

RENDERED: MARCH 11, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000101-MR
AND
NO. 2010-CA-000150-MR

TONY B. MUSE; AND LORETTA S. MUSE

APPELLANTS/
CROSS-APPELLEES

APPEAL AND CROSS-APPEAL FROM LINCOLN CIRCUIT COURT
v. HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 08-CI-00538

LEONARD BANKS; VIVIAN BANKS;
AND JERRY DAVIDSON

APPELLEES/
CROSS-APPELLANTS

OPINION REVERSING

** ** * * * * *

BEFORE: ACREE, DIXON AND KELLER, JUDGES.

DIXON, JUDGE: Appellants, Tony and Loretta Muse, appeal from a judgment of the Lincoln Circuit Court finding that, pursuant to KRS 178.116, they did not have the right to preclude Appellees, Leonard and Vivian Banks, and Jerry Davidson,

from utilizing an abandoned roadway located on Appellants' property. Appellees have also filed a cross-appeal from the trial court's judgment. Because we find that the trial court misconstrued the applicable statutory law, we reverse.

This action concerns a dispute over access to an old road that is adjacent to and passes through properties owned by the parties herein. Lee Banks Road consists of a short segment that is currently maintained by the Lincoln County Road Department and an unpaved, much longer segment that is no longer maintained by the county. A 1954 Lincoln County Road map depicts a county-maintained roadway that extended the entire length of property known as the Keenas Hall farm. By 1963, the county-maintained portion of the road had decreased and, by 1999, had again decreased to its current length. The disputed portion of the road at issue herein is only that section which is no longer maintained by the county.

In 2005, Appellants purchased a farm that was located directly north and adjacent to the disputed roadway. At the time of the purchase, a gate was located across the road at the point where county maintenance of such ended. In May 2008, Appellants' neighbor on the south side of the road, Keenas Hall, sold his farm in several tracts at a public auction. Appellants and Appellees all purchased tracts of the Keenas Hall property. Following Appellants' purchase, they owned the land on both the northern and southern sides of the road for a substantial portion of its length. Shortly after the auction, Appellants erected a solid fence across the road near where the prior gate was located.

In November 2008, Appellees filed an action in the Lincoln Circuit Court seeking a determination of the rights of all the parties. Appellees alleged that they were informed by both the auction officials as well as by Appellants themselves that the disputed roadway would remain open to any purchasers of the Keenas Hall tracts. Further, Appellees claimed that the old road was an easement appurtenant to the other tracts.

A bench trial was held in April 2009, wherein the parties, along with various county engineers and land surveyors, testified. In its subsequent judgment, the trial court first ruled that the disputed road was neither a “county road”¹ nor a “public road”² as defined in KRS Chapter 178. Further, the trial court found that even if the road was once a public road, the evidence clearly demonstrated that it had been abandoned. Nevertheless, the trial court determined that because the disputed portion was a “road formerly maintained by the county,” as defined in KRS 178.116(1), and because it provided “necessary access” to Appellees’ property, Appellants were precluded from blocking or closing the road. In so doing, the court stated:

[T]he statute defines “necessary access” as including “access to any farm, tract of land, or dwelling, or to portions of such farm, tract of land, or dwelling.” [KRS 178.116(5)]. Here, there can be no dispute that old Lee Banks Road provides Plaintiffs access to a portion of their farms or tracts of land. While the

¹ “‘County Roads’ are public roads which have been accepted by the fiscal court of the county as part of the county road system.” KRS 178.010.

² “Any road, street, highway, or parcel of ground, dedicated and laid off as a public way and used without restrictions on a continuous basis by the general public for fifteen (15) consecutive years, shall conclusively be presumed to be a public road.” KRS 178.025.

Court cannot determine that such access is the only or exclusive access possessed by the Plaintiff, KRS 178.116(5) contains no such requirement.

Following the denial of the motion to alter, amend or vacate, Appellants appealed to this Court. Appellees thereafter filed a cross-appeal.

The first issue presented in this Court concerns the statutory construction of the phrase “necessary access.” Appellants argue that the trial court essentially removed the term “necessary” from its interpretation of KRS 178.116(5).

Appellants point out that Appellees neither claimed nor proved any necessity in using the disputed roadway.

KRS 178.116 provides:

(1) Any county road, or road formerly maintained by the county or state, shall be deemed discontinued and possession shall revert to the owner or owners of the tract of land to which it originally belonged unless at least one (1) of the following conditions exists:

(a) A public need is served by the road;

(b) The road provides a necessary access for a private person;

(c) The road has been maintained and policed by the county or state within a three (3) year period.

(2) If the only condition which exists is for a necessary access for a private person, by a joint petition of all parties entitled to such access, the road shall be deemed discontinued and possession shall revert to the owner or owners of the tract of land to which it originally belonged.

(3) If the only condition which exists is for a necessary access for a private person, by joint petition of all parties entitled to such access, the road shall be closed to public use but remain

open in accordance with its condition and use for the access of the private parties involved.

.....

(5) For the purposes of this chapter “necessary access” shall be construed to include access to any farm, tract of land, or dwelling, or to any portions of such farm, tract of land, or dwelling.

By its own terms, KRS 178.116 is self-actuating in that it provides for the discontinuance of a formerly maintained road without action by a county fiscal court under certain circumstances. Under the statute, possession of the road way reverts to the property owner in the absence of the conditions listed in subsections (1)(a)-(c). As previously noted, the trial court herein found that the disputed roadway provided a necessary access for Appellees, thus precluding its discontinuance and reversion.

A fundamental principle of statutory interpretation is that the legislature intends the act to be effective as an entirety and that each part is entitled to significance and effect. *See George v. Scant*, 346 S.W.2d 784 (Ky. 1961). A corresponding rule of construction is that a statute should be construed so that no part of its provisions is rendered meaningless. *Hardin County Fiscal Court v. Hardin County Bd. Of Health*, 899 S.W.2d 859, 862 (Ky. App. 1995); *See also Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth Transportation Cabinet*, 983 S.W.2d 488 (Ky. 1998).

To be sure, the language of KRS 178.116 is confusing at best. Even the trial court admittedly struggled with its construction, expressing reservation

that such an “all-inclusive” interpretation of “necessary access” would essentially prevent any old or abandoned roadway from being completely closed. However, it is incumbent upon this Court to avoid an interpretation that would render any part of the statute meaningless.

The *American Heritage Dictionary of the English Language* (New College Edition 1981) defines “necessary” as “[n]eeded for the continuing existence or functioning of something; essential; indispensable.” Contrary to this definition, Appellees argue that “necessary access” means any access. We disagree. Subsection (5) does not define “necessary access.” Rather this subsection merely denotes types of land to which access shall include, i.e., farms, tracts of land, or dwellings. Significantly, the subsection does not mandate that “necessary access” shall include *any* access, as Appellees would have us interpret this statute. Furthermore, Appellees’ interpretation of subsection (5) renders much of the subsection superfluous. Were we to conclude that the legislature meant to define “necessary access” as “any access,” obviously there would be no need to further describe what is encompassed within the purview of the meaning of “any.” Thus, we decline to accept Appellees’ interpretation of KRS 178.116(5), which would vitiate the plain meaning of the statute.

Recently, in an unpublished decision, the United States District Court for the Eastern District of Kentucky rejected the defendants’ claim of “necessary access” to their property under KRS 178.116(5), commenting that “[a]ccess is not necessary merely because it is the preferred or easier route compared to another

way.” *Scott v. Garrard County Fiscal Court*, 2010WL1038211 (E.D. Ky. 2010).

While not precedent and certainly not binding on this Court, we agree with the federal court. The legislature intentionally and with a specific purpose included the term “necessary” several times within KRS 178.116. We are compelled to accord meaning to the term and construe the statute in such a manner as to render it effective in its entirety. *See George*, 346 S.W.2d 784.

Appellees did not argue, and the trial court did not find that the disputed roadway was the only or even best access to their property. In fact, our review of the video shows that portions of the roadway are eroded, overgrown and certainly not passable by most farm equipment, much less a normal vehicle. Clearly, no one has used the roadway as a means of ingress or egress for a very long time. As such, we must conclude that the trial court erroneously ruled that the disputed roadway provided “necessary access” under KRS 178.116.

Next, Appellees cite to *Blankenship v. Acton*, 159 S.W.3d 330 (Ky. App. 2004), in arguing in their cross-appeal that Appellants failed to prove ownership of the old road. In other words, Appellees contend that even if the trial court had ruled that the old road did not provide necessary access, ownership of such may not necessarily have reverted to Appellants’ property.

First, it appears as though the trial court, in light of its finding that the roadway provided “necessary access” to Appellees’ property, did not fully address this issue because it merely stated that “it is mere supposition that the roadway property would revert to Muse since he currently possesses title to both adjoining

tracts.” Nevertheless, we are of the opinion that *Blankenship* is distinguishable from the instant case, in that Appellants herein own both sides of the disputed road. Thus, unlike the facts in *Blankenship*, there are no “across the road” competing claims to ownership of the roadway. Clearly, whether the road was initially part of the tract to its north or the tract to its south is irrelevant because Appellants own both tracts of land. Appellees cannot reasonably argue that the disputed road would revert to their tracts since they do not own the adjoining land.

For the reasons set forth herein, we reverse the decision of the Lincoln Circuit Court.

ALL CONCUR.

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