IN THE COURT OF APPEALS OF IOWA

No. 5-052 94-707

WARREN COUNTY, IOWA,

Appellant,

vs.

ERNEST R. FISHER, JR. and DOLLY MAE FISHER,

Appellees.

FILED
JUN 27 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Warren County, Michael J. Streit, Judge.

The plaintiff appeals from the district court's summary judgment ruling quieting title in abandoned railroad right-of-way to the defendants as the adjoining property owners. **AFFIRMED.**

Kevin Parker, County Attorney, for appellant.

Delbert C. Binford, Des Moines, and Gary R. Fischer of Dreher, Simpson, Jensen, Sellers, Harvey, Butters, Kaiser & Abels, P.C., Des Moines, for appellees.

Considered by Donielson, C.J., and Sackett and Cady, JJ., Hayden, J., takes no part.

CADY, J.

Both parties to this action claim an interest in certain abandoned railroad right-of-way in Warren County. The district court entered summary judgment for defendants, the adjacent property owners. We affirm.

In 1886, Cyrus and Mary Callison, conveyed certain property in the west half of a section of land to the Chicago, St. Paul and Kansas City Railway Company in a deed entitled "Right-of-Way Deed." This deed provided the grantors did:

> grant, bargain, sell and convey to the Chicago, St. Paul & Kansas City Railway Company its successors and assigns all that part of the above described Real Estate lying within Fifty (50) feet on the Westerly side and within Fifty (50) feet on the Easterly side of the center line of said Railway as the same is now located and staked out across said Real Estate, and also an additional strip of land on the west side of and next to the right-of-way Fifty (50) feet wide and extending from the Station Three hundred and Ninety-three (393) to the South line of said SectionEight (8) containing Fifteen and Nine Hundredths (15.09) acres; hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State; hereby warranting with said Company that they own said premises in fee simple; that the same are free from all encumbrances; and that they will warrant and defend the title to said premises against all lawful claims.

In 1888, Abner and Ollie Callison conveyed additional property in the southwest quarter of the same section to the Railroad. This deed conveyed:

> A strip of land Ninety-two (92) feet wide on the Easterly side of and adjacent to the Right of Way of the Chicago, St. Paul & Kansas City Railway Company and extending from the Northerly side of Block One (1) of the Town of Cumming, Northerly to the North line of the South-West quarter of Section Eight (8) Township Seventy-seven (77) North, Range Twenty-five (25) West of the Fifth P.M. -- Also a strip of land Fifty (50) feet in width on the Westerly side of and adjacent to the right of way of said Railway Company and extending across the entire length of the above described South-West quarter of said Section Eight (8) Tnp 77, R. 25. The land hereby conveyed to be used for Railway purposes. A Station Building Erected and Maintained.

Through several conveyances, the property in question was transferred to the Chicago North Western Transportation Company. In 1984, the railroad sought to abandon its track from Des Moines to St. Joseph, Missouri, which included the track

through the property described above. On September 12, 1984, the Interstate Commerce Commission (ICC) issued a certificate, to become effective on October 12, 1984, authorizing the abandonment.

On October 27, 1986, the railroad conveyed, by a quitclaim deed, its abandoned railway property in Iowa to the Iowa Natural Heritage Foundation. The Warren County Conservation Board purchased 204 acres of the abandoned railway in Warren County, including the property in question here, from the Foundation. The Board intended to develop a recreational trail on the property, which it called the Great Western Trail.

In the meantime, on June 21, 1985, Ernest and Dollie Fischer purchased the portion of the southwest quarter lying west of the railroad's right-of-way. They attempted to use the abandoned railroad right-of-way for agricultural purposes.

On June 26, 1992, Warren County filed a petition to quiet title against the Fischers. Warren County claimed a superior right to the abandoned railroad right-of-way due to its deed from the Iowa Natural Heritage Foundation. The Fischers filed a counterclaim, claiming that as adjacent property owners, they had a superior right to the property lying west of the center line of the former railroad property.

The Fischers filed a motion for summary judgment which was granted by the district court. The court found the 1886 and 1888 deeds granted the railroad an easement for railroad purposes. The court concluded that under Iowa Code section 327G.76, the railroad's property rights, which were extinguished upon cessation of service by the railroad, divested one year after the railroad obtained authorization to remove the tracks. Here, the railroad obtained such authorization on October 12, 1984. Therefore, the railroad's property interest divested on October 12, 1985. The railroad did not convey its interest in the property to the Iowa Natural Heritage

Foundation until October 27, 1986. The court concluded that at the time of the conveyance to the Foundation, the railroad had no interest to convey.

The court furthermore determined the property passed to the owners of the adjacent property, here the Fischers, in accordance with section 327G.77(1). This section, in pertinent part, provides:

> 1. If a railroad easement is extinguished under section 327G.76, the property shall pass to the owners of the adjacent property at the time of the abandonment. If there are different owners on either side, each owner will take to the center of the right-of-way.

The court quieted title to the property in the Fischers.

Warren County filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). The district court denied the motion. Warren County has now appealed.

I. An action to quiet title is in equity, and our review is de novo. *See* Iowa R. App. P. 4. However, even in equity cases, we do not find facts de novo in an appeal from a summary judgment. *Farm & City Insurance Co. v. Anderson*, 509 N.W.2d 487, 489 (Iowa 1993).

Under Iowa Rule of Civil Procedure 237, summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact and the moving part is entitled to a judgment as a matter of law. On appeal of a summary judgment ruling, we must decide whether a genuine issue of material fact exists and if the law was correctly applied. *Ottumwa Housing Authority v. State Farm Fire & Casualty Co.*, 495 N.W.2d 723, 726 (Iowa 1993).

The party moving for summary judgment has the burden of showing the nonexistence of a genuine issue of material fact. *Hofco, Inc. v. National Union Fire Ins. Co.*, 482 N.W.2d 397, 400 (Iowa 1992). The resisting party should be afforded every legitimate inference that can reasonably be deduced from the evidence. *Id.*

A fact question is generated if reasonable minds could differ on how the issue should be resolved. *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 338 (Iowa 1991).

II. Warren County contends summary judgment was not appropriate in this case. It believes a question of fact existed as to the meaning of the 1886 and 1888 deeds and whether the deeds conveyed a fee interest in the property or an easement. This question is important because section 327G.77 applies only to easements and land acquired by condemnation. *McKinley v. Waterloo Railroad Co.*, 368 N.W.2d 131, 138 (Iowa 1985). For an adjacent property owner to establish title to abandoned railroad property, it must be shown that the railroad had only an easement in the property. *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 89 (Iowa App. 1994). Section 327G.77 does not apply when the railroad has a fee interest in the property. *Notelzah, Inc. v. Destival*, 489 N.W.2d 744, 746 (Iowa 1992).

In construing the meaning of a deed, the grantor's intent is controlling, and it is ascertained by applying general contract principles. *Hawk v. Rice*, 325 N.W.2d 97, 99 (Iowa 1982). The construction of a contract and the interpretation of its language are matters of law for the court to decide where neither party offers extrinsic evidence about the meaning of the contract. *Grinnell Mut. Reins. Co. v. Employers Mut. Cas. Co.*, 494 N.W.2d 690, 692 (Iowa 1993). No extrinsic evidence was offered here, and we determine the meaning of the language of the deeds was properly decided by summary judgment.

The 1886 deed was specifically titled "Right-of-Way Deed". Also, in describing a second strip of land, the deed referred to the first strip as a right-of-way. The reference to a fee simple states only that the grantors warrant they have a fee simple interest in the property. It does not state they are conveying a fee

simple interest. In Iowa, a grant or gift of ground for right-of-way is presumed to be of an easement only. *Macerich Real Estate Co. v. City of Ames*, 433 N.W.2d 726, 728 (Iowa 1988). We conclude the 1886 deed conveyed an easement to the railroad.

The 1888 deed provided, "The land hereby conveyed to be used for Railway purposes. A Station Building Erected and Maintained." Similar language which conveys a right-of-way for the purpose of constructing a railway has been held to convey an easement only. *Hawk*, 325 N.W.2d at 99; *Estate of Rockafellow v. Lihs*, 494 N.W.2d 734, 736 (Iowa App. 1992). We conclude the 1888 deed conveyed an easement to the railroad.

III. Warren County also contends summary judgment was not appropriate because there was a genuine issue of material fact concerning when the railroad abandoned the property. It asserts that the language in the deed from the railroad to the Foundation reveals the railroad may not have actually abandoned the property until June 30, 1987.

In pertinent part, the deed in question provides:

> It is understood and agreed to by Buyer and Seller, that Seller shall make application with the Interstate Commerce Commission for abandonment of said track. It is further understood and agreed to that Seller shall remove tracks and appurtenances thereto within ninety (90) days (weather permitting) after written approval for said abandonment has been received by Seller from the Interstate Commerce Commission. Said removal shall, however, be completed no later than June 30, 1987.

We observe the deed covered more property than that in dispute in this case. As to the property involved in this suit, the ICC approved the abandonment on September 12, 1984. By an affidavit, the assistant treasurer of the railroad stated the property was physically abandoned in October 1984, and the tracks were removed by the end of October. The language in the deed used by Warren County to support

its claim applied to other property for which the ICC had not yet authorized abandonment.

We conclude there is no genuine issue of material fact on the issue of whether the railroad had abandoned the property in question prior to the date of the deed to the Foundation.

IV. Warren County further claims summary judgment was not proper in this case because federal law preempts state law in this area. It claims the district court failed to recognize this preemption or to apply federal law.

The federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended, provides:

> If the Commission finds that the rail properties proposed to be abandoned are suitable for public purposes, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Commission. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

49 U.S.C. §10906 (1984). The Iowa supreme court determined the act did not preempt Iowa title law, but simply meant the ICC may prohibit a railroad from disposing of its interest for 180 days. *McKinley*, 368 N.W.2d at 134. Section 8(d) of the National Trails System Act, however, was amended in 1983 to provide:

> [I]n furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transporation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.

16 U.S.C. §1247(d) (1984).

The United States Supreme Court has recognized that while State law generally governs the disposition of reversionary interests, the ICC has exclusive and plenary jurisdiction to regulate abandonments and to impose conditions affecting post-abandonment use of the property. *Preseault v. Interstate Commerce Commission*, 494 U.S. 1, 8, 110 S.Ct. 914, 920, 108 L.Ed.2d 1, 11 (1990). By this statute, Congress has prevented property interests from reverting under State law under certain circumstances, and thus, preempts State property law. *Id.*, 110 S.Ct. at 920, 108 L.Ed.2d at 11.

As the Supreme Court noted, the concept of attempting to establish trails only after the formal abandonment of a railroad right-of-way was self-defeating because under many State laws once the right-of-way was abandoned for railroad purposes there was no property interest remaining in the railroad. *Id.* at 8, 110 S.Ct. at 920, 108 L.Ed.2d at 12. The 1983 Amendments to the National Trails System Act ensure that potential interim trail use will be considered prior to abandonment. *Id.*, 110 S.Ct. at 920, 108 L.Ed.2d at 12.

Under ICC regulations, the ICC may issue a certificate which gives the railroad 180 days to negotiate a voluntary agreement for interim trail use. 49 CFR §1152.29 (1988). If an agreement is reached within this 180-day period, interim trail use is authorized, and the property does not revert under State law. *Preseault*, 494 U.S. at 8, 110 S.Ct. at 919, 108 L.Ed.2d at 11, n.5. If no agreement is reached the property is deemed to be abandoned. *Id.*, 110 S.Ct. at 919, 108 L.Ed.2d at 11.

The National Trails System Act and accompanying regulations give a railroad a 180-day window in which to negotiate an agreement for use of the railway property as a recreational trail. We determine that when no agreement is reached within this 180-day period, the property may revert under State law. In the present

case, the railroad did not enter into an agreement for use of the railway right-of-way within 180 days of abandonment.

Warren County further contends the ICC regulations were not final in the period between 1984 and 1986, which rendered the railroad unable to obtain a certificate for interim rail use under the provisions of the National Trail Systems Act. If an interim trail use certificate was unavailable to the railroad, then the benefit of the federal preemption over State law here would not be available to the railroad. If such a certificate was available, there is no evidence here the railroad obtained a certificate. To the contrary, by an affidavit the Superintendent of Railroad Regulation and Operations for the Iowa Department of Transportation stated the railroad did not obtain an interim use certificate.

We conclude that because the railroad did not take advantage of procedures which would have enabled it to come within the ambit of federal law, Iowa property law is the proper law to be applied. As previously discussed, under Iowa property law, title to the property in question should be quieted to the Fischers as the adjacent property owners. We affirm the district court's grant of summary judgment in this case. Costs of this appeal are assessed to Warren County.

AFFIRMED.