FILED
MAR 26 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES CHANDLER and IRENE CHANDLER; GARY V. MATTHIAS; DAVID GIENAU and BLYTHE GIENAU and LAVERN MATTHIAS,

Plaintiffs-Appellees,

vs.

MARTIN H. FRITZ FARM, INC.,

Defendant-Appellant.

Filed March 26, 1985

5-39
84-722

Appeal from the Iowa District Court for Bremer County - B. C. Sullivan, Judge.

Defendant appeals from the district court decree granting an easement across defendant's land for the benefit of plaintiffs. AFFIRMED.

Timothy Baldwin and Gary J. Boveia of Boveia Law Offices, Waverly, Iowa, for defendant-appellant.

David M. Englebrecht of Englebrecht, Ackerman & Hassman, Waverly, Iowa, for plaintiffs-appellees.

Heard by Oxberger, C.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Defendant appeals from the district court decree granting an easement across defendant's land for the benefit of plaintiffs.

Plaintiffs are the owners of four landlocked tracts of land. From north to south the parcels are owned by L. Matthias, Gienau, G. Matthias, and Chandler, respectively. South of the Chandler property is defendant's land which abuts a road. The only access plaintiffs have to their parcels is a one-lane path of vehicle ruts along the western edge of defendant's land leading to the road to the south. Plaintiffs' land is not suitable for farming. Plaintiffs use the property for hunting, fishing, and gathering firewood in the winter.

When a dispute arose concerning use of the path plaintiffs filed the present suit. The district court decreed that an easement for ingress and egress existed across defendant's property for the benefit of plaintiffs and enjoined defendant from obstructing the right of way.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact although we are not bound by them. Iowa R. App. P. 14(f)(7).

The principles relating to prescriptive easements are summarized below:

> And a prescriptive easement may be created by adverse possession under claim of right or color of title, openly, notoriously, continuously and hostilely asserted for ten years or more. Of course, mere usage does not establish adverse possession. Rather, a party claiming an easement by prescription must prove, independent of use, an easement was claimed as a matter of right, and the other party had express notice thereof, either actual or from known facts of such nature as to impose a duty to make inquiry which would reveal existence of an easement. (citations omitted).
>
> This court has also held there may be a prescriptive easement where the original use was with a servient owner's consent and usage as of right has continued for more than ten years. (citations omitted).

Anderson v. Yearous, 249 N.W.2d 855, 861 (Iowa 1977). The claim of right may be shown by words or acts which demonstrate an intention to assert an interest in the

property. I-80 Associates, Inc. v. Chicago, Rock Island and Pacific Railroad Co., 224 N.W.2d 8, 11 (Iowa 1974). The claim of right must be made in good faith. It cannot be established by one who knows he has no basis for claiming an interest in the property. Carpenter v. Ruperto, 315 N.W.2d 782, 785-86 (Iowa 1982).

Defendant asserts that plaintiffs failed to establish their right to a prescriptive easement because: (1) plaintiffs have no claim of right; (2) defendant did not receive express notice of a claim of right; (3) plaintiffs' use was permissive and therefore not adverse to defendant's use of his property; and (4) plaintiffs failed to pursue their statutory remedy under Iowa Code section 471.4(2).

We find, as did the trial court, that plaintiffs established a claim of right. The evidence showed that plaintiffs and their predecessors in title had regularly used the roadway for over fifty years. Each predecessor in title has indicated to the new owner at the time of the sale that there was a right to use the path for access. Several of plaintiffs' predecessors testified that while using the road they would on occasion see defendant's predecessors in title but never felt the need to ask for permission to use the road since it was their understanding that the road was the proper route for them to take.

Furthermore, we also agree with the trial court's finding that defendant had notice of plaintiff's claim of right. Although defendant did not have actual notice, there were acts of the plaintiffs which should have led defendant to inquire concerning the rights of plaintiffs to use the path. Defendant undoubtedly knew of the use of the road. While knowledge of the use is not alone sufficient to constitute notice, that knowledge was coupled in this case with defendant's knowledge that the parcels to the north of his land had no other access to a road, that none of the plaintiffs except Chandler had asked for permission to use the path, and that a chain placed across the path had been cut. Defendant should have inquired as to the status of the users of this path.

There was conflicting evidence concerning whether plaintiffs' use was permissive. Although Chandler sought permission to use the roadway, the other plaintiffs and their predecessors in title testified they did not expressly ask for permission but considered they had a right to use the drive. The fact that one of the plaintiffs forced his way through a barrier erected across the drive also indicates that plaintiffs' use was adverse to defendant's.

Finally, plaintiffs' failure to pursue their statutory right to eminent domain is irrelevant when they have shown their entitlement to a prescriptive easement.

AFFIRMED.