IN THE COURT OF APPEALS OF IOWA

No. 9-666 / 99-0236
Filed December 27, 1999

M. DEAN JONES and ELLEN JONES,
Plaintiffs-Appellees,

vs.

T L & L, INC.,
Defendant-Appellant.

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CLERK SUPREME COURT

T L & L, INC.,
Third-Party Plaintiff-Appellant,

vs.

QUAIL CREEK CONDOMINIUM DEVELOPMENT CORPORATION and QUAIL CREEK CONDOMINIUM OWNERS ASSOCIATION,
Third-Party Defendants-Appellees.

Appeal from the Iowa District Court for Johnson County, William L. Thomas (judgment) and Lynne E. Brady (trial), Judges.

The defendant appeals a district court ruling in favor of plaintiffs and third-party defendants on plaintiffs' action against defendant regarding plaintiffs' easement over defendant's land. **AFFIRMED.**

Jerry D. Van Scoy of Van Scoy & Kross, P.C., Clinton, for appellant.

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C. Joseph Holland, Iowa City, and Philip A. Leff of Leff, Haupert, Traw & Willman, L.L.P., Iowa City, for appellees M. Dean and Ellen Jones.

L. Jay Stein of Stein & Pugh, L.L.P., Iowa City, for appellees Quail Creek.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

MAHAN, J.

T L & L, Inc. appeals a district court ruling in favor of M. Dean Jones, Ellen Jones, the Quail Creek Condominium Development Corporation, and the Quail Creek Condominium Owners Association on the Joneses' action against T L & L regarding the Joneses' easement over T L & L's land. T L & L contends the district court erred in: (1) reforming a deed and quieting title to an unrestricted easement in favor of the Joneses, (2) determining T L & L was required to pay for all repairs and maintenance to the golf course entrance road, and (3) failing to quiet title to an easement over the maintenance shop road in their favor. We affirm.

T L & L own the Quail Creek Golf Course ("golf course"). This golf course wholly surrounds an 8.9 acre tract ("condo parcel"). The Quail Creek Condominium ("Phase I condominiums") is located on 3.9 acres of the condo parcel. The Joneses own two condominium units and the remaining, undeveloped 5.07 acres of the condo parcel ("Jones tract").

The condo parcel is only accessible by way of the golf course entrance road.[1] There is a fork in the golf course entrance road at the condominium entrance marker. To the right of the marker, the condominium road provides access to the condo

[1] In prior proceedings and in the appellate briefs, this portion of the road was referred to as point A to point B.

parcel.[2] To the left of the marker, the maintenance road provides access to the maintenance shop.[3]

The Joneses once owned all of the land involved in this dispute. They developed the golf course and the condominiums in the early 1970s. The Joneses sold the golf course and other real estate holdings to Southgate Development Company ("Southgate") by installment contract.[4] The condo parcel was excluded from this sale and an easement was reserved in favor of the grantors (the Joneses) and the present and future owners of the Phase I condominiums.

In July of 1990, T L & L entered an agreement to purchase the golf course and adjacent undeveloped land from Southgate. The Joneses delivered a deed to Southgate in partial fulfillment of the installment contract so Southgate could convey the property to T L & L ("the Jones deed"). Southgate's attorney deleted the provision reserving an easement in favor of the grantor from the deed from Southgate to T L & L ("the Southgate deed") because Southgate would not retain any land benefitted by the easement. This deletion, however, was mistakenly copied into the Jones deed. Thus, the only easement reserved in the Jones deed, and the Southgate

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[2] In prior proceedings and in the appellate briefs, this portion of the road was referred to as point B to point C.

[3] In prior proceedings and in the appellate briefs, this portion of the road was referred to as point B to point D.

[4] Quail Creek Golf Course, Inc. entered the sales contract with MRD, a wholly owned subsidiary of Southgate. MRD's interest in this contract was later assigned to Southgate and Quail Creek Golf Course's interest was later assigned to the Joneses.

deed was the easement in favor of the present and future owners of the Phase I condominiums. The sale closed in February of 1991.

The present dispute arose after it was determined the golf course entrance road needed to be repaired. The parties were unable to resolve the dispute among themselves, and the Joneses eventually petitioned the court to quiet title and enter a declaratory judgment regarding their easement over the golf course road. T L & L joined the Quail Creek Condominium Development Corporation ("Condo Corp") and the Quail Creek Condominium Owners Association ("Condo Association") as third-party defendants and requested a declaratory judgment regarding the maintenance and repair obligations of each party as to the golf course entrance road. T L & L also filed a counterclaim to quiet title in an easement in their favor over the maintenance road, part of which lies on the Jones tract. Finally, the Condo Association filed a claim against T L & L for one-half of past and future snow removal expenses.

Testimony was received from Southgate's attorney Charles Mullen, Southgate's president Myles Braverman, Dean Jones, the Condo Association's accountant Albert Watson, T L & L's vice-president Leonard Lewis, and T L & L's attorney Robert Downer.

The district court declared the Joneses have the same easement interest in the golf course entrance road as they had when they first conveyed the land to Southgate, quieted title to the easement in the Joneses, reformed the Jones and Southgate deeds to re-establish the Joneses' easement, and found the easement was not restricted. The

district court denied T L & L's request to quiet title to an easement interest in the maintenance road, and determined T L & L is responsible for all maintenance and repair costs and one-half of the snow removal costs for the golf course entrance road.

T L & L appeals.

I. Standard of Review. This action was tried in equity, and our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Reformation and the Joneses' Easement. T L & L contends the district court erred in reforming the Jones deed and in quieting title to an unrestricted easement in favor of the Joneses. We disagree.

"Equity is not bound by forms, fiction or technical rules, but will seek and determine the true situation." *Hosteng Concrete & Gravel, Inc. v. Tullar,* 524 N.W.2d 445, 448 (Iowa App. 1994) (citing *Tri-State Refining & Inv. Co. v. Opdahl,* 481 N.W.2d 710, 712 (Iowa App. 1991). A court sitting in equity has considerable flexibility in framing remedies and has the power to grant reformation of an instrument. *Id.*, (citing *Walnut St. Baptist Church v. Oliphant*, 257 Iowa 879, 886, 135 N.W.2d 97, 101 (1965)). The Joneses, as the parties seeking reformation of the Jones deed, had the burden of establishing by clear and convincing evidence the deed does not reflect the true intent of the parties because of mutual mistake. *Id.* The remedy of reformation of an instrument lies within the sound discretion of the equity

court and depends on whether the remedy is essential to the ends of justice. *Kendall v. Lowther*, 356 N.W.2d 181, 188 (Iowa 1984). In reforming the instrument, the court does not change the agreement between the parties, but changes the drafted instrument to conform to the real agreement. *Wellman Sav. Bank v. Adams*, 454 N.W.2d 852, 855 (Iowa 1990).

We have recently stated "the requirement of mutuality of mistake does not apply to a mistake of a scrivener in reducing an agreement to writing." *Gouge v. McNamara*, 586 N.W.2d 710, 713 (Iowa App. 1998) (citing *Schuknecht v. Western Mut. Ins. Co.*, 203 N.W.2d 605, 609 (Iowa 1973) (quoting 45 Am. Jur. *Reformation of Instruments* § 55, at 617)). This statement of the law has been interpreted or restated as follows:

> If the scrivener has made a mistake and neither of the parties realizes that the instrument does not express their true agreement, then the ground for reformation is the *mutual mistake of the parties* in believing that the instrument correctly embodies their true agreement.

66 Am. Jur. 2d *Reformation of Instruments* § 21, at 547 (1973)(emphasis in original).

The testimony of Jones, Braverman, and Mullen establishes this is exactly what happened; there is no other credible explanation offered for the Joneses giving up their only access to the Jones tract. The district court found, and we agree, the Joneses demonstrated mutual mistake by clear and convincing evidence. T L & L mistakenly argues this mutual mistake cannot be the basis for reformation of the Southgate deed or, alternatively stated, the Joneses must prove there was a mutual mistake between T L & L and Southgate. Courts sitting in equity will reform

contracts not only as between the parties, so as to carry out their intentions, but as against subsequent purchasers with notice. *Winker v. Tiefenthaler*, 225 Iowa 180, 186, 279 N.W. 436, 439 (1938). As a subsequent purchaser, T L & L had the burden to establish its status of bona fide purchaser by showing the purchase was made without either actual or constructive notice of the Joneses' existing easement rights in the property. *See Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 638 (Iowa 1996).

Actual notice depends upon the purchaser having either (1) actual knowledge of the existing rights, or (2) knowledge of sufficient facts to charge the purchaser with a duty to make inquiry that would reveal the existence of such rights. *Id.* at 637. If a purchaser is charged with a duty to make inquiry, the purchaser "will be presumed to have made inquiry, and will be charged with notice of every fact which such suggested investigation would in all probability have disclosed had it been properly pursued." *Id.* at 637-38 (quoting *Raub v. General Income Sponsors*, 176 N.W.2d 216, 220 (Iowa 1970) (citation omitted)). "[A] purchaser may not act in contravention to the dictates of reasonable prudence, or refuse to inquire when the propriety of the inquiry is naturally suggested by circumstances known to him." *Id.* Anything Lewis knew or should have known must be imputed to T L & L. *See id.*, at 638 (finding what two sole shareholders knew or should have known must be imputed to the corporation).

In the case at bar, Lewis knew the golf course wholly surrounded the condo parcel which was excluded from the sale. He also knew the Quail Creek Condominium was located on that parcel, the golf course entrance road provided the only access to the condo parcel, and condominium unit owners actually used the golf course entrance road to access the condo parcel. These are sufficient facts to charge T L & L with a duty to make inquiry to reveal existing easement rights in the road. *See, e.g., Gilmore v. New Beck Levee Dist.*, 212 N.W.2d 477, 479, (Iowa 1973) (finding open and obvious existence of drainage levee put purchaser on inquiry notice); *Hatton v. Cale*, 152 Iowa 485, 498-99, 132 N.W. 1101,1106 (1911) (finding open and obvious existence of a ditch put purchaser on inquiry notice). If Lewis had made inquiry with the Condo Association, he probably would have discovered they owned only part of the condo parcel and the Joneses continued to have an interest in the Jones tract. Consequently, T L & L is unable to establish it had bona fide purchaser status.

Finally, there is no evidence the Joneses and Southgate agreed to restrict the Joneses' easement to condominium purposes only; the district court properly reformed the deed to conform the parties' actual agreement.

In sum, we conclude the district court did not err in reforming a deed and quieting title to an unrestricted easement in favor of the Joneses. The Joneses met their burden to establish a mutual mistake in the Jones deed and T L & L failed to meet its burden to establish it was a subsequent purchaser without notice.

III. The Golf Course Entrance Road. T L & L contends the district court erred in determining T L & L was required to pay for all repairs and maintenance to the golf course entrance road. We disagree.

In the construction of written contracts, the cardinal principle is the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14). The relevant contract provision from the T L & L purchase agreement with Southgate is as follows:

> 16. Maintenance of the Quail Creek Condominium Access Road. The Buyer [(T L & L)] will assume the obligation of the Seller (Southgate) to maintain the present golf course entrance road which entrance road also serves as access to the Quail Creek Condominium. The Buyer understands that the Sellers present obligation for maintenance of said roadway includes the obligation to provide the equipment and labor for snow removal, provided that one-half of the cost thereof is reimbursed by the condominium association.

Southgate's obligations were established in the real estate installment contract in the following provision:

> Buyer [(Southgate)] will furnish equipment and labor for snow removal on the golf course entrance road, up to the condominium area road, provided Buyers are reimbursed for one-half (½) of the cost thereof by the condominium association. Buyer will maintain said golf course entrance road at Buyer's expense.

The meaning of these provisions is clear. The district court did not err in determining T L & L is responsible for the total maintenance and repair costs of the golf course entrance road and responsible for one-half of the snow removal costs for the golf course entrance road.

IV. The Maintenance Shop Road. T L & L contends the district court erred in failing to quiet title to an implied or prescriptive easement over the maintenance shop road in their favor. We disagree.

An easement by implication is one which the law imposes by inferring the parties to a transaction intended that result, although they did not express it. *Schwob v. Green*, 215 N.W.2d 240, 242-43 (Iowa 1974). An easement by implication requires a showing the parties intended such a right to exist. *Id.* at 244. Although strict necessity need not be proven, mere inconvenience is not enough. *Id.* The evidence does not show the Joneses and Southgate intended an easement over the maintenance shop road be created in Southgate's favor. To the contrary, the testimony shows Southgate's use of the maintenance shop road was permissive. Additionally, the evidence shows T L & L is merely inconvenienced by the lack of an easement over the maintenance shop road, and in fact, have established a road to the maintenance shop entirely on their own property. Under these circumstances, T L & L's claim for an easement by implication fails.

A prescriptive easement may be created "'by adverse possession, under claim of right or color of title, openly, notoriously, continuously, and hostilely asserted against defendants for ten years or more.'" *Heald v. Glentzer*, 491 N.W.2d 191, 193 (Iowa App. 1992) (quoting *Simonsen v. Todd*, 261 Iowa 485, 489, 154 N.W.2d 730, 732 (1967) (citations omitted)). Permissive use is not adverse or under a claim of right. *Schwenker v. Sagers*, 230 N.W.2d 525, 527 (Iowa 1975). The evidence shows

the Joneses permitted Southgate to use the maintenance shop road. Therefore, even if T L & L could prove all of the other elements of a prescriptive easement, their claim fails because the ten-year period has not run; when the Joneses closed the maintenance shop road, T L & L had owned the property for less than five years.

We conclude the district court did not err in failing to quiet title to an easement over the maintenance shop road in T L & L's favor.

For all of these reasons, we affirm.

AFFIRMED.