

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 28 1968

CLERK SUPREME COURT

NATIONAL PROPERTIES CORP.,)

Plaintiff-Appellee,)

vs.)

POLK COUNTY, IOWA and)
DRAINAGE DISTRICT 51)

Defendants-Appellants.)

229

8-309
87-1598

Appeal from the Iowa District Court for Polk
County (No. CE25-14604) - Rodney Ryan, Judge.

Defendant appeals an adverse verdict in a quiet title
action. **REVERSED.**

David W. Hibbard, Assistant Polk County Attorney, for
the defendants-appellants.

Kristine M. Fasano, Urbandale, for the
plaintiff-appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

SACKETT, J.

230

In this quiet title action we address defendants-appellants Polk County, Iowa's and Drainage District 51's complaint the trial court should have determined they have an easement for drainage purposes across plaintiff-appellee National Properties Corp.'s land. We determine the issue was resolved in the defendants' favor in a prior judgment. We reverse the trial court.

This is the second law suit involving a drainage easement on plaintiff's property. The first case resulted in a verdict for plaintiff. It was appealed and remanded for a new trial. National Properties Corp. v. Polk County, 351 N.W.2d 509 (Iowa 1984). A verdict on retrial for the defendants was affirmed on the second appeal. National Properties Corp. v. Polk County, 386 N.W.2d 98 (Iowa 1986).

In this case plaintiff seeks to quiet their title to the east 255 feet except the north forty feet of Lots 122 and 123, Highland Park Acres, an official plat of Polk County, Iowa. In the late 1800's a drainage ditch was constructed across the north forty feet of Lots 122 and 123 with other property. In 1973 plaintiff acquired Lot 122 except the west sixty feet and the north forty feet, and Lot 123 except the north forty feet. In 1942 the north forty feet of the two lots had been conveyed to the state

of Iowa "for road purposes and use as a public highway by a successor to plaintiff's interest. In 1955 Polk County formed drainage district number 51 that included lots 122 and 123. At that time plaintiff's predecessors in interest were paid for drainage district right-of-ways of .0860 acres in Lot 122 and .2165 acres in Lot 123.

In 1980 defendants wanted to clean out the open ditch and sought to enter on the property of plaintiff to do so. Plaintiff contended the county had no rights to enter their property because they claimed the ditch was constructed entirely on the tract conveyed to the State in 1942. The county went in and cleaned the ditch. Plaintiff said when the county did so the county agreed their easement was invalid and agreed to pay plaintiff the fair market value of any land taken by the work. The county claimed it did not concede the district had no right-of-way on plaintiff's property but agreed to compensate plaintiff for any land not covered by the 1955 easement.

The first action was commenced wherein plaintiff sued defendants for alleged damage to their land caused by cleaning out the ditch. At trial the county sought to prove the 1955 drainage right-of-way acquisition through records kept in the auditor's office. The trial court, however, excluded most of the testimony concerning the easement because the evidence was not recorded with the county recorder. The Supreme Court reversed a verdict for

plaintiff and remanded for new trial, holding defendants should have been able to show the evidence of the alleged 1955 easement for upon proper proof they should not be required to pay for the same rights twice. National Properties Corp., 351 N.W.2d at 512. On retrial the jury rejected plaintiff's claimed damages and on appeal the Supreme Court determined

The record contains sufficient evidence to support a finding that a prescriptive drainage easement vested in the area in question. Under the record, the jury could have reasonably determined the ditch was built in accordance with the proposed plans which locate portions of the ditch, including the ditch bank and levees, south of the forty-foot road easement.

National Properties Corp., 386 N.W.2d at 105.

Defendants contend the claim here was adjudicated as between the parties in the earlier action and plaintiff is precluded from bringing this action and it should be dismissed. We must determine whether the issue of defendants having an easement for drainage purposes across plaintiff's land was litigated in the earlier action and whether the issue of defendants' drainage easement across plaintiff's land was an inherent part of the verdict in the earlier action.

Issue preclusion prevents parties to a prior action in which judgment has been entered from relitigating in a subsequent action issues raised and resolved in the previous action. Risken v. Clayman, 398 N.W.2d 833, 836 (Iowa 1987); Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981).

Four prerequisites are required before the doctrine of issue preclusion can properly be applied in any given case:

- (1) the issue concluded must be identical;
- (2) the issue must have been raised and litigated in the prior action;
- (3) the issue must have been material and relevant to the disposition of the prior action; and
- (4) the determination of the issue in the prior action must have been necessary and essential to the resulting judgment.

See Risken, 398 N.W.2d at 836; Bascom v. Joseph Schlitz Brewing Co., 394 N.W.2d 879 (Iowa 1986); Kraft v. El View Construction, Inc., 394 N.W.2d 365 (Iowa 1986).

In the prior action plaintiff sought damages for defendants' use of their land. To reject plaintiff's claim as the jury did would have necessitated: (1) a determination of the identical issue here of whether the county had an easement; (2) the issue of whether the county had an easement having been raised and litigated in the prior action; (3) the easement issue being found material and relevant to the determination; and (4) a finding the county had the easement being essential to the resulting judgment denying plaintiff damages.

The issue having been litigated in the prior action, we reverse the district court and dismiss at plaintiff's cost.

REVERSED.