

NEBRASKA SUPREME COURT

Harts v. County of Knox

308 Neb. 1 (2020) · No. No. S-20-014 · Decided December 18, 2020

SUMMARY

The Nebraska Supreme Court affirmed the district court’s reversal of Knox County’s approval of a conditional use permit for expansion of a cattle feedlot. The court held that a surviving spouse who co-owned inherited property could not create an easement binding the interests of the other heirs, and that estoppel by deed and ratification did not apply. The court also concluded that reliance by the county and feedlot operator on the easement was unreasonable.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	December 18, 2020
DOCKET	No. S-20-014
DISPOSITION	affirmed
PROCEDURAL POSTURE	The County of Knox and Epic Land and Cattle, LLC, appealed from a district court judgment reversing and vacating the county board of supervisors' approval of a conditional use permit allowing expansion of a feedlot to 20,000 cattle.
STANDARD OF REVIEW	In an appeal involving a conditional use permit under Neb. Rev. Stat. § 23-114.01(5), the district court's factual findings have the effect of a jury verdict and will not be set aside unless clearly erroneous; legal conclusions are reviewed for errors of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	County of Knox, Nebraska, Epic Land and Cattle, LLC, intervenor-appellant v. Pat Harts, Donna Poppe, Mardell Hochstein, Kelly Tramp, Sandee Zoucha, Allen Tramp, Carol Norris, Dale Tramp

TOPICS

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QUESTIONS PRESENTED

1. Whether Bernadette had authority to grant an easement binding the interests of her children, who inherited undivided interests in the property upon Sylvester's intestate death.
2. Whether the deed of distribution or the 2003 easement supported estoppel by deed against the children.
3. Whether the children ratified the easement by failing to object to it or by accepting the deed of distribution.
4. Whether the county board's reliance on the easement and the general deference accorded official acts required reinstatement of the conditional use permit.

HOLDINGS

1. A person with a possessory interest may create an easement burdening that person's own interest, but the easement cannot extend beyond that interest; co-owners must act together to burden their land with an easement. Because Bernadette was not the sole owner and did not own an interest sufficient to bind the children's shares, her easement did not bind the children.
2. Estoppel by deed did not make the easement enforceable against the children. The appellants were strangers to the deed of distribution and could not invoke estoppel based on that deed; as to the easement, Bernadette never held sole title and therefore could not create the interest that the appellants sought to enforce.
3. The children did not ratify the easement because the record did not establish that they had actual knowledge that Bernadette had signed it.
4. The county and Epic could not avoid the consequences of the invalid easement through reliance on the county board's official acts. Reliance was not reasonable where a record search would have shown that Bernadette was not the sole owner, and official deference does not permit the county to cure Bernadette's lack of authority to bind the children.

KEY QUOTATIONS

“the right to possession of an intestate’s property and the right to take through intestate succession accrue immediately on the death of the ancestor, subject only to the control of the court for purposes of administering the estate.” (308 Neb. at 6)

“Any person with a possessory interest in land may create an easement burdening that person’s interest; however, that easement cannot last beyond the interest held in the burdened property by the grantor of the easement.” (308 Neb. at 7)

“title cannot be created or acquired by estoppel.” (308 Neb. at 9)

FACTUAL BACKGROUND

Sylvester Tramp owned a quarter section of land and died intestate in 1997, leaving his surviving spouse, Bernadette, and their eight children. In 2003, Bernadette alone signed and recorded an impact easement over the property in favor of H & H Cattle Co., which needed the easement for a feedlot conditional use permit. In 2012, after probate proceedings, the property was distributed to Bernadette for life with the remainder to the children, subject to recorded easements and restrictions. The county board later relied in part on the 2003 easement when approving expansion of the feedlot to 20,000 cattle, but the district court found the easement did not bind the children and vacated the permit.

PROCEDURAL HISTORY

H & H Cattle Co., Epic's predecessor, obtained a 2003 impact easement from Bernadette Tramp and later received county approvals for feedlot expansions. In 2017, the county board approved a conditional use permit for expansion to 20,000 cattle, relying in part on the easement. The plaintiffs challenged the approval, and after a trial de novo the district court reversed and vacated the permit. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Application of Olmer, 275 Neb. 852, 752 N.W.2d 124 (2008)
- Wilson v. Fieldgrove, 280 Neb. 548, 787 N.W.2d 707 (2010)
- Brtek v. Cihal, 245 Neb. 756, 515 N.W.2d 628 (1994)
- Stratton v. McDermott, 89 Neb. 622, 131 N.W. 949 (1911)
- Omaha Bridge & Terminal R. Co. v. Whitney, 68 Neb. 389, 99 N.W. 525 (1903)
- Holt County v. Scott, 53 Neb. 176, 73 N.W. 681 (1897)
- Ianotti v. Ciccio, 219 Conn. 36, 591 A.2d 797 (1991)