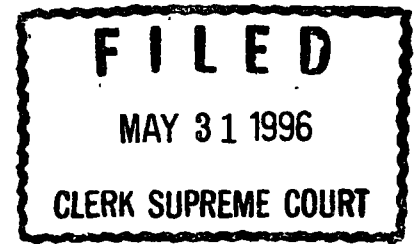


IN THE COURT OF APPEALS OF IOWA

No. 5-595 / 94-2139



GERALD L. FISHER and CATHERINE E. FISHER,

Appellees,

vs.

LOWELL C. HOY, JR., and CELINE M. HOY,

Appellants.

Appeal from the Iowa District Court for Des Moines County, R. David Fahey,
Judge.

Appeal from grant of permanent injunction which required appellants to remove
a barricade erected across property subject to easement. **AFFIRMED.**

John M. Loeschen of Loeschen & Loeschen, Burlington, for appellants.

Rodney A Wittkamp of Wittkamp & Waples, Burlington, for appellees.

Considered by Cady, P J , and Huitink and Streit, JJ. Vogel, J., takes no part.

STREIT, J.

This is an appeal from an action to enjoin the appellants from obstructing the appellees' use of property subject to an easement. Our review in this equity action is de novo. Iowa R. App. P. 4. We affirm.

I. Factual Background. In 1938 Harry Fisher bought a tract of property. He later built a large, horseshoe-shaped driveway for his personal and commercial vehicles used in his plumbing and heating business and Roto-Rooter sewer cleaning service. When Harry retired in 1947, his son Stanley took over the plumbing and heating business and his son Gerald took over the Roto-Rooter service.

In 1950 Harry sold a portion of the land to Stanley and his wife, Celine Fisher. Harry reserved a sixteen-foot easement over the west sixteen feet of the parcel for driveway purposes. Celine subsequently received the property when she divorced Stanley, and she deeded it to herself and her new husband, Lowell Hoy.

Harry sold another portion of the land to James Ewinger in 1955 and also granted him the right to use the sixteen-foot easement. Following the deaths of Harry and his wife, Gerald and his wife Catherine obtained title to the Fisher family home in 1979. In 1993 Ewinger conveyed by quitclaim deed all of his interest in the easement to the Hoys.

At the time this action arose, the Fishers and the Hoys owned adjoining properties. The Hoys were disturbed by the volume of traffic using the driveway

Believing the easement had been eliminated by the Ewinger quitclaim, the Hoys erected a barricade across the driveway to prevent the Fishers' further use of it.

Gerald and Catherine Fisher filed an action in equity against Lowell and Celine Hoy. They claimed they had an easement over the Hoys' property and sought a permanent injunction to prevent the Hoys from erecting barricades or otherwise interfering with their use of the easement. The Hoys' answer raised a number of affirmative defenses including claims the easement had been extinguished and the Fishers' increase in frequency of use and expansion in purpose of the easement had overburdened the servient estate.

In ruling on a motion for summary judgment, the district court ruled the Fishers retained an easement by express grant over the west sixteen feet of the Hoys' property. The parties stipulated to the existence of the easement at trial.

Following the trial, the district court rejected the Hoys' claim their servient estate has been overburdened by increased use or expanded purpose of the easement. The court noted the family businesses had been in continuous operation on the property since before the easement was created. The district court entered a decree granting the permanent injunction requiring the Hoys to remove the barricade and refrain from interfering with the Fishers' right of way.

In their brief, the Hoys assert the overburdening of the servient estate is the only substantive issue they are raising on appeal. They contend the record shows Harry

Fisher created the easement with the intent it would be used primarily for residential purposes, and only incidentally for business vehicles. They also maintain the plaintiffs have increased the use and expanded the purpose of the original easement.

II. Easement. An “easement” is a liberty, privilege, or advantage in land without profit, existing distinct from ownership. *Hawk v. Rice*, 325 N.W.2d 97, 98 (Iowa 1982). Neither party to an easement may interfere with the rights of the other. *Krogh v. Clark*, 213 N.W.2d 503, 506 (Iowa 1973).

The dominant estate owner has the right to reasonable use of a driveway easement in the manner and for the purpose it was intended to serve, but must not use it in a way imposing additional burdens on the servient estate. *Wiegmann v. Baier*, 203 N.W.2d 204, 209 (Iowa 1972). Ordinarily, an increase in the frequency of use, alone, will not constitute an additional burden. See *Schwob v. Green*, 215 N.W.2d 240, 243 (Iowa 1974). However, increased use coupled with the expanded purpose of an easement creates an additional and undue burden on a servient estate. See *id.*; *Halsrud v. Brodale* 247 Iowa 273, 278, 72 N.W.2d 94, 97 (1955).

From our de novo review of the record, we conclude the driveway easement was reserved by Harry Fisher for use by residential and commercial traffic associated with the family businesses. The easement continued to be used for commercial purposes after Harry retired and his sons took over the businesses. There has not been an increased use and expanded purpose which would render the use of the easement

burdensome on the servient estate. We recognize some of defendants' witnesses believed there had been an increase in usage of the easement, but there was contrary evidence there had not been an increase. In any case, there was not sufficient evidence to establish an expansion of the purpose of the easement.

A grant of injunctive relief is appropriate where there has been interference with the use of an easement. *See Wiegmann*, 203 N.W.2d at 209. We affirm the findings of the district court and its imposition of a permanent injunction.

AFFIRMED.