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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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MERTON V. HAWK,)
Plaintiff-Appellee,) Filed April 27, 1982
vs.)
ROBERT L. RICE, et al,) 2-94
Defendants-Appellants.) 2-66644

Appeal from Grundy District Court - Peter Van Metre, Judge.

Defendants appeal from trial court's ruling sustaining a motion for summary judgment for the plaintiff in his action to quiet title to real estate in which the defendant claimed an interest conveyed to him by a railroad. REVERSED AND REMANDED.

William G. Wheatcraft, Des Moines, Iowa, for defendants-appellants.

Michael Mumma, Jefferson, Iowa, for plaintiff-appellee.

Submitted to Oxberger, C.J., Carter and Johnson, JJ.

The defendants appeal from trial court's ruling sustaining a motion for nmary judgment for the plaintiff in his action to quiet title to real estate in ch the defendants claimed an interest conveyed to them by a railroad. The endants claim that the original deed granting the land to a railroad company veyed a determinable fee subject to a possibility of reverter rather than an ement, and that the provisions of section 614.17, The Code, barred plaintiff's im to the property.

The plaintiff brought an action to quiet title to real estate which had been d as a railroad right-of-way. The defendants claimed an interest which had n conveyed by a railroad. The plaintiff claimed that defendants' interest as an ement extinguished upon the railroad company's abandonment of the property ailroad right-of-way. The defendants claimed that plaintiff had a fee simple erminable interest and the plaintiff's reversionary interest extinguished as a e interest not preserved under the provisions of section 614.17, The Code.

On April 21, 1880, a railroad company acquired from the original grantor an erest in real estate which consisted of a one hundred foot strip through the ntor's remaining property. The property's total acreage was 5.97 acres for ch the railroad paid $100. The deed provided that the grantor did convey the perty "for the purpose of constructing a Railroad thereon, and for all uses and poses connected with the construction and use of said Railroad . . . ." The d also provided that if a railroad was not built within a specific period of time f the railroad was abandoned or the route changed that "said land hereby nted shall revert to said grantor, his heirs or assigns." The deed also contains a ase of dower rights. The railroad company's interest was acquired by another road company. On February 20, 1976, that company abandoned the property as road right-of-way. On September 6, 1978, the company sold its interest to the ent defendants. The defendants have filed an affidavit of possession pursuant ection 614.17, The Code.

Both sides filed motions for summary judgment based on stipulated facts. The court sustained plaintiff's motion, finding that the deed created an easement interest for the railroad which was extinguished upon the railroad's abandonment rather than a determinable fee.

I. The sole issue on appeal is whether the April 21, 1880, deed from Peter Marker to the Toledo & N.W. Ry. Co., conveying an interest in approximately 5.97 acres, created in the grantee a determinable fee or a mere easement. As such, the issue is similar to the one before this court in Johnson v. Burlington Northern, Inc., 294 N.W.2d 63 (Iowa App. 1980). In the Johnson case this court found that a deed which stated the property was granted "for said railroad and railroad purposes only" and contained "right-of-way" at the top of the document and in the deed itself conveyed an easement only and not an estate in fee. It is notable, however, that the deed in Johnson contained no reversionary clause.

The language in the present deed is not dissimilar from that employed in Reichard v. Chicago B. & Q. Ry. Co., 231 Iowa 563, 566, 1 N.W.2d 721, 724 (1942), wherein the estate conveyed was found to be a determinable fee. The authority of Reichard with respect to the present controversy is somewhat weakened by the fact that no party in that case claimed that the deed involved created an easement. On the other hand, the nature of the estate conveyed in Reichard was nonetheless disputed as between the parties. After reviewing a myriad of authorities, the court in Reichard concluded: "It is our judgment, that under all of the decisions of this court, the estate conveyed . . . was a determinable fee." We reach a similar conclusion as to the proper construction of the deed before the court in the present case.

The trial court, in reaching a contrary result, relied entirely on the decision in Barlow v. Chicago, R.I. & Pacific Ry. Co., 29 Iowa 276 (1870). While that case appears to support the trial court's decision, we find it unpersuasive in view of what was later stated in Reichard.

II. Because we have determined that the estate created by the April 21, 1880, deed of the subject premises was a determinable fee, the decision in Chicago & N.W. Ry. Co. v. City of Osage, 176 N.W.2d 788 (Iowa 1970), controls the result of this appeal. The judgment of the trial court is reversed and the cause is remanded for an order denying plaintiff's motion for summary judgment. Following the entry of such order, the trial court shall rule on defendants' motion for summary judgment and any other remaining proceedings in a manner not inconsistent with this decision.

REVERSED AND REMANDED.