FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CITY OF LENOX, IOWA, )

Plaintiff-Appellee, )

vs. )

IVAN D. HAYWORTH, A. JEANNETTE HAYWORTH, PAUL D. HAYWORTH, and DENNIS HAYWORTH, )

Defendants-Appellants. )

Filed April 8, 1983

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Appeal from Taylor District Court - Richard Morr, Judge.

Defendants appeal from the summary judgment granted in plaintiff's favor in this equity action for injunctive relief restraining the defendants from preventing its maintenance, repair and improvement of its pipelines crossing under defendants' land. AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Harold G. DeKay, Atlantic, Iowa, for defendants-appellants.

Ronald D. Bonnett, Lenox, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Johnson, J., takes no part.

**PER CURIAM**

Defendants appeal from the summary judgment granted in plaintiff's favor in this equity action for injunctive relief restraining the defendants from preventing its maintenance, repair and improvement of its pipelines crossing under defendants' land. Defendants claim that the trial court erred in granting a summary judgment in excess of the relief requested by plaintiff and not supported by the record. Our review is **de novo.** Iowa R. App. P. 4. We affirm in part, reverse in part and remand.

On August 26, 1981, the plaintiff filed its petition against defendants, asserting that it had maintained and used buried city sewer and city storm pipelines under real estate owned by the defendants and that the defendants had denied it access for needed repair. The city requested a permanent injunction restraining the defendants and their successors in title to the real estate from preventing plaintiff's maintenance, repair and improvement of plaintiff's pipelines which cross under defendants' lands now and in the future and that the trial court "specify the continuing rights, duties, liabilities, and prohibitions of the parties." The defendants filed an answer admitting most of the allegations of the petition but contending that the plaintiff had an adequate remedy at law which was condemnation. In response to plaintiff's application for adjudication of law points, the trial court ruled that the plaintiff had acquired an easement across the defendants' property for storm sewer and sanitary sewer pipelines and that the plaintiff had a right to continue to exercise the easement "to the extent necessary to repair and maintain the said storm and sanitary sewer pipelines."

Based on that ruling, plaintiff on February 16, 1982, filed a motion for summary judgment claiming that it was entitled to a judgment establishing its right to an injunction and that "the only matter that could be in dispute is the amount of damages to which the defendants may be entitled and the extent of the easement to which the plaintiff is entitled."

On April 13, 1982, the trial court entered a summary judgment for the plaintiff. The trial court determined that the defendants presented no facts on which the court could deny plaintiff's motion. The trial court ordered the grant of a permanent injunction against the defendants in respect to the land in question, permanently restraining the defendants from obstructing in any manner the maintenance and repair of plaintiff's storm and sanitary sewer pipelines crossing defendants' real estate. The trial court specifically granted an easement to maintain and repair the pipelines. The court stated that the easement "shall be of sufficient width to permit the plaintiff to reasonably carry out the intent of this order and in case of doubt said width shall be sixty feet, the centerline of which is located along the plaintiff's pipelines now in place under defendants' real estate." The order also provided that the plaintiff was responsible for damages which might arise to the defendants from the plaintiff's exercise of the easement rights and if such damages could not be mutually agreed upon, a panel of three disinterested persons chosen pursuant to court instructions would determine the amount of damages. The amount of damages so determined would be final and conclusive. Defendants then brought this appeal.

The rules governing summary judgment procedure are contained in Iowa R. Civ. P. 237-240. In Moser v. County of Black Hawk, 300 N.W.2d 150, 151-52 (Iowa 1981), the supreme court summarized that procedure:

> The movant has the burden to show there is no genuine issue as to any material fact and that he or she is entitled to judgment on the merits as a matter of law. (citations) Trial court is required to examine the entire record before it in the light most favorable to the party opposing the motion to determine whether any genuine issue of a material fact has been generated. (citation)

We find no error with regard to the trial court's judgment that plaintiff has an easement to maintain and repair the pipelines and that defendants should be enjoined from interfering with such maintenance and repair. Plaintiff sustained its burden of proving that there was no genuine issue of material fact as to those

general issues. In fact, defendants do not even contest those portions of the judgment on appeal. We therefore affirm the summary judgment to that extent.

The trial court, however, did not stop there. It also specified the location and extent of the easement granted to plaintiff and established a specific procedure to determine the damages to which defendants will be entitled as a result of plaintiff's easement. The meager record before the trial court contained nothing indicating precisely where plaintiff claimed its easement on defendants' land to be. Nor was there any basis in the record for concluding in a summary judgment how the damages were to be determined. It necessarily follows, therefore, that plaintiff did not sustain its burden of proving no genuine issue of any material fact on these issues. In fact, plaintiff's own motion for summary judgment acknowledges that those matters involved factual disputes not amenable to resolution by summary judgment. Paragraph five of the motion claims that plaintiff is entitled to an injunction "limiting the trial in this matter to the amount and extent of said injunction now and in the future." We conclude that the trial court erred in determining in summary judgment the extent of plaintiff's easement and in establishing a specific mechanism for arriving at damages.

We therefore affirm the trial court's summary judgment insofar as it held that plaintiff had an easement and was entitled to an injunction. We reverse the judgment as to its specification of the location and extent of that easement and of the method of determining defendants' damages and remand for further proceedings to determine those issues.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.