

IN THE COURT OF APPEALS OF IOWA

No. 9-620 / 89-584

FILED

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CLERK SUPREME COURT

JERRY D. COCKLIN,

Plaintiff-Appellee,

36

vs.

MARION SCHAFER and ROBERT L. SCHAFER,

Defendants-Appellants.

Appeal from the Iowa District Court for Louisa County,
John C. Miller, Judge.

Defendants appeal a declaratory judgment granting plaintiff the right to condemn a portion of their property as an ingress and egress route for the plaintiff's property. **AFFIRMED.**

Russell R. Newell, Columbus Junction, for appellee.

Roger A. Huddle, Wapello, for appellants.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

SACKETT, J.

37

Defendants-appellants Marion Schafer and Robert L. Schafer appeal a declaratory judgment granting plaintiff-appellee Jerry D. Cocklin the right to condemn a portion of their property as a "public way" under Iowa Code section 471.4(2) (1989). Defendants contend the statute is unconstitutional and should not be available to plaintiff because he could establish a different ingress-egress route by suing another of his neighbors. We affirm the declaratory judgment.

Plaintiff owns a ten-acre tract of land in rural Louisa County. It is bordered on the north and east by the Mark Twain Wildlife Refuge, which is U.S. Government property. Defendants' land borders it on the east, and land owned by the Walker family borders it on the south. The nearest public road is a county road. There is no public access from this road to the plaintiff's land.

Section 471.4 reads in relevant part:

The right to take private property for public use is hereby conferred:

. . . .

2. Owners of land without a way to the land. Upon the owner or lessee of lands, which have no public or private way to the lands, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with an existing public road. The condemned public way shall be located on a division, sub-division or "forty" line, or immediately adjacent thereto, and along the line which is the nearest feasible route to an existing public road, or along a route established for a period of ten years or more by an easement of record or by use and travel to and from the property by the owner and the general public.

Defendants first contend section 471.4(2) cannot be applied to plaintiff because of the language limiting the statute's application to those who "have no public or private way to" their land. They claim plaintiff could establish a right-of-way either by necessity or by implication across the land belonging to the federal government or the Walkers. They note that historically, plaintiff (and his father before him) most often gained access to his land by crossing the government or the Walker properties.

"[T]he statute evidently does not contemplate that the owner who claims to have no way to his land shall be compelled, before inviting the aid of the statute, to try one or more lawsuits for the purpose of finding out whether he has a way or not." Carter v. Barkley, 137 Iowa 510, 514, 115 N.W. 21, 22-23 (1908) (referring to the predecessor of section 471.4(2), section 2028 (1897)). A landowner may proceed under the statute as long as there is no existing way giving access to the property. See Anderson v. Lee, 191 Iowa 248, 252, 182 N.W. 380, 382 (1921); Miller v. Kramer, 148 Iowa 460, 469, 126 N.W. 931, 934 (1910). Contra Strawberry Point Dist. Fair Soc'y v. Ball, 189 Iowa 605, 611, 177 N.W. 697, 699 (1920) (one who has reasonable passage to and from their land may not condemn another's land under the statute). We reject

defendants' argument that plaintiff should have secured access from the government or the Walkers. We find the route designated by the trial court is the "nearest feasible route" to the county road.

Defendants next contend section 471.4(2) is unconstitutional. Defendants direct us to no federal constitutional provisions. They refer to Iowa Const. art. I, section 18, but cite no authority interpreting that section to support their proposition. We find no merit in defendants' constitutional argument.

The decision of the trial court is affirmed.

AFFIRMED.