IN THE COURT OF APPEALS OF IOWA

No. 0-149 / 89-856

FILED
JUN 26 1990
CLERK SUPREME COURT

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WILLIAM COOPER and **LOU ANN COOPER,**

Appellees,

vs.

JOHN NEUBAUER and **BONNIE NEUBAUER,**

Appellants.

Appeal from the Iowa District Court for Warren County, Ray Hanrahan, Judge.

The Neubauers appeal a district court decision which ordered them to pay 25% of the past and future maintenance costs of an easement which the Coopers have across the Neubauers' land. The court based its decision on the parties' respective use of the road. The Neubauers contend the court's decision is inequitable and speculative and they should not be found liable for any portion of the past and future maintenance costs of the easement. **AFFIRMED AS MODIFIED.**

Stephen A. Hall of Hall and Schlenker, Indianola, for appellants.

Robert M. Benton of Stuyvesant & Benton, Carlisle, for appellees.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ. Hayden, J., takes no part.

DONIELSON, P.J.

The Coopers and Neubauers own adjoining farmland. In 1958 the Neubauers' predecessor in interest granted an easement for road purposes to Coopers' predecessor in interest. Coopers' predecessors constructed a road and bridge on the easement. In the 1970's the Coopers and the Neubauers acquired their properties. In August 1983 the Coopers filed a lawsuit against the Neubauers requesting the court to establish an easement by prescription and for a judgment to share the costs of maintenance of the easement. The district court found the Coopers had failed to establish an easement for roadway purposes over Neubauers' land. The Coopers appealed.

In an unpublished opinion, this court found the Coopers did establish a prescriptive easement and remanded for further proceedings. On remand the district court addressed the issue of whether the Neubauers should be responsible for some of the costs of maintaining the easement.

In its findings, the district court concluded the Coopers used the easement on a daily basis and that the Neubauers' use of the roadway was more limited in nature. The district court considered the evidence presented by the Coopers regarding the costs to maintain and repair the road, and it concluded the Neubauers should pay twenty-five percent of the costs to repair and maintain the road and the Coopers should pay the remaining seventy-five percent.

Using this distribution, the court entered a judgment against the Neubauers for twenty-five percent of the past repair costs, or $424.43. The decree also specified that the Neubauers were liable for twenty-five percent of the expenses for any future labor and materials for the reasonable repair and maintenance of the road, excluding snow removal. The Neubauers appeal the district court's decision.

The Neubauers contend it is inequitable to require them to pay 25% of the past maintenance costs because their use of the road is so small compared to that of the Coopers'. The Neubauers also claim they should not be required to pay 25% of the future maintenance costs because it is speculative if and how often they will use the road.

This action was tried in equity, and our review is de novo. Iowa R. App. P. 4. In equity cases, we give weight to the fact findings of the trial court. Iowa R. App. P. 14(f)(7).

When a private road is used in common by the owner of the land across which such road runs and by a person who has an easement over it, the burden of reasonable repairs must be distributed between them in proportion as nearly as possible to their relative use of the road. See Bina v. Bina, 213 Iowa 432, 438, 239 N.W. 68, 71 (1931); Kepler v. Border, 179 Iowa 318, 324, 161 N.W. 302, 304 (1917); 25 Am. Jur. 2d Easements and Licenses § 85 (1966). The apportionment of repair costs depends upon which parties

benefit from the easement. See Bellville v. Porter, 256 Iowa 1119, 1126, 130 N.W.2d 426, 430 (1964); Nixon v. Welch, 238 Iowa 34, 43-44, 24 N.W.2d 476, 481 (1946). While the cost of repairs should be proportionate to each party's use, it is recognized that an exact distribution of the expense and labor necessary to make reasonable repairs cannot be accomplished. "An approximation only is all that can be achieved." Bina, 213 Iowa at 438, 239 N.W. at 71.

We have reviewed the record in this case and concur with the trial court's conclusion that the evidence regarding past labor costs estimated at $8,000 is too speculative to assign any of the costs to the Neubauers. We also find that the record supports the 25%-75% assessment reached by the trial court with regard to each party's liability for both past and future repair costs. We affirm the entry of a judgment against the Neubauers for $424.43 for past repair costs. We modify the trial court decision only to clarify that the obligation of the Neubauers for twenty-five percent of future costs is contingent upon their ownership of the servient estate and their actual use of the easement.

In conclusion, we affirm the trial court's decision subject only to our clarification regarding the Neubauers' liability for future repair costs.

AFFIRMED AS MODIFIED.