



IN THE COURT OF APPEALS OF IOWA

Y-KNOT POSTERS, INC.,

Appellee,

v.

IOWA DEPARTMENT OF
TRANSPORTATION,

Appellant.

)
)
)
)
)
)
)

Filed December 28, 1977

301
2-59491

Appeal from Marion District Court - M. J. V. Hayden, Judge.

Appeal by defendant, Department of Transportation, from judgment requiring it to pay "just compensation" as a condition of removal of plaintiff's outdoor advertising devices from its highway right-of-way. Affirmed as modified.

Paul F. Christoffers, of Chariton, for appellee.

Franklin W. Sauer, Assistant Attorney General, Iowa Department of Transportation, Richard C. Turner, Attorney General, and Asher E. Schroeder, Special Assistant Attorney General and General Counsel to the Iowa Department of Transportation, for appellant.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an action in which the plaintiff sought injunctive relief against removal of its outdoor advertising devices from the right-of-way easement for highway 92 acquired by the State of Iowa. A temporary injunction prohibiting such removal was issued and upon trial and final hearing the trial court dissolved the temporary injunction; ordered plaintiff to remove the advertising devices from defendant's highway right-of-way; and ordered defendant to pay plaintiff "just compensation" for the removal of said devices. In addition, defendant's counterclaim seeking to recover costs of removal, and profits realized by the plaintiff from holding over on defendant's property was dismissed. Defendant appeals from a portion of this judgment.

I. On appeal defendant urges that while the trial court correctly granted its motion to dismiss plaintiff's petition for injunctive relief at the conclusion of plaintiff's evidence it acted beyond its authority in ordering the payment of compensation by defendant. As to the initial contention neither party challenges that portion of the trial court's ruling which dissolved the temporary injunction, denied permanent injunctive relief and ordered removal of plaintiff's advertising devices. On our review of the evidence we agree that plaintiff had no right to continue to locate its outdoor advertising devices on the highway right-of-way at the time of the trial. Even if it enjoyed the status of a tenant-at-will at the time this action was commenced (an issue which is hotly disputed and which we do not decide) this status had terminated by notice and lapse of time prior to the trial.

With respect to defendant's contention that there was no issue presented in this action concerning plaintiff's right to recover compensation for the removal of the advertising devices we must agree that such is the case. No claim for compensation was asserted in plaintiff's petition. Moreover, we conclude that the statute upon which the trial court relied in awarding compensation is inapplicable to plaintiff's situation.

The court's findings and conclusions state that this portion of the judgment entry is predicated upon the provisions of § 306C.15, The Code. That statute is part of the Iowa Junkyard Beautification and Billboard Control Act of 1972. As such it has application to acquisition or elimination of outdoor advertising devices pursuant to that chapter of the Code (ch. 306C). The record reveals that defendant's efforts to cause removal of plaintiff's display devices from its highway right-of-way were in no way

based upon that legislation. Such efforts stem from the fact that the land on which such devices have been located has been acquired by public authority pursuant to eminent domain. Such acquisition was initially undertaken by the federal government which continues to own the land and has granted the State of Iowa an easement for highway purposes. Both said acquisition and granting of easement took place before chapter 306C, The Code, was enacted and were in no way dependent upon that legislation.

For all of the reasons stated we deem that portion of the judgment ordering payment of "just compensation" to plaintiff to be in error and modify said judgment accordingly.

II. Defendant also complains of the action of the trial court in refusing it the opportunity to offer evidence in support of its counterclaim. Had this appeal simply been taken from the final judgment we doubtless would have jurisdiction to consider this claim. But defendant, in its notice of appeal, limited its appeal to the "order and decision. . . directing that defendant pay plaintiff 'just compensation.' " In view of this factor we do not assume jurisdiction to decide matters relating to the dismissal of defendant's counterclaim.

The judgment appealed from is modified so as to delete therefrom the provision for payment of "just compensation" to plaintiff and is otherwise affirmed.

AFFIRMED AS MODIFIED.

Donielson, J., concurs specially.

DONIELSON, J. (specially concurring)

Although I agree with the result reached by the majority, I do so for slightly different reasons. After a review of the record, I am firmly convinced that the plaintiff, Y-Not Posters, Inc., has no compensable interest of any kind.

The record reflects that in 1957 the plaintiff's predecessor, the Combs Companies, leased property from Alta Fee Clark upon which the outdoor advertising devices at issue were placed. The lease specified a term of five years and included an option to renew for an additional five years. In 1964, the United States Army Corps of Engineers acquired the Clark property, and in May of that year, the Corps of Engineers refused to accept a rental check from Combs. No further lease payments were made after May of 1965, nor at any time did the Corps renew the lease with Combs. Both the Corps and Clark gave Combs notice to remove the signs. However, the signs were not removed, and neither party took any affirmative action to effectuate their removal.

In 1969, plaintiff purchased the Combs Companies. In 1970, the State of Iowa received a conveyance of the property in question from the Corps of Engineers. Although Y-Not applied to the State for a permit to maintain the outdoor signs, the application was denied.

Against this factual background is the general legal principle that a mere "squatter" or occupant on public land has no right to compensation when the land is taken for the public welfare. See 2 Nichols on Eminent Domain § 5.23(7) (3rd ed. 1976). In Nichols, supra, it is stated:

"To entitle a person having a right of occupancy of real estate to recover compensation when the land is taken, he must have an actual estate or interest in the soil. A mere contractual relation not creating an interest is not sufficient. However, if, by force of an agreement with the owner (even if it is not called a lease) other persons acquire an interest in the use and occupancy of the estate, they are owners in the constitutional sense. The estate or interest must be an existing one; a lessee whose term has expired when the taking is effected has no interest in the property for the deprivation of which he is entitled to damages. A lease, invalid by reason of the fact that it is against public policy, confers no right to compensation upon the lessee.

"Mere occupancy, unaccompanied by any claim of ownership, is not in and of itself an estate or interest in land sufficient to form the basis of a claim for damages when the land so occupied is taken by eminent domain. Thus, for example, a trespasser is not entitled to compensation, even if he has erected a building upon the land. It has been held that the act of entering upon unsurveyed public land, residing thereon, and erecting improvements, with the ultimate aim of acquiring the property as a homestead, does not confer upon the settler any vested property right. A mere 'squatter' on public lands has no right to compensation when the lands are taken for public use. . . ." (emphasis added)

- 2 -

I conclude that plaintiff was just such an occupant or "squatter" and consequently, had no compensable interest.

Furthermore, I believe that the trial court's conclusion that Y-Not was a tenant at will was erroneous and unsupported by the evidence. Plaintiff never alleged such a tenancy in its petition, but merely claimed that it was the owner of the signs. Furthermore, rent had been refused by the Corps and the State of Iowa since prior to the time the signs were purchased by Y-Not in 1964 and plaintiff paid no rent after May of 1965.

However, even if, *arguendo*, a tenancy at will did exist, the weight of authority in litigated cases dealing with this issue holds that a tenant at will has no compensable interest. 2 Nichols on Eminent Domain, *supra*, at § 5.23(5). Consequently, I conclude that plaintiff had no compensable interest of any kind and therefore, I concur in the result reached by the majority.