IN THE COURT OF APPEALS OF IOWA

No. 1999-323 (9-576) / 98-1288
Filed April 28, 2000

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CLERK SUPREME COURT

WOODBINE SADDLE CLUB,
Plaintiff-Appellee,

vs.

REEMAX, INC.,
Defendant-Appellant.

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

Reemax, Inc. appeals from the district court's judgment recognizing the Woodbine Saddle Club's easement encumbering its property and refusal to restrict the nature and use of the easement. **AFFIRMED.**

Robert Kohorst and William T. Early of Kohorst Law Firm, Harlan, for appellant.

John W. Kellogg of Kellogg Law Firm, Missouri Valley, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

HUITINK P.C.

I. Background Facts and Proceedings.

Reemax owns the following-described property in Woodbine:

> S½ Lot "C" in Woodbine Land and Improvement Company's Irregular Survey of the SW1/4 SW1/4 of Section 14, Township 80 North, Range 42 West of the 5th P.M., Harrison County, Iowa; formerly described as:
>
> South ½ of Lot C East of the ditch and the SW1/4 SW1/4 of Section 14, Township 80, Range 42, West of the 5th P.M.

The Woodbine Saddle Club owns an adjoining lot located north of the Reemax property.

On August 9, 1967, Mary Brummer, a predecessor in title, granted the Woodbine Saddle Club a written right-of-way easement across this property. The easement provided:

> EASEMENT AGREEMENT
>
> THIS AGREEMENT, made and entered into this 9 day of Aug., 1967, by and between Mary Brummer, a widow party of the first party and the Woodbine Saddle Club of Woodbine, Iowa, party of the second part; WITNESSETH:
>
> Whereas, the party of the first part is the owner of the South 1/2 of Lot C East of the ditch and the SW1/4 SW1/4 of Section 14, Township 80, Range 42, West of the 5th P.M. and
>
> Whereas, the second party desires an Easement over the South 16 feet of the above described real estate,
>
> Now, therefore and in consideration of the mutual conveyances and promises herein contained:
>
> 1. Party of the first part hereby grants, bargains, & sells to the party of the second part an easement to use the south 16 feet over the real estate described as the South 1/2 of Lot C East of the ditch of the SW1/4 SW1/4 of Section 14, Township 80, Range 42 west of the 5th P.M.
>
> 2. Whenever second party fails to use said Easement the said property shall return to the first party.
>
> The consideration for the above Easement will be one dollar and other valuable consideration.

The agreement also contained the following provisions:

A[illegible]ting at a point 367 feet West of the Southeast corner of Lot C thence Northwest 213' to Lot B, thence East 297', thence South 92' to South line of Lot C, all in the above described line.

Thereafter, the saddle club constructed a graveled roadway parallel to the south boundary of Lot C and in a northwesterly direction parallel to the ditch forming the western boundary of the above-described property to the southern boundary of the saddle club property.

In the years following, this roadway was used as an access road for vehicular traffic, including large trucks, for an increasing number of events held on the saddle club property. In 1997 Reemax constructed a fence along the south roadway and set fence posts at its intersection of the northwest/southeast and east/west roadway.

These proceedings were initiated by the saddle club's application for injunctive relief prohibiting Reemax from interfering with the use of its easement across Lot C. Reemax denied its actions interfered with the saddle club's easement and affirmatively alleged that the saddle club's actual use of its easement exceeded its rights under the 1967 easement. Reemax also claimed the saddle club's easement was limited to the south sixteen feet of Lot C and did not extend across the west side of Lot C. The district court granted a temporary injunction granting the requested relief pending final adjudication of the issues raised.

The disputed issues at trial included the existence and dimensions of an easement across the west side of the Reemax property and whether the saddle

club's use of its undisputed easement across the south part of Lot C exceeded the use originally contemplated in the 1967 written easement. The district court rejected Reemax's claim that there was no easement across the western part of its property, citing the express language of the 1967 easement and the saddle club's uncontested use of the easement for thirty years. The court also relied on the saddle club's historic use of its easement in determining that the original sixteen-foot dimensions of the southern easement had been expanded at its intersection with the easement across the west side of Lot C by implication to accommodate large vehicles using the easement to access the saddle club's property.

On appeal Reemax contends the record does not support the district court's conclusions concerning the nature and extent of the saddle club's easement, and the district court erred by failing to confine the saddle club's use of its easement as originally intended. Reemax also contends the record fails to establish the existence of any easement across the west side of its property.

II. Standard of Review.

We review this equitable action de novo. Iowa R. App. P. 4.

III. Easement Across Western Side of Reemax Property.

Reemax argues the language of the 1967 easement is too confusing to support the saddle club's claim of an easement by written agreement across the western portion of its property. We disagree.

As noted earlier, the 1967 easement included the following language:

[redacted] at a point 367' West of the Southeast corner of Lot C, [redacted] Northwest 213' to Lot B, thence East 297', thence South 92' to [redacted] line of Lot C, all in the above described land.

The record includes conflicting evidence concerning the meaning of this language and the intent of the parties concerning it. The district court resolved this issue against Reemax, stating:

> An easement creating a roadway to the ditch has no benefit to the Club. Any easement that does not reach the Club's real estate is useless to the Club.
>
> . . .
>
> This additional language has no other logical meaning than to connect a roadway from the Club's real estate to the south boundary roadway easement on Reemax's tract. To bolster this conclusion is the fact that for approximately thirty (30) years, all interested parties so interpreted that language. No dispute existed regarding the use of the easement until 1997 when Reemax attempted to close the easement.

If ambiguity exists by the terms of an easement agreement, the manner in which the parties themselves have construed them is persuasive evidence of their intention. *Wiegmann v. Blair*, 203 N.W.2d 204, 208 (Iowa 1972). We, like the district court, find the use of the northwest/southeast easement without objection for thirty years clearly establishes the intent of the parties. Construing the additional clause otherwise would render the easement useless to the club and fail to accomplish the easement's purpose of ingress and egress to the saddle club's property.

We therefore affirm the district court on this issue.

IV. Nature and Extent of Easement.

Reemax contends the saddle club's actual use of its easement exceeded the limits of its express dimension and intended frequency. The district court,

Reemax erred by failing to limit the size and use of the easement according to We disagree.

Ordinarily, when an easement exists over another's land for purposes of ingress and egress, a mere increase in the frequency of use will not constitute an additional burden on the servient estate. *Schwob v. Green*, 215 N.W.2d 240, 243 (Iowa 1974). In addition, 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 and the grantee can avail himself of modern inventions, if by so doing he can more fully exercise and enjoy or carry out the object for which the easement was granted. *Wiegmann*, 203 N.W.2d at 208.

The record indicates the easement was used to accommodate truck traffic since 1968. We, like the district court, find the increased frequency of traffic and size of vehicles using the easement fall well within the anticipated use of the saddle club property. The saddle club's use of its easement was not, as Reemax claims, a burden greater than that originally contemplated. We decline to impose the requested limits on its use.

We have carefully considered all of the issues raised on appeal and find that they are either controlled by the foregoing or are without merit. We also decline to make an award of appellate attorney's fees. *See Foxley Cattle Co. v. Midwest Soya Intern., Inc.*, 585 N.W.2d 231, 232 (Iowa 1998) (stating attorney fees are generally not recoverable as costs in the absence of a statute or a

provision in a written agreement). The judgment of the district court is affirmed in its entirety.

AFFIRMED.