IN THE COURT OF APPEALS OF IOWA

FILED
SEP 6 1984
CLERK SUPREME COURT

403

THE ESTATE OF ROBERT A. WILLIAMS, Deceased; ROBERT A. WILLIAMS, JR. and L. W. COURTER, Co-Executors,

Plaintiffs-Appellees,

vs.

NORMAN V. CASKEY, E. PAULINE CASKEY, et al.,

Defendants-Appellants.

Filed September 6, 1984

4-220
83-1294

Appeal from the Iowa District Court for Boone County - Carl D. Baker, Judge.

Defendants Caskeys appeal from a judgment dividing an abandoned railroad right-of-way half to them and half to plaintiffs. AFFIRMED.

Larry R. Curtis of Curtis, Finn & Pattinson, Ames, for defendants-appellants.

Ben T. Doran of Doran, Courter & Quinn, Boone, for plaintiffs-appellees.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

PER CURIAM

This case involves a dispute over the title to an abandoned railroad right-of-way.

In 1874, a one-hundred-foot-wide railroad right-of-way was condemned across a fractional quarter of Boone County land owned by C. J. McFarland. It is undisputed that the right-of-way has been abandoned for more than forty years. The plaintiff, the Robert Williams Estate, owns a lot on one side of the right-of-way and the defendants, the Caskeys, own the lot on the other side. The executor of the Williams Estate commenced an action to quiet title to the right-of-way. The trial court divided the right-of-way, giving half to the Caskeys and half to the Williams Estate. The Caskeys appeal from this judgment asserting that the right-of-way easement was taken from the parcel of land which they now own and that under section 327G.76 of the Iowa Code (abandoned right-of-way shall "revert to the . . . owners of the tract from which . . . [it] was taken") they should have been awarded the entire right-of-way.

Our scope of review in equity cases is de novo. Iowa R. App. P. 4 (1983). We are not bound by the trial court's findings of fact, but we give them weight. Iowa R. App. P. 14(f)(7) (1983).

The primary issue is whether the Caskeys are the "owners of the tract from which . . . [the] . . .abandoned right-of-way was taken." Iowa Code § 327G.76 (1983). When a railroad right-of-way is abandoned, the property shall revert to those persons who, at the time of abandonment, are the owners of the tract from which the abandoned right-of-way is taken. Id.

The Caskeys argue that the portion of the tract from which the right-of-way was carved is the portion which they now own. The 1874 condemnation proceedings granted the Iowa Railway Coal and Manufacturing Company an easement of a strip of land 100 feet wide through the NW 1/4 of the SW 1/4 of Section 19, Township 84, Range 26 West of the 5th P.M., Boone County, Iowa. The above-

described section is presently divided into lots with the Caskeys owning Lot 2 and the Williams Estate owning Lot 3. The records of the Boone County Recorder's office indicate that Lot 3 was platted in 1907. The record does not indicate when Lot 2 was platted.

In 1980, the Caskeys received a quit claim deed for the entire right-of-way from the Chicago & Northwestern Transport Company (the successor in interest to the Iowa Railway Coal & Manufacturing Co.). They offer this deed as evidence of their right to the entire right-of-way. A fundamental principle in Iowa law is that the grantee of a quit claim deed receives only that interest in property that the grantor had at the time of conveyance. Bremhorst v. Phillips Coal Co., 202 Iowa 1251, 1255, 211 N.W. 898, 901 (1927). It is undisputed that the right-of-way had been abandoned for more than 40 years. Therefore, the railroad had no interest in the right-of-way at the time the deed was given.

The Caskeys present two other arguments in support of their claim to the entire right-of-way.

First, they argue that the successor in interest to the original grantor is entitled to the abandoned property. The case which they cite as support, Hawk v. Rice, 325 N.W.2d 97 (Iowa 1982), deals with the issue of whether a railroad right-of-way is an easement or a determinable fee simple rather than with reversionary rights to abandoned right-of-ways. The statute states that the property reverts to "the persons who, at the time of abandonment, are owner of the tract from which such abandoned right-of-way was taken." Iowa Code § 327G.76 (1983) (emphasis added). While the person owning the property at the time of abandonment is generally a successor in interest to the original grantor, nothing in the statute creates an interest in a successor in interest who does not own the property at the time of abandonment.

The second argument raised by the Caskeys is that the right-of-way was taken from Lot 2 because Lot 3 was not platted at the time the right-of-way was

granted, and therefore, they are the "owners of the tract from which such abandoned right-of-way was taken." Iowa Code § 327G.76 (1983). This argument fails on two grounds.

First, the record appears to indicate that the right-of-way was granted across an unplatted section which was later divided into lots. The Caskeys have failed to establish that the right-of-way was actually taken from what is now Lot 2. Secondly, even if the right-of-way was carved from Lot 2, Lot 3 was also carved from that property when it was platted in 1907. The grantee of Lot 3 acquired the interest in the property which the grantor had. Iowa Code § 557.3 (1983). Therefore, unless an express reservation of the right-of-way interest was made, the owner of Lot 3 acquired a share of this right-of-way interest.

When the original grantor of a right-of-way owns property on both sides and subsequently conveys the property on each side to different parties, then the different landowners on each side each own one-half of the right-of-way. Brugman v. Bloomer, 234 Iowa 813, 816, 13 N.W.2d 313, 314 (1944). See also Chadek v. Alberhasky, 253 Iowa 32, 34, 111 N.W.2d 297, 298 (1961); and Atkin v. Westfall, 246 Iowa 822, 828, 69 N.W.2d 523, 527 (1955) (distinguishing Brugman from a case where the grantor only owned land on one side of the easement). The record indicates that the original grantor of the right-of-way, C. J. McFarland, owned the unplatted parcel which was later divided into Lots 2 and 3. As in Brugman, these lots were later sold off to different parties, and ultimately came to be owned by the Caskeys and the Williams Estate.

We affirm the trial court's findings and hold that the Caskeys and Williams Estate are each entitled to one-half of the right-of-way.

AFFIRMED.