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IN THE COURT OF APPEALS OF IOWA

UNIVERSITY LAKE APARTMENTS,	)	
Appellee,	)	Filed October 19, 1978
vs.	)	
FREDERICK D. STAAB and	)	595
MARGARET JO STAAB,	)	<u>2-61090</u>
Appellant.	)	

Appeal from Johnson District Court - Clinton E. Shaeffer, Judge.

Defendants appeal from permanent injunction prohibiting their obstruction or interference with plaintiff apartment owners' use of right-of-way easement. - Affirmed.

Bruce L. Walker & Charles A. Mullen, Iowa City, for Appellants.

James McCarragher, of Meardon, Sueppel, Downer & Hayes, Iowa City, for Appellee.

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

PER CURIAM

Defendants Frederick D. Staab and Margaret Jo Staab appeal from the permanent injunction granted by the trial court prohibiting their obstruction or interference with plaintiff University Lake Apartments' use of the right-of-way easement over the Staab property. The Staabs also seek to enjoin any future use of the easement by University Lakes and its tenants or invitees. We affirm.

The instant dispute erupted when University Lakes constructed apartments upon the dominant estate and their tenants began using the easement by foot, by bicycle, and by car. No exact evidence of volume or frequency was introduced. Dr. Staab testified during the limited hours he was home each day fifteen or so individuals were observed on the easement right-of-way.

Since 1907 when the properties held in common were divided, all subsequent deeds in both chains of title have included language expressly granting without reservation or limitation the easement right over the servient Staab property to the dominant University Lake property. Such an express grant without restriction gives the dominant owner the right to use the easement for any purposes to which the dominant property may subsequently be devoted so long as such use is reasonable. *Wiegmann v. Baier*, 203 N.W.2d 204, 208 (Iowa 1972); *McDonnell v. Sheets*, 234 Iowa 1148, 1154, 15 N.W.2d 252, 255 (1944).

It is undisputed that for many years the easement has supported traffic to and from the dominant estate for a succession of family-related and seasonal commercial ventures, such as parking for football games, sale of ice, ice skating and seasonal fruit sales. The Staabs themselves joined University Lakes' predecessors in interest in some of these activities. *Schwob v. Green*, 215 N.W.2d 240, 243 (Iowa 1974) recognized a mere increase in the frequency of the use of a right-of-way easement will not constitute an additional burden. Courts which have dealt with the reasonableness of increased use resulting from sub-division development of the dominant estate, analogous to the apartment development by University Lakes, have ruled the change in usage is one of degree rather than character. *Karches v. Adolph Investment Corporation*, 429 S.W.2d 788, 789 (Ct. of App. Mo. 1968).

... those who succeed to the possession of each of the parts into which the dominant tenement may be subdivided also succeed to such privileges of use, unless otherwise provided by terms of the conveyance.

Cox v. Gienbrook Company, 371 P.2d 647 (Nev. 1962). Neither University Lakes nor the Stuabs may use the easement in violation of the rights of the other. Schwartz v. Grossman, 173 N.W.2d 57, 60 (Iowa 1969). University Lakes cannot convert the private right-of-way into a public road and use the road as a thoroughfare or as a connecting road between two other public roads. However, as a grantee, University Lakes has a right to have its tenants and those members of the public, who are going to and from the dominant estate, to use the easement for ingress and egress. Stozenski v. Borough of Forty Fort, Luzerne County, 317 A.2d 602, 606 (Pa. 1974).

We affirm the trial court's injunction which preserves unlimited reasonable use of the easement by tenants and invitees of the University Lakes complex situated on the dominant estate. We do not construe said injunction as permitting unauthorized use by the general public.

We decline the invitation to make an anticipatory adjudication regarding University Lakes' lands adjacent to the dominant estate which are not subject by deed to the easement rights over the Stanab property. No construction on this portion of the University Lakes property had begun at trial. Whether future construction of additional apartments on this adjacent land would be an impermissible enlargement of the burden on the servient estate must await the time the facts come into existence:

... The announced intention by the owners of the dominant estate as to their proposed future use of the easement does not, of itself, constitute an unreasonable burden upon the servient estate. When the facts concerning the use become known an unreasonable burden upon the servient estate may or may not result. That determination must await the presentation of evidence then in existence.

Cox, 371 P. 2d at 655. See also Halsrud v. Brodale, 247 Iowa 273, 72 N.W.2d 94 (1955) and Thul v. Weiland, 213 Iowa 713, 716-17, 239 N.W. 515, 517 (1931). Nor can we decide on this record whether the proposed construction of additional units on non-benefited University Lakes property could ultimately result in the transformation of the easement into a throughway between public streets and thereby change the character of the easement use so substantially as to require forfeiture by the dominant estate.

AFFIRMED.