 1 of Lost Grove Township, Webster County, Iowa. Section 1 is a fractional section with a government correction line on its north side. The correction is necessary to adjust for the curvature of the earth and was made pursuant to federal law. Section 1 contains less than the usual 640 acres.

Originally, John Stone owned all of the northwest quarter of Section 1 (shown on the map as A). He also owned the northwest quarter of the northeast quarter (shown as B) and the northwest quarter of the southwest quarter of Section 1 (shown as C), and nine acres to the north of Section 1 (shown as D). The homestead was located on part C. When Stone died in 1921 he bequeathed his property to his daughter Anna Carlson for life, with the remainder to her children, Francis R. Carlson, Sr. and Elwin A. Carlson. Anna died in 1956 and the property passed to Francis Sr. and Elwin, with each taking an undivided one-half interest in the property as tenants in common.



Map of Section 1

Francis Sr. lived on the homestead and farmed all of the land. Elwin did not participate in the farming, but worked as an electrician and plumber and resided in Harcourt, Iowa. Francis R. Carlson, Jr. joined his father, Francis, Sr., in the farming operation in 1956. Francis Jr. testified that at that time a fence ran across part A dividing it north and south at the government survey line. That fence was later removed.

In 1960 Francis Sr. and Elwin decided to divide their land. Francis Sr. received the south half of part A and part C. Elwin received the north half of part A and parts B and D. The deeds which the brothers made to show the division of the property did not mention the number of

acres involved in the partition, but noted the property by description only. Francis Sr. received the homestead, which was on part C.

In 1963 Elwin sold his portion of part A and part D to Reynold Hade, who was incorporated under the name of R & M Farms, Inc. Hade paid $35,000 for the land. Again, the deed did not mention the number of acres involved, but used only the government description of the land. In 1963 Francis Sr. sold the north twenty acres of the southern half of part A to Hade. Hade paid $9,320 for this parcel. Francis Sr. placed two poles in the ground to show the southern boundary of the Hade property, but these poles are apparently no longer in existence. Elwin later sold part B to a third party.

After 1963 Francis Sr. leased part C and the remaining portion of part A to Hade. Thus, Hade farmed all of part A, and parts C and D as one unit. The lease was originally for eighty acres of land, but was later increased to ninety acres after Francis Sr. cleared some additional land.

Francis Sr. died in 1988. His son, Francis Jr., and a daughter, Ramona Jacobson, were appointed executors. The land in the estate of Francis Sr. was sold at a public auction. The homestead was advertised as being about 2.3 acres, and was sold for $4,100 to Hade's son. The rest of the land was advertised as being about 92 tillable acres and was sold to Elsie Erickson for $183,000.

After the sale the land was surveyed. The surveyor first located the section corner stones and then divided the total acres of part A in half. The surveyor then added twenty acres to the south half of that line and marked the boundary. However, the estate asked the surveyor to establish the boundary as being twenty acres south of the government survey line. The difference between these two proposed boundary lines is about ninety-five feet and involves about six acres.

The executors of the estate of Francis Sr. brought this action to quiet title. The district court determined the deeds between Francis Sr. and Elwin referred to the government survey lines, and not to a mathematical division of the property. The court found no credible extrinsic evidence to support any other construction of the deeds. The court concluded the boundary of the estate's property in part A was twenty acres south of the government survey line. The court also concluded Hade had not established title to the land by adverse possession. Hade has appealed.

I. This quiet title action stands in equity and our review is de novo. Shine v. State, 458 N.W.2d 864, 865 (Iowa App. 1990). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. Id. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Id.

II. Hade contends the district court erred in finding the deeds between Francis Sr. and Elwin referred to the government survey line and not a mathematically equal division of part A. He points out that the brothers each had an undivided one-half interest in the property before it was divided.

The burden of proof is on a plaintiff in a quiet title action, and the plaintiff must quiet title on the strength of his own title and not rely on the weakness of another's. Nielsen v. Stratbucker, 325 N.W.2d 391, 394 (Iowa 1982).

The estate's claim to the property in question here is based on the deeds exchanged between Francis Sr. and Elwin. The deeds themselves refer only to the government descriptions of the land. While the deeds mention the number of acres in part D, no mention is made of the number of acres in any other parcel of land. We agree with the district court that looking at the deeds alone, it appears the brothers divided part A at the government survey line. We also note that generally where a deed designates a half of a fractional quarter section, the presumption is that the deed is referring to half as measured by the government survey lines, not a mathematical half of the quarter section. See Marshall's Iowa Title Opinions and Standards, §2.1(E) (1978).

We next consider the intent of Francis Sr. and Elwin in creating the deeds. Generally, the intent of a grantor is

controlling in construing a deed. Hawk v. Rice, 325 N.W.2d 97, 99 (Iowa 1982). Among the factors to be considered are the situation of the parties to the deed at the time it was made, the property which was the subject matter of the contract, and their intentions with regard to the property as displayed by the language of the entire deed. Montz v. Hill-Mont Co., 329 N.W.2d 657, 658 (Iowa 1983).

Much of Hade's argument is based on his supposition that as a good businessman, Elwin would not have agreed to take a lesser amount of land. If part A is divided on the government survey line, Elwin received a total of about 112 acres and Francis Sr. received about 120 acres of land. The only evidence offered on the question of the parties' intent is the testimony of Francis Jr. that Elwin agreed to take less land because he did not want responsibility for the upkeep of the buildings on the homestead.

We conclude Francis Sr. and Elwin intended to divide part A on the government survey line. There is no substantial evidence to show the brothers intended any other division of the property. Thus, when Hade purchased Elwin's interest in part A, he purchased the approximately 68.57 acres north of the survey line.

III. Hade also contends this quiet title action brought by the estate is barred by the statute of limitations. An action to quiet title is subject to the ten-year statute of limitations in Iowa Code section 614.1(5). Helms v Helten, 290 N.W.2d 876, 881 (Iowa

1980). Hade states that he has been in possession of the property in question since 1963.

We agree with the district court's conclusion that the limitations period began to run when the estate discovered Hade was making an adverse claim to the property following the estate sale. The estate's action is not barred by the statute of limitations.

IV. Finally, Hade claims a right to the property in question under a theory of adverse possession. He states he believed he owned the land to a line twenty acres south of the mathematical half-way point of part A. He then rented the rest of part A. Hade argues he has had possession of the land in question since 1963.

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. The doctrine of adverse possession is strictly construed. Simonsen v. Todd, 261 Iowa 485, 495, 154 N.W.2d 730, 736 (1967). There are usually no equities in favor of one who claims property by adverse possession. Id.

We determine Hade has not established his claim of adverse possession. Hade has not shown any evidence to suggest he possessed the land by ownership instead of by lease. He failed to show such possession or open dominion

as ordinarily marks the conduct of owners in general in holding, managing, and caring for property of like nature and condition. See Pearson v. City of Guttenberg, 245 N.W.2d 519, 530 (Iowa 1976). Hade admitted that he had not paid taxes on the land in question.

V. We conclude the estate of Francis Sr. included the property in part A up to a line twenty acres south of the government survey line. We affirm the district court's order quieting title to this property to the estate. Costs of this appeal are assessed to Hade.

AFFIRMED.

IN THE COURT OF APPEALS OF IOWA

In re Marriage of Carraway (Bertram/Kathern), 91-1741, Filed July 30, 1992

(MISSING: See Volume 1443 Abstracts and Arguments/C-Ca/Spring Term 1992/ Court of Appeals)