IN THE COURT OF APPEALS OF IOWA

No. 1-534 / 91-413

FILED
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CLERK SUPREME COURT

IOWA POWER, INC.,

Appellant,

vs.

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THOMAS E. SHAEFFER and **RANDY L. SHAEFFER,**

Appellees.

Appeal from the Iowa District Court for Story County, Ronald H. Schechtman, Judge.

Iowa Power appeals the district court's denial of its request to permanently enjoin the Shaeffers to remove a building located within its easement. **AFFIRMED.**

David J. Lynch of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for appellant.

Greg W. Steensland, Ames, for appellees.

Considered by Donielson, P.J., and Sackett and Habhab, JJ. Oxberger, C.J., takes no part.

HABHAB, J.

Iowa Power owns and operates a 69,000 volt electric transmission line. The line runs twenty-two miles from the John Deere substation in Ankeny to Ames, Iowa. The line consists of three insulated conductors and a shield wire strung on single wooden poles. These poles are approximately 60 feet tall and located approximately 400 feet apart. The shield wire on top of the pole is for protection from lightning strikes.

The transmission line was built in 1957 on a railroad right of way pursuant to transmission line easement. The easement runs with the land, and its existence is not disputed.

In 1982 Thomas E. Shaeffer purchased a 2,100-foot strip of land from the railroad. This land is subject to Iowa Power's easements. It varies in width from 100 to 150 feet. Beginning in 1983, Shaeffer started a tree nursery with his son, Randy. Shaeffer was aware of Iowa Power's easements.

In 1984 the Shaeffers constructed a sheet metal pole building with a hip roof. Its peak is 12 feet. The Shaeffers use the building to store equipment. The building lies partially under the Iowa Power conductors.

In 1988 Iowa Power learned of the building. It contacted the Shaeffers in July 1989 to discuss a perceived clearance problem. After making calculations for weather conditions and electric load, Iowa Power employees believed the clearance to be too low.

An Iowa Power construction engineer measured the lowest conductor. He concluded it was 12.6 feet from the building's peak. He then adjusted this measurement for temperature differences. Under increased temperature and load conditions, his calculations showed a clearance of 11.5 feet. Using the National Electric Safety Code, he concluded the required clearance should be 13.6 feet.

Shaeffer disputes the authenticity of the measurements. He testified that when he used an electrician's disconnect pole, he measured the wire to be more than 14 feet above the roof's peak.

Iowa Power requested a permanent writ of injunction directing the Shaeffers to remove their structure. The court denied the injunction. It apparently believed Iowa Power's request was based on a 12-inch theoretical, convoluted difference in measurements.

The court did, however, allow Iowa Power to remove trees as necessary for the proper maintenance and operation of the line. Iowa Power appeals. We affirm.

As this case was tried in equity, our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of facts, especially on credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Neither party disputes the existence of a valid easement for Iowa Power's transmission lines. The law as it relates to easements and their effect on the land is

well settled. In this respect neither party to an easement may interfere with the rights of the other. Krogh v. Clark, 213 N.W.2d 503, 506 (Iowa 1973). In addition, Iowa law recognizes the easement owner's right to remove obstacles interfering with the easement. Id.

Although the appellant distinguishes the factual settings of several of the cases relied on by the trial court from those in the case at bar, there is general agreement as to the application of the following statement of the law.

The land which is entitled to an easement is called the "dominant tenement," and the land burdened with the servitude is referred to as the "servient tenement." Dawson v. McKinnan, 285 N.W. 258 (Iowa 1939).

An easement in land is a liberty, privilege, or advantage in land, without profit, existing distinct from the ownership of the soil. Hadsell v. West, 67 N.W.2d 516 (Iowa 1954).

An easement may be created by express written agreement, by prescription or by implication. Wymer v. Dagnillo, 162 N.W.2d 514 (Iowa 1968).

Intention of parties must control construction of easement grants, and, except in cases of ambiguity, that intention is determined by what the contract itself says. Wiegmann v. Baier, 203 N.W.2d 204 (Iowa 1972).

It is clear that neither party to an easement may interfere with the rights of the other. The one who enjoys

the easement must use it according to its terms; the one who has granted it must not interfere with the rights conferred. Krogh at 506.

It is equally clear that although injunctions will not, as a general rule, issue upon mere fear, or possibility of injury, this does not mean that the remedy may not be granted to prevent future wrongs. 42 Am. Jur. 2d Injunctions § 31 (1969). The main virtue of injunction is to anticipate and prevent threatened wrongs which, if committed, a court of law could not adequately remedy. Id.

The trial court considered the aforesaid statements of the law in reaching its decision. After weighing the facts against the applicable law, it stated:

> Nor is this Court impressed with the alleged clearances mandated by the NESC. The computations by Sweeney, appearing on Exhibit 7, are complicated and self-rewarding. It presumes a 400 foot span when 8 poles span the 2100 foot property, which would indicate a lesser individual span. The "sag" computation is a number of alternatives which presumes a certain load. The constancy or existence of that load was not proven. Nor is the Court convinced the clearance measurement is 12.6 feet rather than 13.3 feet (plus 8 inches) or 14 feet. But even assuming 13.6 feet is a correct limitation, Iowa Power asks a removal of the building for a 12 inch theoretical, convoluted difference, with no showing that foot spells additional danger, disaster, or cost to it. Additional danger from a possible fire in the building was not even hinted.
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> The "clearances" themselves suggest a placement of some structure from which "to clear." Balancing that foot (theoretical, rather than actual) against the destruction of the use of land by the owner, does not abet the claims of Iowa Power.

We have made a de novo review of the record. After

doing so we see no reason to disturb the result reached by the trial court. To a great extent we rely heavily on its assessment of the witnesses and their credibility. In this respect the burden rested with the plaintiff. The trial court found that it had failed to meet its burden. We agree. Accordingly, we affirm.

Costs of this appeal taxed to Iowa Power.

AFFIRMED.