

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001488-MR

LEE COUNTY FISCAL COURT

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE DANIEL SPARKS, JUDGE
ACTION NO. 06-CI-00085

JAMES CHAMBERS and
DARLENE CHAMBERS, his wife,
and GENEVIVE CAMPBELL BREWER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: NICKELL AND THOMPSON, JUDGES; ISAAC,¹ SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Lee County Fiscal Court appeals from a judgment dismissing its claims for injunctive relief relating to disputed sections of two roadways. The Fiscal Court argues the trial court erred by: (1) finding that it failed

¹ Senior Judge Sheila R. Issac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

to prove its title because its deed was overly vague; (2) finding that Appellees had superior title; and (3) finding that the Fiscal Court's resolution adopting the roadways was ineffective. We affirm.

In 1938, J.D. Olinger conveyed a right-of-way to Lee County. The disputed roadways consist of sections of Shoemaker Ridge Road and Walkers Creek Road. The disputed roadways were situated within a larger tract of property, which Olinger also conveyed to Earl Graston by deed dated 1943. The deed to Graston did not mention the right-of-way previously conveyed to Lee County. Graston is the predecessor in interest to Appellees, James Chambers, Darlene Chambers, and Genevive Campbell Brewer, who obtained the property in 1989. Graston's deed was recorded in 1943. Lee County did not record its deed until 1946.

In 1990, the Fiscal Court approved a resolution incorporating all roads containing a cemetery and having two or more families residing thereon into the county road system. In 2006, Appellees appeared before the Fiscal Court to request the closure of a section of Shoemaker Ridge Road, which Appellees had blocked. The Fiscal Court voted not to close that portion of the road and filed a complaint in the Lee County Circuit Court on June 20, 2006. The Fiscal Court sought an injunction to prohibit Appellees from blocking a section of Shoemaker Ridge Road as well as a portion of Walkers Creek Road. The Appellees filed an answer and counterclaim alleging ownership of the sections of the roads by color

of title or adverse possession and that the 1990 resolution was inapplicable because the roads at issue did not contain a cemetery and that no families resided upon the disputed portions of the roads. The matter was tried before the court without a jury. The trial court entered judgment dismissing the Fiscal Court's claims for injunctive relief and found that the disputed roads were private and belonged to Appellees. The Fiscal Court filed a motion to alter, amend, or vacate the judgment, which the trial court denied. This appeal followed.

The Fiscal Court first argues that the trial court erred by finding its right-of-way deed void for vagueness. The deed states in pertinent part:

That for and in consideration of the sum of One Dollar . . . and the further consideration of the Construction and maintenance of a County road over and through the lands of parties of the first part as hereinafter set out . . . the parties of the first part . . . convey a strip of land (60) feet wide, being fifteen feet on each side of the stakes hereinafter described, over, across, and through the lands of parties of the first part on Airdale Road and Shoemaker Ridge road in Lee County, Kentucky.

The interpretation of a deed is a matter of law, which this Court reviews *de novo*. *Melton v. Melton*, 221 S.W.3d 391 (Ky.App. 2007). A plaintiff seeking to establish title has the burden to affirmatively prove title rather than rely on the weakness of the defendant's title. *Knott Coal Corp. v. Kelly*, 417 S.W.2d 253, 256 (Ky. 1967). The plaintiff must locate the boundaries and demonstrate that the disputed property is embraced within them. *Id.* A deed is void where the description is so uncertain as to be meaningless and deed supplies nothing to enable the premises to be identified. *Justice v. Justice*, 239 Ky. 155, 158, 39

S.W.2d 250, 251 (1931). Further, as this case was tried before the court without a jury, the findings of the trial judge may not be set aside unless clearly erroneous, with due regard being given to the opportunity of the trial judge to consider the credibility of the witnesses. Kentucky Rule of Civil Procedure (CR) 52.01; *Lawson v. Loid*, 896 S.W.2d 1, 3 (Ky. 1995). Findings of fact are not clearly erroneous if supported by substantial evidence. *Black Motor Company v. Greene*, 385 S.W.2d 954 (Ky. 1964). The test for substantiality of evidence is whether the evidence, either when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable persons. *Janakakis-Kostun v. Janakakis*, 6 S.W.3d 843, 852 (Ky.App. 1999). Additionally, the trial court as fact-finder is free to choose between “conflicting opinions of surveyors so long as the opinion relied upon is not based upon erroneous assumptions” or does not ignore established factors. *Webb v. Compton*, 98 S.W.3d 513, 517 (Ky.App. 2002).

The deed contains no description to locate the property on the ground. The deed simply calls for a 60 foot strip of land with no particular beginning or ending point as there is no evidence of the stakes referenced in the deed. The deed further contains no source of title. The trial court specifically noted the conflicting opinions of the parties’ surveyors and was within its authority to accept the opinion of the Appellees’ surveyor.

The Fiscal Court next argues that the trial court erred by finding that Appellees had superior title to the disputed property. It is undisputed that the deed

from Olinger to Lee County was recorded after the deed from Olinger to Graston. The trial court found that there was no proof that Graston had notice of the deed to Lee County. However, we need not address the issue of superiority of title because our holding that the Fiscal Court failed to prove its title to the disputed property renders the issue moot.

Finally, the Fiscal Court argues that the trial court erred by finding that the 1990 resolution adopting the disputed roadway was ineffective. KRS 178.110(1) requires compliance with the Eminent Domain Act when a fiscal court seeks to establish a county road. The Fiscal Court argues that KRS 178.110 is not applicable because the 1990 resolution merely adopted existing roads into the county road system. However, the Fiscal Court failed to prove that it owned the disputed portions of the roadway or that the disputed portions of the roadway were public. There was ample evidence that Lee County did not maintain the disputed roadways or had ever previously asserted any claim to them. The evidence also demonstrated that the only maintenance of the disputed roadways was at the Appellees' expense. It is undisputed that the Fiscal Court did not comply with the Eminent Domain Act. Further, the 1990 resolution, by its own terms, only applied to roadways with a cemetery and two or more families residing upon them. There is no evidence that there are any families or cemeteries located upon the disputed roadways. We conclude that the 1990 resolution did not apply to the disputed roadways.

Accordingly, the judgment of the Lee Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kendall Robinson
Boonesville, Kentucky

BRIEF FOR APPELLEE:

Michael Dean
Irvine, Kentucky