

FILED

AUG 26 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HOWARD TIETJEN,

Plaintiff-Appellant,

vs.

**JACKSON COUNTY, IOWA, A MUNICIPAL
CORPORATION, RICHARD NORPEL, SR.,
EVERETTE YADDOF, ALFRED EHL, AND
WILLIAM UPMAYER,**

Defendants-Appellees.

Filed August 26, 1982

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2-66700

Appeal from Clinton District Court, Judge John J. Carlin, Judge.

Plaintiff-landowner appeals from the directed verdict granted defendant county and county officials in this trespass suit arising from the county's action in improving a road across his property. Plaintiff claims he presented sufficient evidence of trespass and damages to warrant submission of his case to the jury. REVERSED AND REMANDED FOR A NEW TRIAL.

Louis P. Pfeiler and Mark S. Beckman Pfeiler & Pearce Law Office,
Dubuque, for plaintiff-appellant.

Mike Kane, Jackson County Attorney, for defendant-appellee.

Considered en banc.

PER CURIAM

Plaintiff-landowner appeals from the directed verdict granted defendant-county and county officials in this trespass suit arising from the county's action in improving a road across his property. Plaintiff claims he presented sufficient evidence of trespass and damages to warrant submission of his case to the jury. We reverse and remand for a new trial.

Plaintiff filed his petition on November 9, 1978, in which he alleged that defendant-county trespassed on his land when it constructed a road across his property. He claimed \$30,000 actual damages (relating to loss of farmland, fence removal and rebuilding, loss of use of adjoining pasture land while the road was under construction, lost milk production when his dairy herd was confined during construction, and other elements) and \$20,000 punitive damages. Defendant filed a motion for summary judgment, alleging that it had authority to do the roadwork under an 1873 dedication to the county by plaintiff's grandfather of a right-of-way for road purposes. Plaintiff responded by alleging that there was a fact question as to whether the county abandoned that right-of-way and, if not, whether defendant's construction work was done within established limits. Defendant's motion was overruled and the case proceeded to trial.

At the close of the trial, the court granted defendant's motion for a directed verdict. It was determined that the main issue was whether the county abandoned the right-of-way granted to it in 1873 and that plaintiff failed to prove such abandonment as a matter of law. Plaintiff's motion for a new trial was overruled and he brought this appeal.

Plaintiff claims there was sufficient evidence presented relating to defendant's abandonment of its right-of-way, its trespass on plaintiff's property in

construction and widening of the road and consequential damages to warrant submission of his case to the jury. In determining the propriety of a motion for directed verdict, we examine the evidence in the light most favorable to the party against whom the motion was made; here, plaintiff. Iowa R. App. P. 14(f)(2).

We conclude that the trial court erred in granting defendant's motion. There was evidence that, at least prior to 1968, the "road" was nothing more than a very seldom-used dirt path. At various times gates were installed at both ends of the road so that adjoining acreages could be used as pasture land. Defendant does not contest the fact that the road as widened and improved in 1978 did not coincide with the road as dedicated in 1873 but characterizes these as merely "unimportant variations." Both plaintiff and his son testified as to various costs incurred by them as a result of defendant's actions. Under these circumstances, we think plaintiff presented sufficient evidence of abandonment, trespass and damages to warrant submission of those questions to the jury. In saying this, of course, we make no statement regarding the merits of his claim.

REVERSED AND REMANDED.