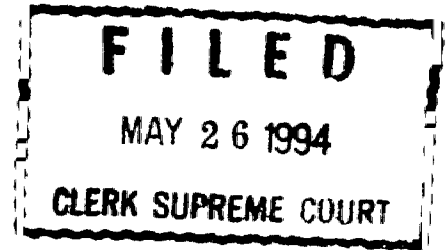


IN THE COURT OF APPEALS OF IOWA

No. 3-385 / 92-1947



DORIS A. MARKIN,

Appellant,

vs.

JUDY HILLESHEIM,

Appellee.

Appeal from the Iowa District Court for Buchanan
County, Robert E. Mahan, Judge.

Markin appeals the district court's order reforming the
deed and the real estate contract between the parties.

AFFIRMED.

A.F. Craig, Jr. of Craig, Wilson & Flickinger,
Independence, for appellant.

John W. Hofmeyer III, Oelwein, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab,
JJ.

DONIELSON, C.J.

Doris A. Markin and her husband owned two contiguous buildings in Hazelton, Iowa. They operated a gun shop out of the north building and a tavern out of the south building. The common wall had been altered to take space from the south building for an office and bathroom for the gun shop. The Markins altered the common wall in the early 1970s and took a five-by-twelve-foot area from the north building to provide storage for the tavern. The only access to the office and bathroom is from the north building. The only access to the storage room is from the south building.

In 1984, Markin sold the tavern business and the south building to Judy Hilleshiem on a real estate contract. Part of an agreement between the parties was included in the contract which provided: "Present walls, including common walls, shall not be moved."

Hilleshiem continued to operate a tavern out of the south building and to use the five-by-twelve-foot storage room. Hilleshiem paid off the real estate contract and received a deed in December 1989. The legal description in the deed did not take into account the alterations to the interior wall. Six months after the delivery of the deed, Markin requested that Hilleshiem cease using the storage area and restore the original walls. Hilleshiem refused.

Markin filed suit seeking \$7000 for diminished use and value of her building and an order requiring restoration of

the common wall. Hilleshiem filed a counterclaim seeking reformation of the deed to reflect the interior walls as they were when the business and property were purchased.

The trial court viewed the property and found the "storage area appears to be very essential to the tavern's business." The court also determined the sales contract survived the delivery of the deed and it required the parties not to move the walls. To the extent the deed conveyed property different from the existing walls, the court found there had been a mutual mistake. The court further found both parties had easements by implication in the areas defined by the existing walls.

The court denied Markin's petition for damages and to restore the common wall. The court granted Hilleshiem's counterclaim and reformed the legal descriptions of the properties to give Hilleshiem a permanent easement to the storage area and Markin a permanent easement to the office and bathroom.

Markin appeals. We affirm the decision of the district court.

We review cases in equity de novo. Iowa R. App. P. 4. We give weight to the district court's findings, especially concerning the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

The district court found for Hilleshiem on all four issues raised at trial: merger of the sales contract into the deed, construction of the contract language,

reformation of the deed, and easement by implication. Any of the findings would support the decision of the court on appeal. We address the last issue first because we find it dispositive.

Iowa case law concerning implied easements generally follows the factors set forth section 476 of the Restatement of Property in determining whether to imply an easement. Schwob v. Green, 215 N.W.2d 240, 243 (Iowa 1974). Those factors include (1) whether the claimant is the seller or buyer, (2) the terms of the conveyance, (3) how necessary the easement is to the claimant, (4) the consideration paid, (5) the prior use of the property, and (6) the parties' knowledge of the prior use. Id.; see also Tamm, Inc. v. Pildis, 249 N.W.2d 823, 838 (Iowa 1976); Farmers and Mechanics Sav. Bank of Minneapolis v. Campbell, 141 N.W.2d 917, 923 (Iowa 1966); Bray v. Hardy, 248 Iowa 794, 797-98, 82 N.W.2d 671, 673 (1957); Wilbur v. City of Council Bluffs, 247 Iowa 268, 270-71, 73 N.W.2d 112, 113 (1955). The district court, having heard the testimony of the witnesses, viewed the property, and examined the exhibits, found application of the factors supported easements by implication. We agree. Application of all the factors listed above requires finding an easement by implication for the storage area adjacent to the tavern and for the office and bath adjacent to the former gun shop. Therefore the court correctly exercised its equitable powers to reform the description of the properties to

conform to the easements. The court also correctly determined no damages were due Markin, since Hilleshiem's use of the storage area was proper.

Since the determination easements exist by implication is dispositive, we do not address the other issues on appeal. Costs of this appeal are taxed to appellant.

AFFIRMED.