

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001008-MR

MATT PRICHARD AND
LUKE PRICHARD

APPELLANTS

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 08-CI-00242

CARTER FISCAL COURT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, STUMBO AND VANMETER, JUDGES.

DIXON, JUDGE: Luke Prichard and his son, Matt Prichard, appeal from a judgment of the Carter Circuit Court affirming a decision of the Carter Fiscal Court. Finding no error, we affirm.

Appellants own land on either side of a county road, Campbell Road, in Carter County, Kentucky. Appellants petitioned the Carter Fiscal Court to

discontinue 1.3 miles of Campbell Road as a county road. The fiscal court held a hearing on December 27, 2007, and heard testimony from witnesses opposed to Appellants' petition. Appellants testified in favor of their petition and presented the fiscal court with eight signatures of neighbors who also favored discontinuing the Campbell Road as a county road. Luke testified the road was infrequently traveled, people dumped trash along the road, and there were incidents of criminal activity such as theft and drug transactions. Brian Prichard testified in opposition to closing the road. He presented the court with a petition signed by 92 citizens in favor of keeping the road open. Brian testified that Campbell Road was useful as a short-cut and also as an alternate route when the "main" road was impassable due to inclement weather. At least four other citizens testified against closing the road. At the conclusion of the hearing, two magistrates, Millard Cordell and James Wilburn, volunteered to view the road with the county road engineer pursuant to KRS 178.070. Thereafter, at a fiscal court meeting on April 8, 2008, the court voted to keep Campbell Road open and part of the county road system. Appellants filed a petition in Carter Circuit Court to set aside the decision of the fiscal court as arbitrary and contrary to law. In April 2010, the circuit court rendered an opinion upholding the fiscal court's decision. This appeal followed.

Pursuant to KRS 178.100, a party aggrieved by a fiscal court's decision not to discontinue a road may contest that decision by seeking judicial review in circuit court. *See also Trimble Fiscal Court v. Snyder*, 866 S.W.2d 124, 126 (Ky. App. 1993). Judicial review is concerned with determining whether basic

due process was afforded and ensuring the fiscal court did not act arbitrarily. *Id.* Here, Appellants failed to satisfy the burden of persuasion before the fiscal court; accordingly, the court's decision to keep the road open should be upheld unless the evidence compelled a finding in favor of closing the road. *Id.*

Appellants first argue the fiscal court acted arbitrarily because the evidence compelled closing the road. The relevant inquiry for a fiscal court in determining whether to discontinue a county road is public convenience and need. *Id.* at 127. A review of the fiscal court hearing indicates that citizens opposed closing the road, opining that it was a beneficial short cut and also provided a secondary route for nearby residents if the primary road became impassible. In contrast, Luke and Matt testified regarding their own personal inconvenience as to litter and theft of personal property.

Although Appellants contend their evidence was entitled to more weight, we believe the fiscal court was in the best position to weigh the evidence and assess the credibility of the witnesses. *See Bowling v. Natural Res. & Envtl. Prot. Cabinet*, 891 S.W.2d 406, 409-10 (Ky. App. 1994). The evidence indicated that public convenience was best served by keeping the road open; consequently, the evidence did not compel a finding in Appellants' favor. After careful review, we conclude the action of the fiscal court was not arbitrary.

Next, Appellants contend the fiscal court failed to comply with KRS 178.070, and denied them procedural due process. The statute states:

The fiscal court may direct any county road to be discontinued. Notice must be published, according to the provisions of KRS 178.050, and in addition, notices must be placed at three (3) prominent and visible public places within one (1) mile of the road. After posting the notices, the fiscal court shall appoint two (2) viewers who have no vested interest in the discontinuance of the road and who, together with the county road engineer, shall view the road and report in writing at the hearing what inconvenience would result from the discontinuance. Upon presentation of the report and other evidences, if any, at a public meeting of the fiscal court, the court may discontinue the road.

Appellants assert the fiscal court failed to present a viewers' report signed by Magistrates Cordell and Wilburn who volunteered to view the road. Appellants also contend Magistrate Cordell was not "disinterested" because of an ongoing disagreement with the Appellants.

Despite Appellants' contention, a review of the record shows a notarized "Campbell Road Committee Report" recommending that the county keep the road open and maintain the road by graveling it. The report was signed by Leroy Jessie and John Kitchen.

While Appellants' argument implies they question the veracity of the report, we presume the fiscal court properly appointed Jessie and Kitchen, as *disinterested* citizens, to view the property. *See Peers v. Cox*, 356 S.W.2d 768, 770 (Ky. 1962) (It may be proper to presume the required steps were taken unless uncontroverted proof establishes procedural steps were omitted.); *see also Hennessy v. Bischoff*, 240 S.W.2d 71, 73 (Ky. 1951) ("There is a presumption that public officers have

performed their duties as required by law[.]”). We conclude the committee report, on its fact, satisfied the statutory requirements.

In the case at bar, Appellants were afforded the opportunity to testify and present evidence in support of their petition to close Campbell Road. The fiscal court also heard evidence from citizens opposed to closing the road. In deciding whether to discontinue a county road, “[t]he public convenience must be consulted. And the common will, represented by the county court, must prevail over individual advantages and wishes.” *Walker v. Lyon County Fiscal Court*, 425 S.W.2d 730, 731 (Ky. 1968). We conclude Appellants were afforded adequate procedural due process, and the fiscal court acted within its authority by voting to keep Campbell Road open.

For the reasons stated herein, the decision of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

NO BRIEF FOR APPELLEE

John Preston Thompson
Grayson, Kentucky