



IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

JOE SCHWARZKOPF, et al.,)
Plaintiffs-Appellants,)
vs.)
SAC COUNTY BOARD OF SUPERVISORS,)
et al.,)
Defendants-Cross-Appellants,)
and STATE ASSOCIATION OF IOWA RURAL)
WATER SYSTEMS, INC., and WEST CENTRAL)
IOWA RURAL WATER ASSOCIATION,)
Intervenors-Cross-Appellants.)

Filed December 30, 1981

1-203
2-65531

Appeal from Sac District Court, Albert Habhab, Judge.

Plaintiffs appeal, and defendants and intervenors cross-appeal, in an action seeking to declare invalid defendant's grant of an easement across certain secondary roads to West Central Iowa Rural Water Association. Plaintiffs claim the trial court failed, in approving the grant of an easement to West Central, to follow the law of the case established by a prior court of appeals opinion and defendant failed to comply with section 320.4, The Code 1975, which requires the location of easements be designated with particularity. Defendants and intervenors contend the language of section 320.4, The Code 1975, which limits the grant of easements to pipeline companies, should be construed to apply only to petroleum pipeline companies. REVERSED.

Colin McCullough of McCullough Law Firm, P.C., Sac City, for plaintiffs-appellants.

Lon R. Tullar, Sac County Attorney, for defendants-appellees.

Claus H. Bunz of Hansen, Bunz & Muga, Manning, and James A. Giles of Wasker, Sullivan & Ward, Des Moines, for intervenors-cross-appellants.

Heard by Oxberger, C.J., and Danielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiffs appeal, and defendants and intervenors cross-appeal, in an action seeking to declare invalid defendant's grant of an easement across certain secondary roads to West Central Iowa Rural Water Association. Plaintiffs claim the trial court failed to follow the law of the case established by a prior court of appeals opinion and defendants failed to comply with section 320.4, The Code 1975, which requires the location of easements be designated with particularity. Defendants and intervenors contend the limiting language of section 320.4, The Code 1975, should be construed to apply only to petroleum pipeline companies. We reverse the trial court's decision approving the grant of an easement to West Central Iowa Rural Water Association.

Plaintiffs in this action are communities, landowners and residents of Sac County. The Sac County Board of Supervisors is the defendant. The State Association of Iowa Rural Water Systems, Inc., and West Central Iowa Rural Water Association are intervenors.

Plaintiffs initially filed their petition seeking a declaratory judgment that the Board of Supervisor's grant of an easement to intervenor West Central, for the purpose of laying water pipeline, was invalid. The trial court sustained defendant's and intervenors' motion for summary judgment and affirmed the Board's grant of an easement to West Central. This court reversed the trial court's decision, holding section 320.4, The Code 1975, does not authorize the grant of an easement to West Central, which is neither a municipal nor a quasimunicipal corporation.

Plaintiffs then renewed their claim in the trial court. The trial court concluded, after an exhaustive analysis of the legislative history of section 320.4, defendants were authorized to grant West Central an easement under section 320.4.

Plaintiffs assert two issues on appeal. Initially plaintiffs claim the original opinion of this court, prohibiting the grant of an easement to West Central under section 320.4, constitutes the law of the case and, therefore, the trial court could not grant a remedy inconsistent with that decision. We agree with plaintiff's contention, which makes consideration of plaintiff's second claim unnecessary.

The controversy centers around the interpretation of section 320.4, The Code 1975, which in part provides:

The state department of transportation in case of primary roads, and the board of supervisors in case of secondary roads, on written application designating the particular highway and part thereof, the use of which is desired, may grant permission:

1. To lay gas and water mains in highways outside cities to local municipal distributing plants or companies, but not to pipeline companies. This section shall not apply to or include pipeline companies required to obtain a license from the Iowa state commerce commission.

The trial court, in its second ruling in this case, interpreted section 320.4 to prohibit boards of supervisors from granting easements only to pipeline companies whose pipelines carry petroleum products. In the trial court's opinion, the phrase "to local municipal distributing plants or companies" did not limit the applicability of section 320.4 to municipal or quasimunicipal corporations. Instead, the trial court concluded the only limitation on the applicability of section 320.4 was contained in the last sentence of section 320.4, quoted above, which prohibits granting easements only to pipeline companies transporting petroleum products. Thus, the trial court concluded the determination of whether West Central was a quasimunicipal corporation was not critical. The critical question, in the trial court's view, was whether the company was a "pipeline company" as defined by the trial court in its exhaustive discourse on the legislative history of section 320.4.

We think the trial court misinterpreted our original opinion. We construed section 320.4 as permitting boards of supervisors to grant easements only to municipal or quasimunicipal corporations. We did not address the issue of exclusion of "pipeline companies" from section 320.4. We held then, and we reiterate now, that West Central was not a municipal or quasimunicipal corporation. See Schwarzkopf v. Sac County Board of Supervisors, no. 2-61862, unpub. op. at 1-3 (Iowa App. May 31, 1979), and authority cited therein. Nor is section 320.4 sufficiently elastic to embrace an unlimited class of grantees, either by definition of the words contained therein, or by historical derivative. The grant of the easement is without legislative authority and is therefore invalid.

We need not address plaintiff's second issue as our conclusion above is dispositive of that issue.

REVERSED.