FILED
MAY 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES E. HANDSAKER and PAUL D. HANDSAKER,

Appellees, Cross-Appellants,

vs.

ROBERT LARSON, KEVIN LARSON, and TRI-L CORPORATION, an Iowa Corporation,

Appellants,

JACOB ULLESTAD,

Third-Party Defendant-Appellee.

Filed May 31, 1978

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2-60685

Appeal from Story District Court - R. K. Richardson, Judge.

Defendants appeal the trial court order enjoining them from using their easement of ingress and egress for any other purpose than that necessitated by the farming of the benefited 14.5 acres; plaintiffs cross-appeal the refusal of the trial court to find an easement of necessity. We reverse the limitations of use imposed, vacate the permanent injunction and affirm the adverse ruling on the easement of necessity.

Thomas W. Carpenter, of Grefe & Sidney, Des Moines, for Appellants.

Jerrold L. Handsaker, Nevada, for Third-Party Defendant-Appellee.

Charles Deppe, of Brekken, Deppe & James, Story City, for Appellees, Cross-Appellants.

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

PER CURIAM

Defendants Robert and Kevin Larson and Tri-L Corporation appeal the order of the trial court enjoining them from using their easement of ingress and egress along the south property line of the farm (Parcel I) of plaintiff-leasees James E. and Paul D. Hansaker, for any other purpose than that necessitated by the farming of the 14.5 acres of Parcel II(a). We reverse.

The easement was granted in writing in 1954. The defendants argue that the trial court's limitation on the use of the farm lane is unreasonable since it denies them the use of the lane to haul water from the well situated on Parcel II(a) or to store farm equipment in the pole building situated on Parcel II(a). They contend since the use of the water and the stored equipment is integral to their entire farming operation they are being denied valuable access rights which attached to Parcel II(a) by virtue of the written grant. The easement recites that the owner of Parcel II(a) is granted ". . . the free right and authority to use a strip of land. . . as a means of ingress and egress." No restrictions of use are included in the written grant.

Attempts to limit written easement grants are subject to the general rule:

> . . . that where a right of way is granted it may be used for any purpose to which the land accommodated thereby may reasonably be devoted, unless the grant contains specific limitations. . . . Wiegmann v. Baier, 203 N.W.2d 204, 208 (Iowa 1972) quoting from McDonnell v. Sheets, 234 Iowa 1148, 1154, 15 N.W.2d 252, 255 (1944).

The trial court in McDonnell ruled that an easement granting the "privilege of ingress and egress . . . with team and wagon" did not restrict the grantees to these specific vehicles but that it did restrict the type of traffic in that it allowed only the movement of bulky provisions and commodities and did not allow for use for ordinary purposes such as a driveway for the grantee's automobile. The supreme court reversed and held that the words "team and wagon" did not limit either the type of vehicle or the type of traffic.

Doubtless plaintiffs's predecessor in title could have spelled out in the instrument such restrictive use as the plaintiffs now urge and defendants' predecessor in title could have bargained for or resisted such efforts at the time the written grant was negotiated. See Flynn v. Michigan-Wisconsin Pipeline Co.,

161 N.W.2d 56, 65 (Iowa 1968). No such limitation appears in the easement grant. We agree with defendants that they may use the lane ". . . for any purpose to which their property may reasonably be devoted", Livingston v. Davis, 243 Iowa 21, 32, 50 N.W.2d 592, 597 (1951), including the hauling of water from and the movement of equipment from Parcel II(a) to other neighboring lands that they farm.

Plaintiffs on cross-appeal claim the easement was one of necessity when established and that the writing was merely evidence of this way of necessity. They argue defendants cannot elevate the right-of-way born of necessity to that of a permanent easement. They conclude once Parcels II(a) and II(b) were acquired by a common owner the easement of necessity terminated. The words of the grant do not support such a view. The easement is couched in terms of a present agreement between the two owners in fee simple of adjacent properties one of whom was ". . . desirous of obtaining the use of a strip of land . . . for ingress and egress. . .". The right and use of the strip of land is by the easement's terms to ". . . attach to the first party and the second party, their heirs, grantees and assigns forever." The written document is an outright grant of a right of ingress and egress without limitation as to use or time. The language is not ambiguous. Therefore, we have properly determined the intention of the owners in 1954 by reviewing what their contract says. Wiegmann v. Baier, 203 N.W.2d 204 (Iowa 1972). Upon this record plaintiffs were not entitled to a construction of the easement as one of necessity.

We reverse the trial court order limiting the defendant's use of the lane for ingress and egress solely for the purpose of farming Parcel II(a). We vacate the permanent injunction granted to the plaintiffs to restrict defendants' use of the lane to activity necessitated by the farming of Parcel II(a) only.

Reversed in part and affirmed in part.