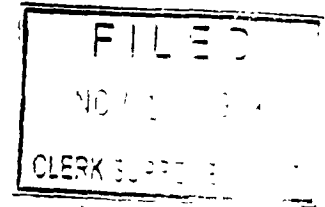


IN THE COURT OF APPEALS OF IOWA

No. 9-065 / 97-1738
Filed November 10, 1999



LAURÁ L. AMBUEHL,
Petitioner-Appellant,

vs.

CITIZENS STATE BANK, MONTICELLO, IOWA,
Respondent-Appellee.

ROGER THOMPSON,
Petitioner-Appellant,

vs.

**CITIZENS STATE BANK
MONTICELLO, IOWA,**
Respondent-Appellee.
CMC HEARTLAND PARTNERS,
Intervenor-Appellee.

Appeal from the Iowa District Court for Jones County, Kristin Hibbs, Judge.

The petitioners appeal from a district court ruling in favor of the respondent bank in their consolidated quiet title actions. **AFFIRMED.**

Adrian T. Knuth, Anamosa, and Ronald L. Ricklefs, Cedar Rapids, for appellants.

Michael Bowman of Shimanek, Shimanek & Bowman, Monticello, and John J. Hines of Dutton, Braun, Staack & Hellman, P.L.C. for Appellee Citizens State Bank.

James L. Pray of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellee CMC Heartland Partners.

Considered by Streit, P.J., Miller, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PETERSON, S.J.

The petitioners-appellants, Laura L. Ambuehl and Roger Thompson, appeal the district court ruling in favor of the respondent Citizens State Bank in their quiet title actions. The court determined title to an abandoned railway easement should be quieted in the Citizens State Bank through the doctrine of adverse possession. The appellants claim the district court erred in this ruling. We affirm.

Background and Proceedings. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company operated a line between Paralta and Hopkinton, Iowa. This line passed through Monticello, Iowa, and more specifically, Bradstreet's Addition to that city. The right-of-way was approximately one hundred feet wide and ran in a northwesterly, southeasterly direction through the addition.

Roger Thompson owns lot number one and the easterly ten feet of lot number two. Laura Ambuehl owns lot number thirty-two which is immediately south of Roger Thompson's lot. The east lot line of lot number one and lot number thirty-two is the west lot line of the right-of-way. The north lot line of lot number one borders First Street, and the south lot line of lot number thirty-two borders Grand Street.

The Chicago, Milwaukee, St. Paul and Pacific Railroad was placed in bankruptcy and CMC Heartland Partners is the successor in interest to the trustee in bankruptcy. On February 24, 1980, authority was secured to abandon the Paralta to Hopkinton line. Service was terminated on February 29, 1980, and the tracks were removed from the right-of-way in August of 1980.

On May 9, 1989, Audrey Kumley, now known as Audrey Savage, offered to purchase for \$17,700, the right-of-way between Grand and First Streets. This offer was accepted by CMC Real Estate Corporation on May 19, 1989. The right-of-way was conveyed by a quit claim deed executed on May 13, 1991, to Audrey G. Kumley by CMC Real Estate Corporation, a Chicago-Milwaukee Corporation and CMC Heartland Partners. This quit claim deed was recorded on February 21, 1991. The abstract of title at entry number twenty-seven also shows a quit claim deed from CMC Real Estate Corporation to Audrey Kumley conveying the same property which is dated June 27, 1989, and filed for record on August 2, 1989.

Audrey Savage is the president, chairman of the board and cashier of the Citizens State Bank. She purchased the property in her own name because the bank was prohibited from owning property that was not used for banking purposes. The property was purchased with the idea in mind that a banking facility would be constructed on the property. On May 8, 1990, Audrey Savage conveyed the property to the Citizens State Bank by warranty deed. Construction was begun on the banking facility in May of 1990, and was completed in October of 1990, for a total cost of \$611,000.

The bank building and the parking lot around the building occupy substantially all of the right-of-way. The curb line of the parking lot on the right-of-way is approximately five feet from an entrance to Laura Ambuehl's home. The westerly

one-half of the right-of-way contains parking facilities and approximately ten to fifteen percent of the bank building.

Laura Ambuehl has lived on the property at 122 West Grand Avenue, which is lot number thirty-two in Bradstreet's Addition, for approximately fifty years. She and her husband received title to the property in 1976 from Lizzie Ambuehl, Laura Ambuehl's mother-in-law. Lizzie Ambuehl planted a garden on the right-of-way, and this garden was continued by Laura Ambuehl until the construction of the bank building in 1990. There was also a two-lane concrete driveway that serviced the Ambuehl home and which entered their property from Grand Street. A portion of this driveway was also on the right-of-way. This was also removed during the construction of the bank building. In addition to the actual garden, a portion of the right-of-way was also maintained by Laura Ambuehl by mowing and cutting weeds.

Sometime after the purchase of the right-of-way by Audrey Savage, she advised Laura Ambuehl that she would have to remove the garden and her driveway. Laura Ambuehl asked Audrey Savage if she could purchase a portion of the property and was told they needed the entire parcel for the banking operation.

In 1995, Laura Ambuehl became aware of the possibility that she may have an interest in a portion of the right-of-way. She filed an affidavit of ownership and a quit claim deed from herself to herself in an effort to assert this interest in the real estate.

Roger Thompson operated the Monticello Monument Company at 201 West First Street in Monticello, Iowa. This is also lot number one in Bradstreet's Addition

to Monticello, Iowa. He leased thirty feet of the right-of-way from the railroad until that lease was terminated in 1985. This lease was entered into in 1949 by the previous owners of the monument company. This portion of the right-of-way was used to display monuments. Even though the lease had been terminated, he continued to use this area for display purposes until he retired in 1989. He also continued to maintain the property until the bank began construction in 1990.

On December 17, 1977, Roger Thompson wrote to the railroad and asked if the parcel of land he was leasing could be purchased. On November 2, 1978, W H. Waldeman, on behalf of the railroad, responded. The letter indicated the property would be sold as soon as they received permission from the Interstate Commerce Commission to approve the abandonment of the railroad line that operated on the right-of-way. W.H. Waldeman stopped at the Thompson residence at different times and discussed matters with Roger Thompson's wife. This would have been prior to March of 1988, when she died.

In 1995, Roger Thompson became aware he may have an interest in the abandoned right-of-way. He filed a quit claim deed and affidavit of ownership in November of 1995.

The taxes on the right-of-way were paid by the CMC Heartland Partners and their predecessors in interest until the property was conveyed to Audrey Savage in June of 1989. The taxes at that time were prorated between CMC and Audrey Savage. She paid the taxes on the property until it was conveyed to the bank, and they

paid the taxes until the quit claim deeds and affidavits of possession were filed by Laura Ambuehl and Roger Thompson in 1995. As a result of the filing of those documents, the real estate taxes have been assessed to Laura Ambuehl and Roger Thompson for that portion they claim an interest in. The taxes for the improvements on the right-of-way have been assessed to the Citizens State Bank.

There was an assessment against the right-of-way as a result of the 1982 Monticello improvement program. This was paid by the Monticello Monument Company in accordance with the terms of the lease that existed at that time between Roger Thompson and the trustee and banker of the railroad.

In January of 1996, Laura Ambuehl and Roger Thompson filed petitions in equity seeking to quiet title in the west one-half of the right-of-way that adjoins their property. The Citizens State Bank filed an answer setting forth several affirmative defenses. They are estoppel, laches, res judicata, stale uses and reversions, unjust enrichment, adverse possession/prescription, and forty-year chain-of-title. They also filed a counterclaim requesting title to the property in question be quieted in their name.

The trial court found the railroad held only an easement in the property, and the easement was extinguished upon the abandonment of the railroad in 1980, and the abandoned right-of-way reverted to the adjoining property owners. The court also found the bank had established their affirmative defense of adverse possession and quieted title to that portion of the right-of-way claimed by Laura Ambuehl and Roger

Thompson in the Citizens State Bank. Because of this finding, the trial court did not consider the other affirmative defenses.

Scope of Review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). Although we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

Discussion. All parties agree with the district court's determination the railroad originally obtained only an easement because the language of the initial grant of a "right-of-way" through the land is "always regarded as an easement." *Macerich Real Estate Co. v. City of Ames*, 433 N.W.2d 726, 728-29 (Iowa 1988); (quoting *Brown v. Young*, 69 Iowa 625, 626, 29 N.W. 941, 941 (1886)). The easement reverted to the adjoining land owners when the railroad abandoned the right-of-way and removed the tracks in August of 1980. See Iowa Code §§ 327G.76 and 327G.77.

The question then is whether or not the possession of the abandoned right-of-way by the railroad and its successor corporation, CMC, and Audrey Savage and the bank meets the requirements of adverse possession. No entity individually possessed the land for the required ten-year period. The railroad and CMC possession spanned from 1980 to 1989. Audrey Savage held the property from 1989 to 1990, and the bank's possession extended from 1990 through the time of the trial in 1996.

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A party claiming title by adverse possession must establish, hostile, actual, open, exclusive, or continuous possession under a claim of right or color of title for at least ten years. *Marksberry v. State*, 322 N.W.2d 281, 287 (Iowa 1982). Proof of these elements must be clear and positive. *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). Since the law presumes possession is under a regular title, the doctrine of adverse possession is strictly construed. *Id.* A claim, however, need not establish both color of title and claim of right, either will suffice. *Council Bluffs Sav. Bank v. Simmons*, 243 N.W.2d 634, 636 (Iowa 1976).

Laura Ambuehl continued her garden which was on the right-of-way and the use of her driveway, a portion of which was on the right-of-way, until the bank began construction of the building in May of 1990. Roger Thompson continued using a portion of the right-of-way under the lease until it was terminated in 1985. Subsequent to that time he continued using a portion of the right-of-way in the operation of his business. He continued maintaining a portion of the right-of-way until the construction of the bank building was begun in May of 1990.

The bank and its predecessors in interest paid the taxes on the right-of-way until Laura Ambuehl and Roger Thompson filed their affidavits of possession in 1995. Since that time, a portion of the right-of-way has been taxed to Laura Ambuehl and Roger Thompson and the bank improvements have been taxed to the bank.

We do not find the bank has established by clear and positive proof their claim of right for a period of at least ten years.

The bank contends the claim of Laura Ambuehl and Roger Thompson is barred by the doctrine of estoppel. The trial court did not rule on this issue, however, a successful party, without appealing, may attempt to save a judgment on appeal based on grounds urged in the district court, but not considered by that court. *Berger v. General United Group, Inc.*, 268 N.W.2d 630, 634 (Iowa 1978); *Moyer v. City of Des Moines*, 505 N.W.2d 191, 193 (Iowa 1993).

A theory of estoppel is where one has invaded the right of another, thinking he is within his own right and invasion is known to the other, and the other stands by and sees him make valuable improvements upon the invaded property, under the supposition it is part of the possession of the invader, equity will thereafter deny the one invaded the right to object to the invasion and will not grant his prayer to have the improvements destroyed or removed when such act would be greatly to the prejudice of the invader. *Brewer v. Claypool*, 275 N.W.2d 34, 36 (Iowa 1937); *Herrick v. Moore*, 185 Iowa 828, 832-33, 159 N.W.2d 741, 744 (1919).

Construction of the banking facility and adjacent parking lot began in May of 1990. Laura Ambuehl and Roger Thompson did not claim an interest in the right-of-way until November of 1995. Their interest in the right-of-way vested in them when the tracks were abandoned. They claim, however, they did not know of their interest in the right-of-way until shortly before they filed their quit claim deeds and affidavits of ownership. Everyone is presumed to know the law, and ignorance of the law excuses no one. These maxims are founded upon public policy and in necessity, and the idea back of them is that one's acts must be considered as having been done with

knowledge of the law, for otherwise its evasion would be facilitated and the courts burdened with collateral inquiries into the content of men's minds. *Millwright v. Romer*, 322 N.W.2d 30, 33 (Iowa 1982); *Neal v. Board of Supervisors*, 243 Iowa 723, 728, 53 N.W.2d 147, 150 (1952). We conclude the doctrine of estoppel applies under the circumstances of this case. Ambuehl and Thompson knew the bank was building its new building on the land in 1990. Neither made any effort to stop the building or to assert their claim to the land until Ambuehl filed an affidavit of ownership in 1995 and this action was filed in 1996. By then the bank had expended over \$610,000 to build its building and the building had been in existence for about five years. The bank would suffer significant prejudice if Ambuehl and Thompson were to prevail in their claim of ownership. Although Ambuehl and Thompson did not know the status of their title, they allowed a building to be erected on their ground without a raised eyebrow. They cannot now complain.

In conclusion, we find the bank has failed to establish by clear and positive proof they have had continuous possession under claim of right of the property in question for at least ten years. We conclude, however, the doctrine of estoppel applies under the circumstances of this case, and the trial court was correct in quieting title in the Citizens State Bank.

AFFIRMED.