



IN THE COURT OF APPEALS OF IOWA

RUTH G. PETERSON,	)	Filed June 30, 1981
Plaintiff-Appellant,	)	
	)	1-168
	)	2-66011
vs.	)	
	)	
EMMET COUNTY, IOWA,	)	
Defendant-Appellee.	)	

Appeal from Emmet District Court. Murray S. Underwood, Judge.

Plaintiff appeals from a declaratory judgment that defendant county has not abandoned an easement for the extraction of gravel from plaintiff's land. **AFFIRMED.**

Lynn Fillenwarth, of Fillenwarth & Fillenwarth, Estherville, Ia., for plaintiff-appellant.

Nathan S. McCay, of Rosendahl, Forsyth & Mohn, Estherville, Ia., for defendant-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Ruth Peterson, appeals from a declaratory judgment that defendant, Emmet County (hereinafter referred to as County), had not abandoned an easement for the extraction of gravel on plaintiff's land. We affirm.

Peterson filed an action in 1979 seeking to terminate an easement granted to the County in 1964 for the extraction of gravel from certain tracts of land owned by her. The agreement which was supplemented in 1967 gave Peterson the right of reversion in the event the County abandoned the use for the purpose of taking gravel therefrom for 10 consecutive years. The County has never extracted gravel from the property. All monies due for the easement were paid by the County. In addition, taxes on the property have been suspended since 1967. In 1976, Peterson requested the County to release a portion of the easement. The County acquiesced to this request in part. The County has filed annually since 1968 reports required by the State Department of Mines and Minerals showing the Peterson property to be part of the County reserve but presently inactive. Peterson has continuously used the property for crop purposes as per the agreement. The trial court found the county had not abandoned the use of the property as its actions belied an intent to abandon. Peterson appeals the trial court's decision. Our review is on error assigned. Iowa R. App. P. 4.

Peterson asserts the trial court erred in finding an existing easement. She alleges the standard of abandonment generally followed is not applicable in this case since the written agreement otherwise provided for the right of reversion to become effective. She urges the trial court misinterpreted the phrase "abandons the use of said property above described for the purpose of taking gravel." Peterson would have us equate "abandons the use" with a non-user standard pursuant to agreement. By this interpretation intent to abandon is not required.

The language of the agreement is clear and unambiguous. By agreement, Peterson's right of reversion would become effective upon abandonment, the intentional relinquishment of a known right, and not merely failure to use or non-use.

We find the trial court correctly interpreted the agreement and applied the proper standard. Harrington v. Kessler, 247 Iowa 1106, 77 N.W.2d 633 (1956), is controlling in this case. The court in Harrington stated,

"An easement created by deed cannot be lost by mere nonuser. Except by agreement, it will be extinguished only by nonuser for the statutory period of limitation, during which period the owner of the servient estate has put it to a use inconsistent with the enjoyment of the easement, so that practically nonuser is simply another form for the claim of adverse possession. . . ."

"Mere nonuser, unless for a period of ten years, will not raise a presumption of abandonment, and, even for the full statutory period, such nonuser is subject to explanation, and if it appears that the owner had no intention of abandoning his easement, no abandonment will be found."

Id. 247 Iowa at 1109, 77 N.W.2d at 634.

The trial court's finding that the County did not intend to abandon the use of the property is supported by the evidence. Therefore, we affirm the decision.

AFFIRMED.