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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-166 / 89-1126

THE CITY OF OSKALOOSA, IOWA, a Municipal Corporation,

Plaintiff-Appellee,

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vs.

M. SHRAGO & SON, INC.; CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY AND MIDWESTERN RAILROAD PROPERTIES, INC.,

Defendants-Appellants,

and

NORTHWEST CHEMCO, INC., et al.,
Defendant.

Appeal from the Iowa District Court for Mahaska County, James D. Jenkins, Judge.

Defendants appeal a decision quieting title to certain property in plaintiff. Defendants contend the title should have been quieted in them. **REVERSED AND REMANDED.**

Suzanne J. Kruse of Brown, Winick, Graves, Donnelly, Baskerville & Schoenebaum, Des Moines, for appellant M. Shrago & Son, Inc.

W. Scott Simmer of Gamble, Riepe, Webster, Davis & Green, Des Moines, for appellants Chicago & Northwestern Transportation Company and Midwestern Railroad Properties, Inc.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

This case deals with property once a part of the Central Railroad of Iowa and located in Oskaloosa, Iowa. The question is whether the trial court was correct in determining the property belongs to appellee City of Oskaloosa, subject to an easement in defendant-appellant Chicago & Northwestern Transportation Company and Midwestern Railroad Properties, Inc., or whether, as appellant claims, title should have been quieted partly in defendant-appellant Chicago & Northwestern Transportation Company and partly in defendant appellant M. Shrago & Son, Inc.

Defendant railroad acquired its interest in the property from successor railroads, whose interests in the property date back to 1870. In 1965, a successor railroad transferred title in a portion of the property to defendant Shrago. Plaintiff-appellee City of Oskaloosa sought to quiet title in the city to certain real estate as against defendants-appellants M. Shrago & Son, Inc., Chicago & Northwestern Transportation Company, and Midwestern Railroad Properties, Inc. Defendants cross-appealed, asking that title to the property be quieted in them.

The trial court quieted title to the property in the city, subject only to defendant Chicago's easement to use the property for railroad purposes. Defendants appeal. We disagree with the trial court and reverse and remand for a

decree quieting title in defendants as requested in their counterclaim.

The crux of the issue is whether an ordinance referred to as Ordinance No. 186, passed by the City of Oskaloosa in 1897, passed fee title subject to a condition subsequent, as defendants claim, or only gave the railroad an easement as the trial court found, and the city claims, is correct. The questioned ordinance was considered by the Iowa court in 1905 in Harrington v. Iowa Cent. Ry., 126 Iowa 388, 102 N.W. 139 (Iowa 1905), in which a landowner claimed damages from the railroad as a result of the railroad erecting an embankment that cut off access. In that case, the court examined the ordinance and held the city had the right to vacate the property and determined: "[T]he language of the title and body of the ordinance is susceptible of no other construction than that the portions of streets referred to therein were vacated and given to the defendant for its exclusive use." Harrington, 126 Iowa at 390-91, 102 N.W. at 140.

The proviso that the title to the portion of streets vacated shall again become vested in the city when the railway company shall cease to use them for railroad purposes is merely a condition subsequent. Harrington, 126 Iowa at 391, 102 N.W. at 140. Finding no reason to depart from the rationale of Harrington, we apply its reasoning and find the result is that the ordinance gave the railroad title, subject to a reversionary interest in the city.

The next step, therefore, is defendants' claim that the city's right to the reversionary interest was lost by its failure to comply with what is referred to as the Iowa Marketable Title Act, Iowa Code sections 614.17, 614.24, and 614.29-38 (1989). The city did not comply with the act. We agree the city lost its reversionary interest by its failure to comply with the applicable statute. See Chicago & N.W. Ry. v. City of Osage, 176 N.W.2d 788, 794 (Iowa 1970).

The case is reversed and remanded for a decree quieting title to defendants as requested in their counterclaim.

REVERSED AND REMANDED.