IN THE COURT OF APPEALS OF IOWA

No. 0-414 / 99-1413
Filed August 30, 2000

ESMANN ISLAND OWNERS ASSOCIATION,
Plaintiff-Appellee,

vs.

ANTHONY E. HELLE, DORIS E. HELLE, and JOHN D. HELLE,
Defendants-Appellants,

and

GLENN E. PRIMMER, JUNE PRIMMER, and THE GLENN E. PRIMMER AND JUNE PRIMMER REVOCABLE TRUST,
Defendants.

FILED
AUG 30 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clayton County, Margaret L. Lingreen, Judge.

Defendants Anthony, Doris, and John Helle appeal from the district court's order reforming their deed. **AFFIRMED.**

Matthew G. McQuillen and Marty A. Hagge of Remley, Willems, McQuillen & Voss, Anamosa, for appellants.

Michael J. Schuster of Schuster & Mick, Guttenberg, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Defendants Anthony, Doris, and John Helle appeal from the district court's order reforming their deed. They claim the court erred in failing to find the plaintiff was estopped or had waived its right to reformation. In the alternative, they argue, if the deed was properly reformed, the court erred in calculating the compensation to which they were entitled for improvements they made to the property. We affirm.

Esmann Island is a ninety-acre island located in the Mississippi River at Guttenberg in Clayton County, Iowa. Art Esmann and his family originally owned the island and rented parcels of the land to other families for "cottage" spaces.

Sometime in 1987-1988, Esmann sold the island to Kenneth Fry. Fry significantly increased the rent and in 1990, the tenants on the island formed the Esmann Island Tenants Association. The Association sought to purchase the island from Fry. After purchasing the island from Fry and taking possession in March 1991, the Association changed its name to the Esmann Island Owners Association. The Association adopted bylaws and a declaration of covenants, conditions and restrictions. It was the Association's intent each tenant could purchase from the Association the same land the tenant had been leasing from Esmann.

The tenants placed flags where they thought the boundaries were located for the plots they were leasing. The Association hired Roger Mohn to survey and plat the land. The "Esmann Island Subdivision Plat According to June 1, 1993,

Plat of Survey of Esmann Island of Roger Mohn" was approved and filed with the Clayton County Auditor on January 10, 1994.

Glenn and June Primmer leased a parcel of land from Esmann that was described as 140 feet by 75 feet and located north of the lot occupied by Robert Scherr. The lease agreement provided no permanent structure would be placed between their property and the river. Other tenants used the land between the Primmer's plot and the Mississippi River to access the river. The land leased by the Primmers appears in the subdivision plat as Lot 131. However, as platted, Lot 131 extended to the Mississippi River and included the strip that had been available to the other tenants for access to the river.

The Primmers purchased Lot 131 from the Esmann Island Owners Association on or about January 21, 1994. The purchase price of $13,000 was consistent with the price set by the Association for property without river frontage. The Primmers subsequently conveyed Lot 131 to the Glenn E. Primmer and June Primmer Revocable Trust (Primmer Revocable Trust).

After seeing Lot 131 with a realtor, Anthony and Doris Helle, along with their adult son, John, entered into a real estate contract with the Primmer Revocable Trust to purchase the lot. The land was not represented to the Helles as extending to the Mississippi River. The Helles understood the perimeters of the lot, and were aware others used the riverfront area to gain access to the river.

After confirming the Primmer Revocable Trust had clear title to Lot 131, the Helles purchased the property for $90,000, an amount consistent with

non-riverfront property. The Association's attorney, Michael Schuster, prepared the real estate contract, which was signed on April 3, 1997. The warranty deed given by the Primmer Revocable Trust in satisfaction of the contract transferring Lot 131 to the Helles was filed on April 9, 1997. The Helles were aware, at the time of purchase, restrictive covenants applied to the property.

The declaration of covenants, conditions and restrictions identifies the common areas, and declares the Association the owner of the common areas. The common areas do not include the easterly portion of Lot 131 (hereinafter "disputed property"). The Association is responsible for the maintenance, repair, reconstruction, and replacement of the common areas. The disputed property was in poor condition. It was covered with a heavy growth of weeds, poison ivy, and brush, along with dead trees and discarded personal items. A large hole was located in the middle of the lot.

On September 20, 1997, Anthony attended an Association meeting to discuss the condition of the disputed property. He offered to purchase the property, but was told by at least one person at the meeting it was not for sale. If he could not purchase the property, Anthony wanted the Association to clean it up or have its permission to do the cleanup work himself. The Association agreed Anthony could clean up the disputed property, but cautioned he should not do anything that would affect the Iowa Department of Natural Resources or the Corps of Engineers.

During the meeting, Wayne Jensen, the Association's president, indicated it appeared the disputed property might belong to the Helles. After the

September 20, 1997 meeting, the Helles attempted to determine whether they in fact owned the disputed property. They learned Lot 131, as platted, was not designated as a common area in the Association's declaration of covenants, conditions and restrictions for Esmann Island.

The Helles began the cleanup work on the disputed property in October 1997. The work included removal of brush, weeds, broken limbs, and garbage. They also brought in fill dirt and used a uniloader/skidloader to spread it around. Throughout the spring of 1998, the Helles continued their cleanup efforts on the disputed property. In March 1998, the Helles filed an application with the Iowa Department of Natural Resources and the United States Army Corps of Engineers to construct a boat ramp and boat dock at the edge of Lot 131 in the Mississippi River. Adjoining landowners and the Association received notice of their application. The Association took no action, and permission to build the dock and boat ramp was granted. In April 1998, the Helles had a notice published in the Guttenberg Press that stated:

> To all parties concerned: We have purchased Lot 131 Riverview Road, Esmann Island, which goes to the river. Any personal items along the river will be disposed of if not claimes [sic] by June 15, 1998.
> Anthony Helle.

The published notice put the residents of Esmann Island on alert the Helles claimed ownership of Lot 131 in its entirety, including the disputed property. At the regular meeting of the Association's board of directors on May 16, 1998, numerous residents appeared to complain that the Helles were

restricting the use of the disputed property. The board scheduled a special meeting to discuss the issue.

At the special meeting on May 23, 1998, Jensen informed those present, including the Helles, the disputed property was included in the sale of Lot 131. The board decided to set up a conference with Roger Mohn, the surveyor; Michael Schuster, the association's attorney; and the Helles, in an attempt to correct this mistake. The conference between the parties never took place.

Hostility was expressed toward the Helles in June 1998, at the Association's annual meeting. Subsequent to the meeting, the Helles' attorney wrote the Association's attorney, Michael Schuster, expressing the opinion the Helles owned Lot 131, including the disputed property. In his letter dated June 24, 1998, the Helles' attorney asked Schuster to contact him if there was any controversy concerning the ownership or control of the disputed property.

The Helles continued to take care of the grass on the disputed property. In July 1998, they installed a boat ramp. In a letter dated August 25, 1998, attorney Schuster responded to the Helles' attorney's June 24, 1998 letter, notifying the Helles the Association was claiming ownership of the disputed property. He informed them any use of the disputed property would be at their own risk, and advised them to stop making improvements on the disputed property. Schuster also informed the Helles the deeds of conveyance were in error and the Association had authorized legal action to reform the erroneous deeds.

During this period of time, Wayne Jensen, president of the Association, was aware of some of the work being performed by the Helles on the disputed property. The Helles discussed the situation with Jensen as it developed. However, Anthony Helle acknowledged he knew Jensen did not speak for the board of directors in the private conversations he had with Jensen. Jensen, as president of the board of directors, could not act for nor bind the board.

The Association sought a reformation of the deeds that conveyed Lot 131 to the Primmers, the Primmer Trust, and the Helles. A bench trial was held on July 22 and 23, 1999. The Helles asserted the affirmative defenses of estoppel, waiver, statute of limitations, and the doctrine of unclean hands. In the event the court grated reformation of the deeds, the Helles asked for compensation for the improvements they made and a right to use those improvements. The district court ordered the deeds reformed and awarded the Helles $3500 for the value of the improvements they made to the disputed property. The Helles appeal.

I. Reformation of the Deed. A court sitting in equity has the power to grant reformation of an instrument. *Hosteng Concrete & Gravel, Inc. v. Tullar*, 524 N.W.2d 445, 448 (Iowa App. 1994). Our review is de novo. *Kufer v. Carson*, 230 N.W.2d 500, 503 (Iowa 1975). In undertaking such a review, we have a duty to examine the whole record and adjudicate anew rights on the issue properly presented. *Id.* We give weight to the trial court's findings, but they are not binding. *Id.*

Reformation refers to a change in the instrument to reflect the real agreement of the parties. *Kufer*, 230 N.W.2d at 503. Reformation may

sometimes be appropriate to correct a mistake in a deed. *Kendall v. Lowther*, 356 N.W.2d 181, 187 (Iowa 1984). The rules governing reformation of an instrument are well established. *Kufer*, 230 N.W.2d at 503. One who seeks reformation contending the instrument does not reflect the real agreement between the parties has the burden of establishing this contention by clear, satisfactory, and convincing proof. *Id.* Requiring this high standard of proof helps ensure a court granting reformation is merely changing the terms of a written document to reflect the agreement of the parties and not making a new agreement for them. *Poulson v. Russell*, 300 N.W.2d 289, 299 (Iowa 1981). Reformation of a deed may be necessary because of fraud or duress, mutual mistake of fact, mistake of law, or mistake of one party and fraud or inequitable conduct on the part of the other. *Kendall*, 356 N.W.2d at 187.

In the instant case, the Helles claim the Association has failed to prove by clear, satisfactory, and convincing evidence there was a mutual mistake in the description of Lot 131, and a prior written or oral agreement between the parties formed a basis for reforming the deed. The Association contends it did not intend to convey the disputed property and, historically, others on the island had used the disputed property for access to the river.

The proper relief for mutual mistake of a material fact in a written instrument is reformation of the instrument to reflect the true intentions of the parties. *Westcott v. Westcott*, 259 N.W.2d 545, 548 (Iowa App. 1977). The mistake must be both mutual and material. *Id.* A mistake on one side may be

grounds for rescinding, but not for reforming a contract. *Id.* The association had the burden to show mutual mistake. *Id.*

When the Helles purchased Lot 131, they understood they were only purchasing the westerly portion of the lot. They were aware others on the island had used the disputed property to access the river. The price paid by the Helles for Lot 131 was consistent with the purchase price of a lot without direct river access. At the September 20, 1997 meeting of the Association, at least one person told Anthony the disputed property was not for sale when he attempted to purchase it.

The remedy for reformation of an instrument lies within the sound discretion of the equity court and depends on whether the remedy is essential to the ends of justice. *Hosteng*, 524 N.W.2d at 448. Facts and circumstances must be sufficiently compelling to constitute an effectual appeal to the conscience of the court and prompt it to interfere by reformation to mitigate the rigorous rules of law. *Id.*

Based on our de novo review of the record, we disagree with the Helles and find the Association established its right to reformation by clear, satisfactory, and convincing evidence.

II. Equitable Estoppel. The Helles contend the Association should be estopped from seeking reformation of the deed. The district court found the Helles had not established a basis for equitable estoppel.

The doctrine of equitable estoppel is applicable when a party has through his acts, words, or silence led another to take a position such that the

subsequent assertion of the first party's interest would be contrary to equitable principles. *Heishman v. Heishman*, 367 N.W.2d 308, 310 (Iowa App. 1985) (citing *Johnson v. Johnson*, 301 N.W.2d 750, 754 (Iowa 1981)). The principles of equitable estoppel are clearly settled: (1) a false representation or concealment of material facts; (2) lack of knowledge of true facts on part of actor; (3) intention it be acted upon; and (4) reliance thereon by the party to whom made, to their prejudice and injury. *Sioux County State Bank v. Veenstra*, 372 N.W.2d 309, 313 (Iowa App. 1985) (citing *Merrifield v. Troutner*, 269 N.W.2d 136, 137 (Iowa 1978)). There can be no estoppel in any event if any of these elements are lacking. *Khabbaz v. Swartz*, 319 N.W.2d 279, 286 (Iowa 1982).

There is no evidence in this case the Association falsely represented or concealed material facts. The Helles did not believe the disputed property was included in the purchase of Lot 131. They later attempted to purchase it. At the September 20, 1997 board meeting, the board's president, Wayne Jensen, indicated the disputed property might belong to the Helles. The evidence does not support a conclusion the Helles relied upon Jensen's statement. On the contrary, the Helles began to make improvements based on the results of their own investigation. Anthony Helle acknowledged he knew Jensen was not representing the board of directors when Jensen spoke privately with him.

The Helles failed to show the required elements of equitable estoppel. The district court properly concluded the Association was not estopped from seeking reformation of the deeds.

III. Waiver. The Helles contend the Association's failure to maintain the disputed property, combined with its inaction after the plat was filed with the Clayton County Recorder on January 10, 1994, provide evidence the Association had impliedly waived its rights to reform the deed. We disagree.

Whether a waiver has occurred is generally a fact question for the court to decide. *Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc.*, 594 N.W.2d 22, 30 (Iowa 1999). The district court's finding is binding on appeal if supported by substantial evidence. *Id.*

A waiver is "[t]he intentional or voluntary relinquishment of a known right . . . ." *Manor of Lake City, Inc. v. Hinners*, 548 N.W.2d 573, 576 (Iowa 1996) (quoting Black's Law Dictionary 1580 (6th ed. 1990)). The essential elements of a waiver are the existence of a right, knowledge, actual or constructive, and an intention to relinquish such right. *Heishman*, 367 N.W.2d at 310.

There was no evidence from which the district court could find the Association voluntarily surrendered a known right. The record is void of any indication the Association intended through its actions to relinquish its right of ownership to the disputed property. Substantial evidence supports the district court's finding the Association did not waive its right to claim title to the disputed property.

IV. Calculation of Compensation. The district court awarded the Helles $3500 for the improvements they made to the disputed property. The Helles

claim the district court erred in calculating the compensation due. They seek compensation for all of their expenses, which they allege totaled $8,086.77.[1]

When an occupant of real estate holds color of title and has, in good faith, made valuable improvements but is thereafter adjudged not to be the owner, Iowa Code chapter 560 provides relief. *See* Iowa Code § 560.1; *Notelzah, Inc., v. Destival*, 537 N.W.2d 687, 690 (Iowa 1995). The two essentials for recovery are color of title and good faith in making the improvements. *Meyers v. Canutt*, 242 Iowa 692, 696, 46 N.W.2d 72, 75 (1951).

Although initially in doubt, we believe when the Helles began the improvements to the disputed property, they believed in good faith they had color of title within the meaning of chapter 560. They purchased Lot 131 for value and held the deed. The plat filed with the county recorder's office reflected Lot 131 extended to the river. Jensen, the board's president, stated he believed the disputed property was a part of Lot 131. The Association told the Helles to go ahead and clean up the disputed property, which they did at their own expense. Various members of the Association were aware and had notice of the work being done by the Helles. Only after the Helles' attorney received the letter dated August 25, 1998 from the Association's attorney does the issue of whether the Helles' had a good faith reason to believe they actually had title to the disputed property arise.

---

[1] This figure includes the expenses incurred by the Helles, $4,227.79 (we believe the figure in appellant's brief of $4,227.27 was an error) plus labor costs of $10 per hour for a total of 385.95 hours.

Clearly, the Helles cleaned up and improved the disputed property. Most of the work was completed prior to receiving the August 25, 1998 letter from the Association's attorney. We hold there is sufficient showing of good faith on the part of the Helles. The mere fact the Helles improved the land at their own expense is evidence of good faith. *Meyers*, 46 N.W.2d at 77.

The district court concluded although the Helles made improvements to the disputed property, not all the improvements increased the value of the land for the Association. Under chapter 560, a person may petition a court for the value of the improvements made upon the land. Iowa Code § 560.3; *Notelzah*, 537 N.W.2d at 690. The person must, however, accurately establish the value of the land and the improvements. *Id.* Upon careful review of the record, we agree with the amount awarded by the district court.

AFFIRMED.