IN THE COURT OF APPEALS OF IOWA

No. 7-333 / 96-0623
Filed December 29, 1997

DOUGLAS D. PRIMMER and
LINDA J. PRIMMER, Husband
and Wife, and **LYLE L. KLINE, and**
LYLE'S DISCOUNT TIRES, INC.,
Appellees,

vs.

HARRY W. WHITNEY a/k/a
HARRY WHITNEY, and
HARRY W. WHITNEY d/b/a
DIRTY HARRY'S RESTAURANT,
and His Unknown Heirs, Devisees,
Grantees, Assignees, Successors in
Interest, and Their Unknown Spouses
and the Unknown Claimants of the
Following Described Real Estate in
Pottawattamie County, Iowa:

Westerly 4 feet of the West 24 feet of Lot 1, Auditor's Subdivision of Original Plat of Lot #213 and all of Lot 4, Auditor's Subdivision of Original Plat #214, in Council Bluffs, situated in Pottawattamie County, Iowa, and all of Lot 3 in Auditor's Subdivision of Original Plat Lot #212 except following described tract; commencing at Southwesterly corner of said Lot 3, running thence Northwesterly along the Southwesterly line of said Lot 3, 60 feet, thence Northeasterly 11 inches, thence Southeasterly to a place of beginning, being a portion of Lot 3 lying Northeasterly of Lot 2 being 11 inches wide at the back and coming to a point on Broadway,

Appellants.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin, Judge.

Defendants appeal from a district court order quieting title in a disputed strip of land in the plaintiffs and permanently enjoining defendants, their customers, employees and vendors from using the property for ingress and egress to a restaurant. **AFFIRMED.**

A.W. Tauke of Porter, Tauke & Ebke, Council Bluffs, for appellants.

Scott H. Peters of Peters Law Firm, P.C., for appellees Primmer.

Deborah L. Petersen of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellees Kline and Lyle's Discount Tires.

Heard by Cady, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Harry W. Whitney, a/k/a Harry Whitney, and Harry W. Whitney, d/b/a Dirty Harry's Restaurant, et al. (Whitney), appeal the district court's order quieting title in a disputed strip of land in Douglas Primmer and Linda J. Primmer, husband and wife (Primmers), Lyle L. Kline, and Lyle's Discount Tires, Inc. (Lyle), and permanently enjoining Whitney, their customers, employees, and vendors from using the property for ingress and egress to a restaurant. We affirm.

I. Background Facts and Proceedings.

This is a dispute over the use of a strip of land between adjoining business properties. Whitney own's Dirty Harry's, a restaurant and bar, located at 114 West Broadway[1] in Council Bluffs, Iowa. He purchased the property at a sheriff's sale on June 16, 1992. Whitney obtained a quit claim deed from the property's prior owner, Robert Main, on May 26, 1992. Primmers are contract purchasers and Kline is the seller of the property at 116 West Broadway[2] in Council Bluffs.

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[1] The legal description of the property is as follows:
All that part of Lot 1, except the Westerly 4 feet of the West 24 feet, in original Plat Lot 213, according to plat of resurvey, Southwesterly from the following described line: Commencing at center of said Lot 1 on Broadway and running N 39°48'58" West 145.07 feet, the part herein described fronting 20.10 feet on Broadway and 23 feet on the alley, all situated in Pottawattamie County, Council Bluffs, Iowa.

[2] The legal description of this property is as follows:
The Westerly 4 feet of the West 24 feet of Lot 1, Auditors Subdivision of original Plat Lot 213 and all of Lot 4, Auditors Subdivision of original Plat 214, in Council Bluffs, situated in Pottawattamie County, Iowa, and all of Lot 3 in

Whitney's property has three entrances: a front door on the south side, a rear door on the north side, and a side door on the west side. The west door faces Primmers' and Kline's property. Whitney's customers who use the west door routinely travel over a strip of property owned by Primmers and Kline.

Robert Main was the prior owner of Whitney's property. Robert operated an ice cream parlor on the property. Randy Main managed the ice cream parlor (Mains). The prior equitable owner of Primmers' property was Susan Newberry. At trial, there was conflicting testimony regarding whether Newberry granted Mains oral permission for the right of ingress and egress over and across Newberry's property. The district court assumed, without deciding as a matter of fact, Newberry gave Mains permission.

In reliance upon Newberry's permission, Randy constructed a doorway and laid a concrete slab and gravel on the property's west side. Mains' customers, employees, and vendors continuously used this entrance, located between Mains' property and Newberry's property.

Prior to purchasing the property, Whitney did not discuss the right of ingress and egress over Primmers' and Kline's property. In fact, the record shows after Whitney

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Auditors Subdivision of original Plat Lot 212 except the following described tract; commencing at Southwesterly corner of said Lot 3, running thence Northwesterly along the Southwesterly line of said Lot 3, 60 feet, thence Northeasterly 11 inches, thence Southeasterly to a place of beginning, being a portion of Lot 3 lying Northeasterly of Lot 2 being 11 inches at the back and coming to a point on Broadway.

purchased the property, Primmers and Kline repeatedly told Whitney he had no right to use their property.

The district court quieted title to the property at 116 Broadway to Primmers and Kline and granted a permanent injunction preventing Whitney, his customers, employees, vendors, or others from using Primmers' and Kline's property for ingress or egress to Whitney's business. The district court also denied Whitney's counterclaim.

II. Standard of Review.

Actions to quiet title are tried in equity. Iowa Code § 649.6. We review equitable proceedings de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter,* 564 N.W.2d 849, 851 (Iowa App. 1997). We give weight to the fact findings of the trial court, especially when considering witness credibility, but we are not bound by them. Iowa R. App. P. 14 (f)(7).

III. Equitable Estoppel.

Whitney argues Primmers and Kline are equitably estopped from denying access over and across part of their property for the purpose of ingress and egress to Whitney's business.

The statute of frauds provides creation or transfer of any interest in land, including easements, must be in writing to be valid. *See* Iowa Code § 622.32. However, the court may enforce an oral contract concerning land if it determines the doctrine of equitable estoppel applies. *Miller v. Lawlor*, 66 N.W.2d 267, 273 (Iowa 1954). The essential elements of

equitable estoppel are (1) a clear and definite agreement; (2) detrimental, reasonable reliance on the agreement; and (3) a finding equities support enforcement of the agreement. *See Uhl v. City of Sioux City,* 490 N.W.2d 69, 73 (Iowa App. 1992); *National Bank of Waterloo v. Moeller*, 434 N.W.2d 887, 889 (Iowa 1989). The party asserting estoppel bears the burden of proving all three of its elements. *National Bank of Waterloo v. Moeller,* 434 N.W.2d at 889.

No Iowa case has squarely defined a clear and definite agreement, the first element of promissory estoppel. *Chipokas v. Hugg*, 477 N.W.2d 688, 690 (Iowa App. 1991). However, the supreme court has addressed clear and definite agreements for estoppel purposes, finding there must be a clear understanding by the promisor that the promisee was seeking an assurance upon which he could rely and without which he would not act. *See National Bank of Waterloo v. Moeller,* 434 N.W.2d at 889-90 (interpreting *Miller v. Lawlor,* 66 N.W.2d at 272-75, and *Johnson v. Pattison*, 185 N.W.2d 790, 795-97 (Iowa 1971)). The court in *Moeller* noted an emphasis on clarity and inducement which parallels the Restatement's definition of agreement for estoppel purposes: "'[a] promise which the promisor should reasonably expect to induce action . . . on the part of the promisee.'" *Id.* (quoting Restatement (Second) of Contracts § 90 (1981)).

Based on our de novo review of the record, we find Whitney failed to establish a clear and definite agreement his equitable estoppel claim must fail. We affirm the district court on this issue.

IV. License.

Whitney argues he is entitled to the right of ingress and egress over and across Primmers' and Kline's property based on an irrevocable license Newberry allegedly granted Mains.

A license in real property is "an authority or permission to do a particular act or series of acts upon the land of another . . . merely a privilege to use land in the possession of another." *Robert's River Rides v. Steamboat Dev.*, 520 N.W.2d 294, 300-01 (Iowa 1994). Generally, a license is personal and revocable by the grantor and unassignable by the grantee. *Id.* at 301. The doctrine of equitable estoppel may apply to enforce an otherwise unenforceable oral agreement "to the extent necessary to protect expenditures made in reasonable reliance upon it." *Miller v. Lawlor*, 66 N.W.2d 273. Cases which apply equitable estoppel to protect expenditures made involve situations where an oral promise restricts the land to a limited use. *Id.*

Assuming Newberry granted Mains a license to use her property for ingress and egress to Mains' business, we find the license was personal and nonassignable. There is no evidence Primmers and Kline granted Whitney a license to use their property. Our review of the record shows Primmers and Kline revoked any license Whitney may have held by telling Whitney had no right to use their property.

We also find the doctrine of equitable estoppel does not apply to enforce the oral promise. We agree with the district court Newberry's oral promise did not restrict the

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property to a limited use. Moreover, Whitney has failed to prove all of the elements of estoppel. Whitney did not speak with Primmers and Kline before purchasing the property, therefore, he did not reasonably, detrimentally rely on any inducements or promises made by Primmers or Kline. A balance of equities does not support enforcement of the promise. We find it significant Whitney presented no evidence regarding the cost of remodeling or reconstructing the business' north entrance to make it accessible to Whitney's customers, employees, and vendors. We accordingly affirm on the issue.

V. Quiet Title.

Whitney claims the district court erred in denying Whitney's quiet title claim to his property at 114 West Broadway. The district court found no merit in Whitney's counterclaim or amendment to his counterclaim to quiet title to his property based on a previous dispute over the exact location of his boundary line.

Iowa Code sections 649.1 and 649.2 require a party pleading a cause of action for quiet title to allege another party claims title to the property at issue. Iowa Code §§ 649.1, 649.2 (1995). To grant relief by issuing a quiet title order, the district court must be presented with a pleading alleging an adverse claim and evidence of the adverse claim. *John Hancock Mut. Life Ins. Co. v. Behr,* 295 N.W. 436 (Iowa 1940).

On August 11, 1995, the parties stipulated Whitney had title to Lot 1, but he had no title in the westerly four feet of the west twenty-four feet of Lot 1. In addition, our review

of the record shows neither Primmers nor Kline makes a claim adverse to Whitney regarding the location of boundary lines. We affirm on this issue.

AFFIRMED.