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JAN 2 7 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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THE WALTER JOHN BERNARD HYINK and ESTHER HAZEL HYINK FUNNEL TRUST, WALTER JOHN BERNARD HYINK and ESTHER HAZEL HYINK Trustees,	)	
Plaintiffs-Appellants,	)	Filed January 27, 1988
vs.	)	
ROBERT J. DICKEY and ROBERTA DICKEY,	)	7-488 87-160
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Montgomery County (No. 16683), Paul H. Sulhoff, Judge.

Plaintiffs brought an action against the defendants asking the district court to find the defendants in contempt for blocking the common driveway of the parties. **AFFIRMED.**

Charles O. Forrest and Janice M. Woolley of Polack & Woolley, P.C., Omaha, Nebraska, for plaintiffs-appellants.

Ronald W. Feilmeyer of Cambridge, Feilmeyer, Landsness & Chase, Atlantic, for defendants-appellees.

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

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DONIELSON, P.J.

Plaintiffs appeal from the decision of the trial court rejecting plaintiffs' action against the defendants for contempt of court for blocking the common driveway of the parties. We affirm.

Following defendants' construction of a garage, plaintiffs brought suit complaining of the runoff on their property from the garage. The parties eventually agreed to a stipulated order which said, inter alia, that the parties had a joint driveway and that each should be enjoined from blocking the driveway to the other. Plaintiffs brought this action claiming that the defendants were willfully violating the order. Plaintiffs alleged that the defendants were parking their vehicles in front of defendants' garage, thereby preventing Walter J. B. Hyink from turning his car around on this portion of the driveway. The trial court rejected plaintiffs' demand stating that plaintiffs still had access to the Hyinks' back yard by way of the driveway and that Walter could still turn his vehicle around on his own property. Plaintiffs now appeal.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I. Walter argues that the entire driveway, including the area immediately in front of the garage, is covered by the driveway easement. Thus, defendants' parking of their vehicles in front of the garage violated plaintiffs' access to the driveway in order to allow him to turn his car around. Therefore, plaintiffs argue the trial court erred in not finding the defendants in contempt of court for their willful violation of a court order. See Iowa Code § 665.2 (1985).

With regard to plaintiffs' contention, the trial court concluded:

> The Court cannot find that there was any intent on either of the parties at the time of this settlement that plaintiff would be entitled to use the concrete apron in front of defendants' garage for the

> purposes of turning his vehicle around, especially when he has sufficient an[d] plentiful room on his property to complete that maneuver.

This is a finding of fact which we find to be supported by substantial evidence, specifically the photographs admitted as exhibits. Plaintiffs have both ingress and egress across the driveway easement.

In addition, we note that the stipulated order which plaintiffs claim that defendants violated provides:

> The rule of strict construction shall not apply to easement created hereby, it being the court's intention and intention of the parties, to confer a reasonable, usable, common right of enjoyment on each of the grantees.

Thus, we also decline to place strict construction on the above-quoted language. We find that this language obviously means "reasonable" to both parties, not just to plaintiffs. While we are appreciative of those factors which plaintiffs refer us to (Walter's advanced age, weather conditions which make plaintiffs' property difficult on which to turn a vehicle around, and the fact numerous vehicles on plaintiffs' property hamper maneuvering a vehicle's turnaround), we find that defendants should not be punished for these factors not in defendants' control. We note, in passing, that a provision was made in the original easement order that plaintiffs could construct an "expansion area" which they have chosen not to do but which would appear to alleviate the problem. We further note that defendants are ordered to contribute to the cost of this expansion area.

To establish the requisite willfulness in finding contempt, we have set forth the standard to be met by requiring "evidence of conduct that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not." Abraham v. Beeghly, 363 N.W.2d 596, 598 (Iowa App. 1984). No person may be punished for contempt unless the allegedly contumacious action has been established by proof beyond

a reasonable doubt. Phillips v. Iowa Dist. Court for Johnson, 380 N.W.2d 706, 709 (Iowa 1986).

The district court found that there was only one isolated instance where defendants may have violated the easement and opined that this one incident was insufficient to find defendants in contempt. We agree. However, we add that even if defendants had parked their car in front of the garage more than one time, for the reasons already stated (i.e., the intention of the stipulated order was for both parties to have access to the joint driveway, not that the defendants would never at any time be able to park on their driveway in front of their garage) plaintiffs have failed to carry their burden of proof in finding defendants in contempt of court.

II. Plaintiffs also contend that the trial court's reference to the reason for the initial easement order, water runoff, as indicative of why the entire driveway was included was an improper modification of the clear terms of the stipulated order. We find this brief reference by the trial court was not the basis of the court's decision, but only served to provide information as to the original trial; as such, we find its import to be immaterial to the present case and hold plaintiffs' second contention is without merit.

III. Plaintiffs' third argument on appeal is that this court has the power to find defendants in contempt of court for violation of the easement order even although the trial court did not so find. Orkin Exterminating Co., Inc. v Burnett, 160 N.W.2d 427, 430-31 (Iowa 1968). A review of the evidence leads us to the same conclusion as the trial court; we do not find defendants to be in contempt of court.

Accordingly, we affirm the trial court in all respects.

AFFIRMED.