

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

Filed April 8, 1983

SHIRLEY C. ADAMS and TIM ADAMS,)

Plaintiffs-Appellants,)

vs.)

2-377
2-67742**ROBERT JENSEN**, Executor of the)
Estate of Sanning Jensen, deceased, and)**ROBERT JENSEN**, personally,)

Defendant-appellee.)

Appeal from Pottawattamie District Court, Glen M. McGee, Judge.

Plaintiffs appeal from the judgment entered upon a decision of the district court for defendant in this trespass action. **AFFIRMED.**

Lyle A. Rodenburg of Lyle A. Rodenburg, P.C. , Council Bluffs, for plaintiffs-appellants.

Robert Schell, Council Bluffs, for defendant-appellee.

Considered en banc.

PER CURIAM

Plaintiffs appeal from the judgment entered upon a decision of the district court for defendant in this trespass action. We affirm the decision of the district court.

The late Sanning Jensen, defendant's father, formerly owned all of the land at issue in this case. In 1959 he sold eighty acres in section 28; the purchasers sold this land and the buildings on it in 1966 to Shirley and John Adams. John is now deceased, and plaintiff Shirley Adams owns the land. Sanning Jensen retained the land in section 27, east of the Adams' land. Sanning died in 1979 and his son, defendant Robert Jensen, farms the land. There seems to be general agreement that the location on the ground of the section line is not known with precision, but a fenceline between the properties was generally accepted as the boundary.

The barn, which is the subject of this dispute, was on the east side of the fenceline. The barn's west side abuts plaintiffs' land. Evidently controversy erupted between the neighbors over the condition of the fence and plaintiffs' alleged repeated failure to close a gate by the barn. Defendant tore down the barn so that he could erect a good fence, without a gate, along the boundary line.

Both parties are agreed that the barn was intended to be part of the sale when Sanning Jensen disposed of section 28. Defendant argues that the barn was on his property, and that the terms of the deal were such that if the purchasers wanted the barn, they would have to tear it down and move it. Defendant further argues that plaintiffs forfeited their right to the barn when they failed to move it. The district court agreed, and judgment was entered for defendant.

The court in its judgment entry found that the barn was located on section 28, "but was intended to be part of the sale to plaintiff provided plaintiff remove it from its location." This was later corrected by an order nunc pro tunc to change what the court described as a typographical error in the decision. "Section 28" was corrected to read "section 27." Thus the decision reads that the barn was on defendant's property.

Plaintiffs argue four points on appeal: (1) the district court erred in entering an order nunc pro tunc materially changing the substance of the original judgment after an appeal had been taken to the supreme court; (2) the district court erred in finding that the barn was located on defendant's land; (3) the district court erred in failing to find that defendant trespassed; and (4) the district court erred in failing to award general and exemplary damages for trespass and damage to personal property.

Because this is an action to vacate a judgment, our scope of review is on assigned error. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981).

Nunc pro tunc is a procedure by which a determination which has already been made, but improperly recorded, may be corrected as of the time when it ought to have been entered. While such a procedure may not be used to substantively change the court's decision, it is clear that mere clerical errors may be so corrected. See Feddersen v. Feddersen, 271 N.W.2d 717 (Iowa 1978). It is this court's opinion that, considering the context of the corrected statement and the decision on the merits, the district court's use of "section 28" in the original judgment was a clerical error, and the nunc pro tunc order was proper.

Plaintiffs contend that the district court's findings of fact are unsupported by the record, and therefore in error. In order for this court to overturn the factual determinations of the lower court, the evidence in plaintiffs' favor must "be so overwhelming that no other reasonable inference could be drawn." Roland A. Wilson v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976). Such is not the case here. There is ample evidence in the record to support the findings of the district court that the barn was located on defendant's property.

Plaintiffs next contend that, notwithstanding the finding as to the location of the barn, the district court erred in not finding that defendant trespassed. This

contention is predicated upon plaintiffs' assertion of a possessory interest in the barn, based alternatively upon adverse possession, oral grant of use, or occupying claimant theories. Plaintiffs' facts are insufficient to support any of the theories under which they claim, and we must hold that the district court's conclusions of law on these points were not in error.

AFFIRMED.