

IN THE COURT OF APPEALS OF IOWA

No. 9-131 / 88-1095

FILED

AUG 23 1989

CLERK SUPREME COURT

LARRY ASPEDON, PATSY ASPEDON, JANICE HENSLEY, CURTIS
HENSLEY, DOYLE HANKINS and BARBARA HANKINS,

Appellants,

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vs.

CAROL LABBE, ARDITH K. JENSON, as Executor of the Estate of
LYNN E. JENSON, Deceased, and LYNN E. JENSON CORPORATION, an
Iowa Corporation, and LEE FEIL,

Appellees.

Appeal from the Iowa District Court for Fremont County,
James M. Richardson, Judge.

Aspedons appeal from a district court order granting the
Jensons' application to enlarge the grant of easement and
denying Aspedons' application to farm the railroad
right-of-way and motion for writ of injunction. **AFFIRMED.**

Scott H. Hughes of the Law Offices of Scott H. Hughes,
Council Bluffs, for appellants.

Peter J. Peters of Peter J. Peters, P.C., Council
Bluffs, for appellees.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

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Aspedons appeal from a district court order granting the Jensons' application to enlarge the grant of easement and denying Aspedons' application to farm the railroad right-of-way and motion for writ of injunction. Our scope of review is de novo. We affirm.

The Aspedons contend that the district court erred by: (1) enlarging the Jensons' easement by allowing the Jensons to enter the railroad right-of-way land for the purpose of cleaning out a drainage ditch; and (2) denying their request to farm the railroad right-of-way land.

Aspedons assert the district court lacked authority to enlarge the easement in light of the Iowa case law on contract alteration and Rule 14(f)(12), Iowa Rules of Appellate Procedure. The cited authority addresses setting aside written instruments affecting real property. We find that the trial court's interpretation of the purpose of the easement does not amount to setting aside, or overriding the written grant of easement. The court is guided by the maxims of equity. "[I]t is only by looking at the intent, rather than at the form, that equity is able to treat that as done which in good conscience ought to be done." Symons, 2 Equity Jurisprudence § 378 at 41 (5th ed. 1941).

The stated purpose of the easement at issue is to protect the railroad bed and the lands of the grantees and their successors from overflow and damage from the East

Nishnabotna River. While the railroad tracks have since been removed, the abutting land of the Jensons is still being farmed as it was at the time of the original grant. The Jensons safeguard their economic interest in farming by flood prevention maintenance of the easement. This is most effectively accomplished by dredging the drainage ditches on both sides of the levee.

Appellants urge that the court is bound within the textual confines of "the contract," which allows access to dredge on the east side of the levee, and excludes by silence on point, access to dredge the west side of the levee. Reading the terms of the document should not end with the clauses cited by the appellant. The document uses language of transfer of title to the grantees, their successors and assigns upon the grantor's permanent abandonment of the strip for railroad purposes. The easement clause provides interim maintenance access to the grantees to benefit both the grantor and grantees.

The trial court ruled that Jensons' predecessors in title failed to act within ten years of the abandonment by the railroad as required by 614.1(5) of the Code, thereby relinquishing their rights of acquisition. Therefore, close adhesion to the text has not been the historical interpretation of this document. The law is a process. Meaningful interpretation of a document occurs in the context of the actual circumstances.

The trial judge was correct in interpreting the terms of the easement in the light of the intent of the parties when it was created, and the purpose for which it is created. The meaning of the document must be construed in the light of the circumstances which surrounded the parties when they entered into the agreement. Gilden v. Kapinis, 402 N.W.2d 457 (Iowa 1987). Interpretation of the purpose of the easement should be guided by reviewing the relation of the contracting parties, their connection with the subject matter of the contract and the circumstances under which it was made. Id.

Nothing about the project initiated by the Jensons approaches an unlawful occupation of the Aspedons' parcel. The trial court's decision is sound:

{T}here is nothing in the nature of an easement, apart from an express prohibition, which prevents all changes during the course of its enjoyment. So long as the use of an easement is confined to the purposes under which it was acquired and created without increasing the burden on the servient estate, the owner of the easement, it has been held, may make changes that do not impair or affect its substance.

28 C.J.S. Easements § 95 at 777 (1941). The increased burden on the servient estate - the deposit or removal of silt and vegetable matter - does not outweigh the beneficial effect of the proposed maintenance of the drainage ditch - flood control.

Aspedons finally contend that the court had no basis for denying their application to farm the ground servient to the

easement. The holder of the servient estate cannot use his property in such a way as to render the exercise by the owner of the easement of his rights unreasonable, difficult, or burdensome. 28 C.J.S § 91, at 771 (1941). The likelihood of damage to crops on the servient estate by the dominant estate holder in the legal exercise of his rights under the easement is a sound reason to deny the Aspedons' application to farm the abandoned right-of-way strip.

AFFIRMED.