

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002126-MR

JERRY¹ WOODS AND HAZEL WOODS

APPELLANTS

v. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE VERNON MINIARD, JR., JUDGE
ACTION NO. 07-CI-00072

M. L. TAYLOR

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: LAMBERT, MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Jerry Woods and his wife, Hazel Woods (collectively
“Woods”), have appealed from the Wayne Circuit Court’s October 1, 2009,

Findings of Fact, Conclusions of Law and Judgment, which found that M.L. Taylor
held a prescriptive easement for the use of a roadway which crossed their lands.

After a careful review of the record, the briefs, and the law, we affirm.

¹ Although this action was commenced against Jerry Woods, the Appellant’s name is actually Jeffrey. This error was made known to the trial court at the beginning of the trial in this matter, and although the trial court verbally ordered the style of the case be changed, the written record was not amended to correct the mistake. We shall not undertake to do so *sua sponte* since the error is irrelevant to this appeal.

In June of 2005 Taylor purchased approximately 308 acres consisting of several contiguous tracts of land. For a period of time after Taylor purchased the property, he accessed his lands via an old roadbed along his southern boundary known as the Old Duncan Valley-Cooper-Slick Ford Road (“Old Duncan Valley Road”). Taylor was informed at the time of his purchase that the old roadbed was the only way to access his property.

On April 22, 2006, Woods purchased a triangular-shaped one-acre tract of land to the south and east of Taylor’s land which Woods had occupied since approximately 1997. The Woods’ property sits in a valley at the base of the mountain upon which the Taylor tracts are situated. The Old Duncan Valley Road lies along the northern boundary of the Woods’ property. A new road had been constructed along the southern border of the Woods’ tract sometime around 1911 and this new road is now used by the general public in place of the Old Duncan Valley Road.

Woods did not believe Taylor had a right to use the old roadbed to access his property because no references to a right-of-way existed in the deed or chain of title to their tract. Woods believed Taylor had received an easement across his neighbor’s lands to the north, thereby extinguishing any need to use Old Duncan Valley Road for access. Thus, Woods caused a metal fence to be erected to impede or block the roadway. Taylor removed a portion of the fencing and continued to use the passway he believed to be his only means of access to his property. Woods then constructed a wooden fence to block Taylor from utilizing

the roadbed for access. Discussions between Taylor and Woods regarding opening the access were fruitless and Taylor filed the instant suit seeking to quiet title to the use of the road and for the diminution in value of his property caused by the restriction to his access.

A bench trial was convened on February 9 and February 27, 2009.

The court heard testimony and took evidence from Taylor, Woods, surveyors and title examiners hired by each party, and local residents familiar with the area in question and its historical use. Based on the nature of the suit, there was conflicting evidence presented.

Taylor presented evidence that the Old Duncan Valley Road was the only access he had to his property and that it had been in continuous use for over fifty years by previous owners for general ingress and egress and by others for timber cutting and oil production. Taylor testified no objection had been lodged to the use of the old roadbed until Woods blocked the access by constructing the fence. He stated the easement referred to in his deed to cross the lands of his northern neighbor was unusable because no pathway was visible or identifiable, the area to be crossed was being used as a farm and for running cattle, the neighbor maintained fences and locked gates obscuring his access, numerous bridges and water crossings would have to be constructed, and the cost to construct a new roadbed would be prohibitive.²

² Taylor testified the easement in question would require construction of approximately 2500 feet of roadway across the neighboring field. He stated the cost would be in excess of \$105,000.00 for the basic work, not including bridges, water crossings, title acquisition costs, or any construction on his own lands. He noted he had paid approximately \$85,000.00 for the property he owned.

Taylor presented testimony from neighbors and landowners familiar with the area who indicated their knowledge that the Old Duncan Valley Road had been the exclusive means of access to Taylor's land for many years. These neighbors testified to timber cutting activities upon the subject property as well as their own recreational uses such as deer hunting. Each stated that they had only ever used the Old Duncan Valley Road as access to the property and were unaware of any other access point. These witnesses stated they each accessed the property several times each year using the Old Duncan Road.

Mike Bell, whose family owns a parcel of land completely surrounded by Taylor's lands, testified his family's only access to their property was via the old roadbed. He stated he had used the road since he was a boy to access the family ground and anytime work was performed on their lands, the roadbed was the exclusive means of access. He testified that he had contacted the Wayne County Attorney about sending a letter to Woods when he noticed the roadway had been blocked.

Taylor's surveyor, James A. West, testified that in addition to the survey he completed for Taylor, he had previously surveyed Woods' property for the previous owner. West identified the location of the Old Duncan Valley Road and stated the roadbed is still visible to the naked eye. He also testified that he had examined the purported easement across Taylor's northern neighbor and had located a portion of a roadbed in a wooded area, but otherwise was unable to locate the right-of-way called for by the deeds. West was only able to access Taylor's

lands by use of the Old Duncan Valley Road and was unable to cross Taylor's northern neighbor's land.

Woods presented testimony from the previous owner of their property who stated that, to her knowledge, the general public had not made use of the Old Duncan Valley Road during the term of her ownership and, further, that she had used the right-of-way across Taylor's northern neighbor in the 1960s or 1970s to visit her brother. Testimony was presented by Mrs. Woods' grandmother that she had lived in the area for 63 years and had never seen any use made of the old roadbed. Similar testimony was presented by Mrs. Woods' mother who had lived in the area for over fifty years. A family friend testified that he had assisted the Woods in clearing and grading their property, that he had placed rock on the old roadbed so the Woods could utilize it as a driveway, and that no rock was previously there. Another family friend testified that he had viewed Taylor's property in the 1980s when it was up for sale and he was able to access the property using a visible roadbed along what he believed was the reserved right-of-way across Taylor's northern neighbor.

Mrs. Woods testified that she grew up on the property she now owns and has no recollection of seeing a roadbed anywhere on the property. She stated that she and her husband had done a significant amount of work to create a driveway along their northern boundary to service a garage they later decided not to build. She produced receipts for gravel she said was purchased to create the driveway. Mrs. Woods also testified she had been approached by Taylor regarding

purchasing a right-of-way across her property, but she had refused. She stated that nowhere in her chain of title was there a mention of any easement or right-of-way across her property. She was aware of Taylor's reserved easement across his northern neighbor's lands. She stated she had walked that path across Taylor's lands and claimed it was gravel "down to the field" and there were no impediments across the passway.

Woods presented testimony from Greg West, a licensed surveyor, who had reviewed the work of Taylor's surveyor, James A. West. Greg West believed the Old Duncan Valley Road ceased being used as a public road sometime prior to 1926, based on his review of the public records and highway maps from that period. He testified he had examined the property and found the easement across Taylor's northern neighbor to be an easier course of travel, although significantly longer, than that of using the roadbed in controversy.

At the close of all of the evidence, both parties moved for a directed verdict. The trial court informed the parties it would personally be viewing the property in question and instructed both parties to submit legal memoranda outlining their respective positions on the issues to be decided. Only Taylor submitted the requested memorandum. On October 1, 2009,³ the trial court entered its findings of fact and conclusions of law finding: 1) the easement across Taylor's northern neighbor was not visible or available; 2) Taylor's predecessors in title and others have continuously used the roadway to access Taylor's lands; 3) the Old

³ The record contains no explanation for the seven-month delay from the conclusion of the trial to the entry of the trial court's order.

Duncan Valley Road had not been closed or abandoned by any action of the Wayne County Fiscal Court; 4) Taylor had no access to his land other than through the use of the disputed roadway; 5) Taylor was entitled to an easement by prescription for the use of the Old Duncan Valley Road based on the open, notorious, forcible, exclusive and hostile use of his predecessors and others for a period in excess of fifteen years; and 6) the width of the easement was to be “based on the actual width used in the past and shall not exceed” fifteen feet. The court ordered the roadway to remain open for travel and unobstructed, and directed Woods to remove the fence constructed across the roadway. The order was made final and appealable on October 22, 2009. This appeal followed.

Woods contends the trial court’s findings of fact and conclusions of law were clearly erroneous. Woods argues the conclusions of law were unsupported by the findings of fact or by the evidence presented at trial. It is further argued that the trial court erroneously found Taylor had no other access to his lands, other than the Old Duncan Valley Road, and that Taylor had established his right to a prescriptive easement to use same. We affirm.

It is well settled that a reviewing court will not substitute its judgment on factual issues for those of a trial court unless they are clearly erroneous with due regard given to the trial court’s opportunity to view and judge the credibility of the witnesses. CR⁴ 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). *See also Monin v. Monin*, 156 S.W.3d 309 (Ky. App. 2004). Factual findings are not clearly erroneous if supported by evidence of substance. *Owens-Corning*

⁴ Kentucky Rules of Civil Procedure

Fiberglas Corp. v. Golightly, 976 S.W.2d 409, 414 (Ky. 1998); *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 117 (Ky. 1991). Substantial evidence is evidence, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person. *Golightly*, 976 S.W.2d at 414; *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002); *Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982). The trial court's conclusions of law, however, are subject to independent de novo appellate determination. *A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc.*, 998 S.W.2d 505, 509 (Ky. App. 1999); *Morganfield National Bank v. Damien Elder & Sons*, 836 S.W.2d 893 (Ky. 1992). With these standards in mind, we will address each of Woods' contentions.

First, Woods contends the trial court clearly erred in concluding that the Old Duncan Valley Road has never been closed by the Wayne County Fiscal Court. Woods argues no evidence was presented indicating the road was ever adopted into the county road system, much less whether it had been closed. Thus, Woods claims the trial court's conclusion of law was unsupported by the evidence.

The trial court clearly had before it substantial evidence that the Old Duncan Valley Road existed prior to 1926 and was used by the traveling public by virtue of the introduction of numerous maps and plats of the area at trial. The trial court also had the testimony of several witnesses that the roadbed in question had continued to be used after the New Duncan Valley Road was constructed. Based

upon this testimony we believe sufficient evidence was presented to support a conclusion that the road had not been abandoned.

However, and perhaps more importantly, Taylor's claim to use the road was not predicated upon its being a county road, but rather upon his claim of a prescriptive easement. Thus, the trial court's determination that the Wayne County Fiscal Court had not closed or abandoned the road was unnecessary to its ultimate resolution of the issue that a prescriptive easement existed. The conclusion could easily be seen as surplusage, and we are unable to discern any prejudice to Woods' substantial rights or perceive any unjust result created as a result of the finding. Therefore, any error in the trial court's finding is harmless at best.

Second, Woods alleges the trial court erred in concluding the width of the roadway to be open for Taylor's use should be based on that width used in the past. Woods argues this issue was never addressed in the testimony or arguments of counsel, thus the trial court's conclusion is clearly erroneous. We disagree.

Our review of the record indicates that at the behest of the parties, the trial court personally inspected the passway and the lands of Woods and Taylor. The court therefore had the benefit of its own observations in addition to the testimony of the live witnesses. Testimony was adduced regarding the types of vehicles and equipment which had historically used the roadbed, and that two tracks were clearly visible along and near the center of the road. In light of the testimony presented, coupled with the trial court's ability to draw upon its personal

observations, we are unable to hold the trial court's conclusion to set the maximum width of the road to remain open was in error.

Next, Woods argues that the trial court erred in concluding Taylor had no other access to his lands other than the Old Duncan Valley Road. Woods takes issue with the trial court's factual findings regarding the availability of Taylor's northern right-of-way. Woods also contends the evidence does not support the trial court's finding that Taylor had no other means of accessing his property apart from the Old Duncan Valley Road. Our review of the record indicates the trial court's findings are correct.

As we have previously stated, the trial court heard testimony regarding the condition of the reserved right-of-way across Taylor's northern neighbor and personally observed the same. Contrary to Woods' assertion, the trial court did not find that Taylor had no other means of accessing his property, nor was the trial court called upon to do so. Rather, the trial court's findings of fact stated only that the reserved right-of-way claimed by Woods to be useable was not visible or available. In viewing the property, the trial court found a fence "which appeared to have been in place for several years and cattle running in the field upon which access depended." Nowhere in the record do we find support for Woods' contention that the trial court ruled that Taylor had no other access to his property other than via the Old Duncan Valley Road. Likewise, we are unable to conclude the trial court erred in its conclusion that the northern right-of-way was impassable.

Finally, Woods argues that the trial court erred in concluding Taylor had established a prescriptive easement in and to the Old Duncan Valley Road. In support of this argument, Woods claims the trial court's finding regarding the continuous nature of the use of Old Duncan Valley Road by Taylor's predecessors and others was unsupported by the evidence. Woods further argues that the trial court failed to state the "specific fifteen-year period which the prescriptive easement was used continuously." We disagree.

Several witnesses were presented to testify regarding their use of the Old Duncan Valley Road and to the use by others. Witnesses for both parties stated the Taylor lands had been accessed using the Old Duncan Valley Road for logging and oil production purposes, recreation and hunting uses, and to reach lands to Taylor's north. Each witness testified as to seeing these activities at different times, some dating back to the 1940s or 1950s. Taken as a whole, the combined testimony clearly supports the trial court's finding that the roadbed had been in continuous use by Taylor, his predecessors, and others.

The trial court concluded that the continuous use to have occurred was in excess of fifteen years. Woods argues this finding is incomplete and clearly erroneous because it does not reference the specific period of time upon which the trial court based its decision. However, Woods cites us to no authority supportive of this argument that such specificity is required, and we believe none exists.

The evidence adduced at trial reveals that Taylor's immediate predecessor purchased the property in 1985 and used the old roadbed over the

apparent objection of Woods' immediate predecessor during his tenure of ownership. Numerous other witnesses testified to logging and oil activities occurring in the 1980s and 1990s upon Taylor's lands and stated that the Old Duncan Valley Road was utilized for access at those times. Thus, the testimony established that the actual, open, notorious and hostile use of the Old Duncan Valley Road had occurred for a minimum of twenty years next preceding the filing of the instant action, and likely for many decades longer. Accordingly, the trial court's finding cannot reasonably be held to be in error.

Therefore, for the foregoing reasons, the judgment of the Wayne Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gordon T. Germain
Monticello, Kentucky

BRIEF FOR APPELLEE:

Harlan E. Judd, Jr.
Burkesville, Kentucky