FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-120 / 89-106

W.C. MAISEL,

Appellee,

451

vs.

GILBERT W. GELHAUS and MARGARET E. GELHAUS,

Appellants.

Appeal from the Iowa District Court for Hardin County, Carl E. Peterson, Judge.

The Gelhauses appeal the adverse portions of the district court's decision regarding a contempt proceeding. **AFFIRMED.**

Gordon D. Greta of Greta & Greta, Eldora, and Emil Trott, Jr. of Barrett & Trott, Des Moines, for appellants.

John L. Butler, Eldora, for appellee.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

In 1985, the district court entered an injunction against the Gelhauses requiring them to remove the diking or levee along the fence line which obstructs the natural flow of surface water from Maisel's property across the Gelhauses' property. That decision was affirmed on appeal. In 1988, Maisel initiated a contempt proceeding against the Gelhauses. Following a hearing, the district court did not find any contempt. However, the Gelhauses appeal from the adverse portions of the district court's decision. We affirm.

Maisel and the Gelhauses own adjoining farmland. The Gelhauses' property is immediately south of Maisel's land. The two properties are separated by an east-west fence line. There is an north-south gravel road west of the properties. On August 12, 1985, the district court entered a decree resolving a water drainage dispute between Maisel and the Gelhauses. The district court found Maisel's land to be the dominant estate, and the Gelhauses' land to be the servient estate. The natural water drainage is in a southeast direction from Maisel's property across the fence line onto the Gelhauses' property. The court further found that the Gelhauses' consistent plowing toward the fence line raised the level of the surface, creating a dike that caused a damming effect. In addition to the award of money damages to Maisel, the court entered an injunction requiring the Gelhauses to remove the diking or levee along

the fence line and enjoining the Gelhauses from arresting the flow of surface water across their property. The Gelhauses appealed that decision. The court of appeals affirmed the district court. See Maisel v. Gelhaus, 416 N.W.2d 81 (Iowa App. 1987).

On May 31, 1988, Maisel filed an affidavit claiming that the Gelhauses have failed to comply with the injunction. On December 22, 1988, following a hearing, the district court dismissed Maisel's application to cite the Gelhauses for contempt. However, the district court stated that while the Gelhauses were attempting to comply with the injunction, they misunderstood the injunction. Specifically, the district court rejected the Gelhauses' interpretation that the injunction only required them to remove the dike at the fifty-eight rod line along the fence line because the injunction stated that the natural waterway intersected the fence line at the fifty-eight rod line. Instead, the district court concluded that the injunction and its affirmance required the Gelhauses to remove the dike they created from the twenty-five rod point to the fifty-eight rod point along the fence line.

The Gelhauses now appeal the district court decisions. Maisel moved to dismiss the current appeal and requested sanctions under Iowa Rule of Civil Procedure 80(a). By supreme court order dated April 11, 1989, the motion to dismiss was denied and the motion for sanctions is to be submitted with the appeal.

On appeal, the Gelhauses first argue that the district court erred by failing to declare the injunction void and unenforceable because the original decree is vague and ambiguous. The decree did not specify the exact height or width of the dike to be removed. The Gelhauses claim they are unable to comply with the injunction because they do not know what they must remove. Next, the Gelhauses claim that the district court exceeded its jurisdiction by modifying the initial decree during a contempt proceeding. Specifically, the Gelhauses claim that the original decree was limited to the fifty-eight rod point and that the district court extended it from the twenty-five rod point to the fifty-eight rod point. Alternatively, the Gelhauses argue that the district court erroneously construed or interpreted the original decree to include the twenty-five rod point to the fifty-eight rod point. Next, the Gelhauses claim the district court erred by refusing to specify the height and width of the dike. The Gelhauses assert that this information is necessary for them to comply with the injunction.

In this contempt action our task is to review the trial court's finding of no contempt and its interpretation of the earlier decree. In order to determine whether an adjudication of contempt was warranted we must first find the proper interpretation of the earlier decree. A decree is susceptible of interpretation on the same basis as other written instruments. Dairyland, Inc. v. Jenison, 207

N.W.2d 753, 754 (Iowa 1973). The determinative factor is the intention of the court as gathered from all parts of the judgment. Id. Effect must be given to that which is clearly implied as well as to that which is expressed. Id.

The decretal court found that the dike at the fifty-eight rod point was the main obstruction, but did not preclude a finding that the obstruction continues on along the fence line. The district court was entitled to interpret the decree and its interpretation was well within the range of evidence. The decree was not vauge or ambiguous and the trial court did not exceed its jurisdiction by interpreting the decree.

The Gelhauses took action to remove the obstruction in accordance with a reasonable construction of the decree, but were stopped by Maisel's failure to allow them onto his property. The trial court was correct in refusing to hold the defendants in contempt because they did not violate the decree.

There is also some confusion over the height and width of the dike to be removed. The decretal court set out no specific dimensions and we agree this was the proper course to take. The amount of dirt needed to be removed is the amount necessary to allow the water to flow freely through the obstruction. An engineer can easily determine the removal necessary to allow the water to flow. We affirm the decision of the trial court.

Maisel's request for sanctions is denied.

AFFIRMED.