FILED
SEP 2 8 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LARRY G. CONKLIN,

Plaintiff-Appellant,

vs.

BENNY CLYDE TILLOTSON and JEANEANE RAE TILLOTSON, and JACK WESTON d/b/a WESTON BODIES, INC.,

Defendants-Appellees.

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8-291
87-1289

Appeal from the Iowa District Court for Warren County (No. Ca20784), Van Wifvat, Judge.

Plaintiff appeals from an adverse ruling regarding the extent of a driveway easement granted to him. **AFFIRMED.**

Ronald L. Wheeler, Des Moines, and David R. Gault of Bittner & Gault, Des Moines, for plaintiff-appellant.

Kevin Parker, Indianola, for defendants-appellees.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

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DONIELSON, P.J.

Plaintiff appeals from an adverse ruling concerning the extent of a driveway easement granted to him over land now owned by Weston Bodies. Conklin contends that the easement agreement was ambiguous and that the trial court erred by refusing to consider parol evidence to determine the intentions of the parties.

In 1977, Conklin bought the western end of a larger parcel of land. He was granted an easement to use an adjacent driveway located on the eastern end which was subsequently sold to Weston Bodies. At that time, Conklin needed only the front part of this driveway to gain access to his land. Then in 1983, Conklin sold the front portion of his land to a third party. Retaining the back portion, Conklin sought to use the back part of the driveway to gain access to his land.

The issue raised at trial was whether the easement included this part of the "driveway." Conklin asserts that it does. Weston Bodies argues that this back part is really a lane, separate from the driveway over which Conklin was granted the easement. The trial court found in favor of Weston Bodies. Our review of this matter is for correction of errors at law. Iowa R. App. P. 4.

I. Conklin contends that the trial court erred in refusing to consider parol evidence to resolve the ambiguity concerning the extent of the easement.

Specifically, Conklin would have the court consider testimony by Mr. Schooler and a 1984 Addendum to the original easement.

The court said the easement is unambiguous. Therefore, the intention of the parties is to be found exclusively from the written agreement. "The Court will not consider any parol evidence on the matter, including the Addendum of the original easement . . . ."

The parol evidence rule forbids the use of extrinsic evidence to vary, add to, or subtract from a written agreement. Tamm, Inc. v. Pildis, 249 N.W.2d 823, 831 (Iowa 1976). The rule does not prohibit extrinsic evidence for the purpose of interpreting the contractual terms. Janssen v. North Iowa Conference Pensions Inc. of Methodist Church, 166 N.W.2d 901, 904 (Iowa 1969). Even in cases where the language is plain and clear, parol evidence of the surrounding circumstances is used by the court to discover and apply the meaning which each party had reason to know would be given to the words by the other party. Janssen, 166 N.W.2d at 904.

Consistent with the parol evidence rule, the district court did hear testimony and accepted photographs into evidence to aid in its interpretation of the easement. The addendum was not considered because it went beyond interpreting "driveway" and added to the agreement.

The permanent easement was described in 1977 as follows:

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> Said easement will be for the use of certain existing driveway that has access to Iowa Highway 5, and lies along the east line of that part of the east one-half of the Northwest quarter, Section Four, Township 77 North, Range 23 West of the 5th P.M., Warren County, Iowa, lying North of the Center of Highway 60.

The addendum was dated in 1984. This was drafted after Weston Bodies bought their property from Schooler and Schooler, subject to Conklin's easement. The addendum, which purported to be only a clarification, stated:

> Beginning at a point 350 feet East of the N.W. Corner of the N.E.1/4 of the N.W.1/4, Section 4, Township 77 North, Range 23 West of the 5th P.M., Warren County, Iowa, thence West 50 feet, thence South 660.2 feet, then S 26°, 45' East 24 feet thence in a northeasterly direction to the point of beginning.

The dimensions in the addendum do not describe the "certain existing driveway." The addendum both adds to and varies the original easement. Therefore, the trial court did not err in refusing to consider the addendum to the easement.

Evidence of "what was meant by what they said" is admissible. However, evidence to show "what the parties meant to say" is not. Bankers Trust Co. v. Woltz, 326 N.W.2d 274, 276 (Iowa 1982). Since the easement was found to be unambiguous, the language of the agreement controls. Iowa R. App. P. 14(f)(14). Any testimony that went beyond interpreting "certain existing driveway" was properly excluded. Therefore, we find no error was committed by the district court in refusing to consider any parol evidence.

II. Conklin also contends that the trial court erred in finding that his easement terminated at the overhead doors. Even excluding the parol evidence, Conklin asserts that the weight of the evidence supports interpretation of the easement to run to the north end of the Weston Building.

Because this action was tried to the lower court as a law action, we treat the case in the same manner. Flynn v. Michigan-Wisconsin Pipeline Company, 161 N.W.2d 56, 60 (Iowa 1968). Findings of fact are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Such findings are to be disturbed only if induced by an erroneous application of law. Larsen v. Warrington, 348 N.W.2d 637, 640 (Iowa App. 1984).

The court found that at the time the easement was purchased, the driveway in question extended northerly from Highway 5 along the eastern edge of the plaintiff's property, widened into a large parking area, and ended at the large overhead doors on the west side of the Weston Bodies building. The driveway did not include the lane emerging from the parking area and leading to defendant Weston Bodies north doors.

The distinction between the driveway and the lane was supported by the language of the easement which said the driveway "lies along the east line" of defendants' property. The court noted that at the entrance to

defendant's property the plaintiff's fence is approximately one foot west of the east boundary line, with the driveway lying directly along the fence at that point. At the northern edge of the Weston Building, this distance is over thirty feet. Therefore, the lane at the north does not lie along the edge of the property and was not included in the description of the easement.

The trial court correctly applied the law to the facts in this case. In the construction of easement grants, the cardinal rule is that the intention of the parties must control; except in cases of ambiguity, this is determined exclusively by what the grant itself provides. Citing Wiegmann v. Baier, 203 N.W.2d 204, 208 (Iowa 1972).

In Baier, the easement was "the driveway and parking place along the west line of the property . . . ." 203 N.W.2d at 207. The words "along the west line" were found to be critical. Similarly, we find the district court's reliance on these words in the present case was not incorrect.

The court also found the easement unambiguous, citing Roundy v. Bonowitz, 40 Iowa 44, 45 (1874). The easement "to use the present road to the timber" was not ambiguous because the road was at that time well defined even though there may be difficulty proving its precise location. Id.

The evidence in this case supports the finding that the driveway was well-defined in 1977. Pictures and testimony

distinguish the lane and the driveway. Conklin's use of the easement is further evidence of this interpretation. Until selling the front portion, Conklin had a fence surrounding his property with only one gate providing access. The gate was located off the driveway. The evidence showed Conklin only used the lane occasionally. It was not until Conklin went to sell part of his land that a problem arose. We find that the district court's decision was supported by substantial evidence; therefore, we affirm the decision below.

AFFIRMED.