

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000373-MR

DAREL WHITFIELD;  
AND HIS WIFE,  
ALVADA WHITFIELD

APPELLANTS

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE JAMES C. BRANTLEY, JUDGE  
ACTION NO. 08-CI-00523

GLENN GARY STANLEY;  
AND HIS WIFE,  
JOYCE FAYE STANLEY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON AND KELLER, JUDGES; ISAAC,<sup>1</sup> SENIOR JUDGE.

KELLER, JUDGE: Darel and Alvada Whitfield (the Whitfields) appeal from a judgment of the Hopkins Circuit Court concluding that Glenn and Joyce Stanley

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<sup>1</sup> Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

(the Stanleys) own a piece of property that is subject to a 20-foot easement. For the reasons set forth below, we affirm.

### FACTUAL BACKGROUND

The following facts are not in dispute.

Clyde and Mary Louise Brooks (the Brooks) owned a 62-acre tract of land in Hopkins County, Kentucky. By a deed recorded on December 18, 1968, the Brooks conveyed 20 acres of their tract to Jackie and Lydida Farmer (the Farmers). This tract was located southeast of the Brooks' remaining 40 acres. The deed also conveyed an easement to the Farmers, which is described as follows:

There is also conveyed a 20 foot easement or roadway for the purpose of ingress and egress to the above described property, said easement or roadway running over and across the [Brooks'] other property and running along the northern line of Goebel Phillips' property from the New Salem Road in an easterly direction to the northwest corner of the above described property.

Thus, the easement ran from Chicken Road<sup>2</sup> in an easterly direction along the southern boundary line of the Brooks' remaining 40 acres.

The Brooks conveyed the remaining 40 acres of their tract to Estill Riley by deed dated December 9, 1974, and Estill subsequently conveyed one-half of his interest in the 40-acre tract to his wife. By deed dated April 12, 1977, the Rileys conveyed the 40-acre tract to Gulf Oil Corporation (Gulf Oil). That tract was subject to the Farmers' easement, which was described in Gulf Oil's deed as follows:

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<sup>2</sup> We note that Chicken Road and New Salem Road are the same road. For purposes of this appeal, we will refer to it as Chicken Road.

The above described property is subject to a 20 foot easement or roadway granted by deed of conveyance recorded in Deed Book 322, page 276, Hopkins County Court Clerk's office, and described as follows:

BEGINNING at a stone and fence post in the East Right of Way of Chicken Road, said stone also being the Northwest corner of William G. Phillips; thence with said Phillips South  $58^{\circ} 19'$  East – 497.94 feet to a fence corner; thence South  $12^{\circ} 09'$  East – 151.72 feet to a 48" black oak, the Northwest corner of Jackie Farmer; thence South  $79^{\circ} 35' 30''$  East – 21.65 feet to a point; thence North  $12^{\circ} 09'$  West – 168.55 feet to a point; thence North  $58^{\circ} 19'$  West – 510.41 feet to a point in the East Right of Way of Chicken Road; thence South  $20^{\circ} 30'$  West – 20.36 feet to the Beginning. (Survey by Associated Engineers dated April 8, 1977).

Prior to the Rileys' conveying this tract to Gulf Oil, the property was surveyed by Associated Engineers. The survey reflected that the property was actually 38.184 acres instead of 40 acres.

Shortly after acquiring the property, Gulf Oil subdivided it into three tracts of land. Gulf Oil retained the eastern portion of the property, which amounted to 28.394 acres. By deed dated May 3, 1977, Gulf Oil conveyed 5.01 acres to Harold and Doris Crick (the Cricks). This 5.01-acre tract was located directly west of the 28.394 acres Gulf Oil retained. The Crick deed provided that Gulf Oil reserved "unto itself, its successors and assigns, an easement across the above described property for ingress and egress to the remaining portion of the tract purchased from Riley."

Also by deed dated May 3, 1977, Gulf Oil conveyed 4.79 acres<sup>3</sup> to the Stanleys, the Appellees in this case. This tract was located directly west of the Cricks' tract, with the front boundary line running along Chicken Road. As in the Crick deed, the Stanley deed provided that Gulf Oil reserved "unto itself, its successors and assigns, an easement across the above described property for ingress and egress to the remaining portion of the tract purchased from Riley."

By deed dated May 6, 1983, Gulf Oil conveyed its remaining 28.394 acres to the Whitfields, the Appellants in this case. The deed excepted the property conveyed from Gulf Oil to the Stanleys and the Cricks in 1977. The deed also provided that it was subject to the 20-foot easement granted to the Farmers in the 1968 deed.

A dispute arose between the Stanleys and the Whitfields in 2007 when the Whitfields started to put in a waterline along the edge of the easement. Both parties claimed to own the property subject to the 20-foot easement that ran from Chicken Road in an easterly direction to the rear boundary line of the Stanleys' property. The Stanleys filed a quiet title action in the Hopkins Circuit Court, and a bench trial was held on June 17, 2009. The trial court entered a judgment on January 26, 2010, concluding that the Stanleys were the owners of the 20-foot easement in dispute. This appeal followed.

#### STANDARD OF REVIEW

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<sup>3</sup> We note that the three tracts of property, the 28.394-acre tract, the 5.01-acre tract, and the 4.79-acre tract equal 38.194 acres instead of 38.184 as reflected on the survey conducted by Associated Engineers. However, this minor difference is insignificant to this appeal.

Because this matter was tried before the circuit court without a jury, our review of factual determinations is under the clearly erroneous standard. Kentucky Rules of Civil Procedure (CR) 52.01. A finding of fact is not clearly erroneous if it is supported by “evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). In our review, we are mindful that the trial court is in a better position to determine the credibility of witnesses and the weight to be given the evidence. *Uninsured Employers’ Fund v. Garland*, 805 S.W.2d 116, 118 (Ky. 1991).

Further, the interpretation of a deed is a matter of law; therefore, our review of that issue is *de novo*. *Smith v. Vest*, 265 S.W.3d 246, 249 (Ky. App. 2007).

#### ANALYSIS

Both parties agree that the description provided in the Stanley deed is ambiguous. However, they disagree as to the proper interpretation of that deed and whether it includes the 20-foot easement.

As stated in *Hoskins Heirs v. Boggs*, 242 S.W.3d 320, 328 (Ky. 2007):

Of course, “[t]he construction of a deed is a matter of law, and [absent an ambiguity,] the intention of the parties is to be gathered from the four corners of the instrument.” *Phelps v. Sledd*, 479 S.W.2d 894, 896 (Ky. 1972). Thus, the “court may not substitute what [a] grantor may have intended to say for what was said.” *Id.* “It is [however,] to be assumed that the parties to a deed intended each of its provisions to have some effect from the very fact that the words were used [and][t]he rule is well settled that words in a deed that are not technical

must be construed as having their ordinary connotation.”

*Id.*

Additionally, “[i]n determining the intention of the parties, courts look at the whole deed, along with the circumstances surrounding its execution, and courts may also consider the acts of the parties following the conveyance.” *Arthur v. Martin*, 705 S.W.2d 940, 942 (Ky. App. 1986).

Both parties agree that the description in the Stanley deed is ambiguous because the description does not close. As a result of this ambiguity, it is unclear whether the deed includes the 20-foot easement. Specifically, the dispute in this case is whether the description of the front boundary line of the tract which faces Chicken Road is 20 feet too long, or if the description of the rear boundary line is 20 feet too short. The Whitfields contend that the trial court erred in concluding that the description of the rear boundary line was 20 feet too short. We disagree.

In *Metropolitan Life Ins. Co. v. Hoskins*, 117 S.W.2d 180, 182 (Ky. 1937), the former Kentucky Court of Appeals set forth the following standard for determining boundary lines in deed descriptions:

In determining boundaries, the general rule is that natural and permanent monuments are the most satisfactory evidence and control all other means of description. Artificial marks, courses, distances, and area follow in the order named, area being the weakest of all the means of description.

With this standard in mind, we now turn to the parties’ arguments.

The Whitfields argue that although the description in the deed provides that the front boundary line is 548.84 feet long, the distance should be described as 528.84 feet in order for the tract to properly close. The Whitfields contend that because the correct measurement is 528.84 feet, the deed did not include the 20-foot easement. However, as correctly noted by the trial court, 548.84 feet is the only description of this boundary line provided in the Stanley deed. There is no reference in the description to a natural or artificial monument. Thus, the description of 548.84 feet controls. Accordingly, the trial court did not err in concluding that the description of this boundary line was not 20 feet too long.

We now address the Stanleys' argument that the ambiguity in the deed is the result of the rear boundary line being described as 20 feet too short. The Stanley deed describes the rear boundary line as follows: "thence with a new division line South 12° 19' West – 628.17 feet to a fence corner; . . ." Because the "fence corner" is an artificial monument, it controls over the description of 628.17 feet. *Metropolitan Life Ins. Co.*, 117 S.W.2d at 182. However, the parties disagree about where the fence corner is located.

The Whitfields contend that the trial court erred in concluding that the fence corner described in the deed is located beyond the easement. In support of their argument, the Whitefields point to the testimony of Roger Lynn (Lynn), an Associated Engineers Registered Surveyor. Although Lynn did not do an independent survey of the parties' property, he testified regarding the parties'

deeds and the 1977 plat. According to Lynn, an “x” on the plat indicates a fence line. Because there are fence lines marked across the rear boundary line, it can be “assumed” that there is a fence corner before the easement.

However, the Stanleys point to a photograph they introduced into evidence during the bench trial in support of their argument that a fence corner is located beyond the easement. Glenn Stanley testified that the photograph is a picture of where the fence post was located in 1977, and that it is located beyond the easement. Additionally, Glenn Stanley testified that when he purchased his property in 1977, a gate crossed the road where the easement was located. He further testified that the gate was attached to a fence, and there was a fence corner beyond the easement. Additionally, the Stanleys note that there is an “x” on the 1977 plat beyond the easement, which coincides with where the trial court determined the fence corner was located.

Based on the evidence presented at the bench trial, the court’s determination that the fence corner was beyond the easement was not clearly erroneous. *See Owens-Corning Fiberglas Corp.*, 976 S.W.2d at 414. Thus, we cannot say that the trial court erred in concluding that the description of the rear boundary line was 20 feet too short and that the line runs to the fence beyond the easement. Accordingly, the trial court correctly concluded that the Stanley deed includes the 20-foot easement.

In addition to the above, we note that Gulf Oil’s intent to include the 20-foot easement in the Stanley deed is evidenced by the fact that it reserved itself



an easement in the Stanley deed. As noted above, the description of the easement in the Stanley deed states that Gulf Oil reserved “unto itself, its successors and assigns, an easement across the above described property for ingress and egress to the remaining portion of the tract purchased from Riley.” The Whitfields contend that this easement is separate from the 20-foot easement in dispute. However, as correctly noted by the trial court, reserving a separate easement across the Stanleys’ property would be unnecessary if Gulf Oil intended to remain the owner of the strip of land upon which the entire 20-foot easement exists. Specifically, if Gulf Oil retained ownership of the entire 20-foot easement, it would be able to access Chicken Road from its tract. Thus, an easement for ingress and egress across the Stanleys’ property would have been unnecessary.

Lastly, we note the Whitfields’ argument that the final paragraph of the trial court’s judgment should be stricken. This paragraph states as follows:

IT IS FURTHER ORDERED, that neither party, their successor or assigns, shall in any way interfere with the use and enjoyment of the easement by those, or their successors in title, now served by the easement[.]

This appears to be a general statement of the law on easements - that an owner of property subject to an easement cannot interfere with the rights of the holder of the easement. *Commonwealth, Dept. of Fish and Wildlife Resources v. Garner*, 896 S.W.2d 10, 14 (Ky. 1995). Thus, the Whitfields’ argument that a portion of the trial court’s order should be stricken is without merit.

## CONCLUSION

For the foregoing reasons, we affirm the judgment of the Hopkins

Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Randall C. Teague  
Madisonville, Kentucky

BRIEF FOR APPELLEES:

Thomas E. Springer III  
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