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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-16 / 90-500

HAROLD BOWERS and LILLIAN BOWERS,

Plaintiffs-Appellants,

vs.

DARWIN OLIPHANT and OLIPHANT ENGINEERING & CONSTRUCTION, INC.,

Defendants-Appellees.

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Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge.

Bowers appeal a district court judgment rejecting their claims for an easement over defendants' property, an injunction to enforce the easement, and a determination they own certain real property claimed by the defendants. **AFFIRMED.**

Kevin P. Shea of Shea Law Offices, Cedar Rapids, for appellants.

Jeffrey K. Robison of Allen, Vernon, Gibson & Robison, Marion, and James F. Pickens of Pickens, Barnes & Abernathy, Cedar Rapids, for appellees.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

PER CURIAM

Plaintiffs-appellants Harold and Lillian Bowers and defendants-appellees Darwin Oliphant and Oliphant Engineering & Construction, Inc. own adjacent parcels of land. The question in this appeal is whether the trial court erred in refusing to grant plaintiffs' petition for an easement across defendants' ground and quiet title in plaintiffs to land between the parties' parcels. The trial court did not err. We affirm.

Plaintiffs contend the trial court should have found they established an easement by implication, express reservation, necessity prescription, and adverse possession. We find plaintiffs have failed to establish an easement under any theory, including implication. We have considered plaintiffs' claim of easement by implication. We find it unnecessary to consider plaintiffs' claim the trial court erred in refusing to allow them to amend their petition to claim an easement by implication.

Plaintiffs and defendants now own contiguous parcels of land in Toddville, Iowa, once owned by the Chicago, Rock Island & Pacific Railroad Company. Defendants' parcels lie between plaintiffs' parcels and Main Street in Toddville. Plaintiffs contend they have driveway easements across defendants' land for the purpose of entering Main Street. No express easement was established for the driveways in any conveyance preceding either parties' acquisition of title.

The question, therefore, becomes whether plaintiffs have established an easement by other means.

Plaintiffs contend they have established an easement by implication. An easement by implication arises only where the use antedates the separation of title. Farmers & Mechanics Savings Bank v. Campbell, 258 Iowa 1238, 1249, 141 N.W.2d 917, 923 (1966). That is, the owner of the entire tract uses it so a part derives from the other a benefit or advantage of a continuous, permanent and apparent nature, and sells the part in favor of which such benefit or advantage exists, an easement, being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication. Id; Loughman v. Couchmen, 242 Iowa 885, 888, 47 N.W.2d 152, 153 (1951).

No easement exists until the properties are severed. See Feilhaber v. Swiler, 203 Iowa 1133, 1136, 212 N.W. 417, 418 (1927). Easements by implication are strictly limited to the rights presumed to have been in the minds of the parties concerned. Dyer v. Knowles, 227 Iowa 1038, 1044, 289 N.W. 911, 914 (1940).

In determining whether the circumstances under which a conveyance of land is made imply an easement, the following factors are important: (a) whether the claimant is the conveyor or the conveyee, (b) the terms of the conveyance, (c) the consideration given for it, (d) whether the claim is made against a simultaneous conveyee, (e) the extent of

necessity of the easement to the claimant, (f) whether reciprocal benefits result to the conveyor and the conveyee, (g) the manner in which the land was used prior to its conveyance, and (h) the extent to which the manner of prior use was or might have been known to the parties. Schwab v. Green, 215 N.W.2d 240, 243 (1974).

The first question is what use was made of the land by the railroad when it was owner of the entire tract. The trial court found the plaintiffs did not show the railroad had established an easement. We agree with the trial court's finding there is no evidence showing the use made of the land by the railroad or that the easement was created by the railroad through their use of the land.

We look too at the minimal consideration plaintiffs' successor in interest paid the railroad for the property. We find plaintiffs have not shown an easement by implication. We affirm the trial court on this issue.

Plaintiffs next contend they have shown an easement by express reservation. They rely on the fact that a deed received by defendants from the railroad for one of its parcels contained a reservation by the railroad for itself and its successor in interest for an easement for the use of existing driveways. The trial court rejected this contention of plaintiffs, finding plaintiffs failed to establish either plaintiffs or plaintiffs' successors in interest were the successor identified in the railroad's

deed to defendants. We agree with the trial court, and affirm the trial court's findings plaintiffs did not establish an easement by express reservation.

Plaintiffs contend they established an easement by necessity. An easement by necessity ordinarily may only be claimed by the immediate parties to the transaction. See Schwab v. Green, 215 N.W.2d 240, 244 (Iowa 1974); Black v. Whiteacre, 206 Iowa 1084, 1086, 221 N.W. 825, 827 (1928); Cassens v. Myers, 154 Iowa 187, 191, 134 N.W. 543, 544 (1912). Plaintiffs and defendants were not parties to the same transaction and were not immediate parties to the grant by the railroad. Plaintiffs have not shown they are entitled to an easement by necessity. We affirm the trial court on this issue.

Plaintiffs contend they have proved an easement by adverse possession. The trial court rejected plaintiffs' claim of an easement by adverse possession, finding plaintiffs had not established adverse possession by evidence distinct and independent from their mere use of the land. We affirm the trial court on this issue.

We find, as did the trial court, that plaintiffs have failed to establish their easement. Finding plaintiffs have no easement, we affirm the trial court's refusal to enjoin defendants' interference with plaintiffs' use of its land.

The plaintiffs also allege they are the owners of a fifty foot parcel of real estate located between their parcel and defendants' parcel. The court concluded the plaintiffs have not established they are the owners of this narrow parcel of real estate in issue. Plaintiffs do not seem to argue with this conclusion, but only advance their title should be superior to defendants' title. Plaintiffs have advanced no valid argument as to why we should reverse the trial court on this issue.

AFFIRMED.