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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001413-DG

WILLIAM P. HUFFMAN — APPELLANT

ON DISCRETIONARY REVIEW FROM CARTER CIRCUIT COURT
v. HONORABLE JOHNNY RAY HARRIS, JUDGE
ACTION NO. 07-XX-00001

BALD EAGLE HOME SALES — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: COMBS, D. LAMBERT AND VANMETER, JUDGES.

D. LAMBERT, JUDGE: This matter is before the Court on discretionary review of a decision entered by the Carter Circuit Court, which sat in appellate jurisdiction over the matter originally heard before the Carter District Court. The district court dismissed the complaint of the Appellant, William P. Huffman, and the circuit court affirmed. For the reasons discussed herein, we reverse.

I. FACTUAL AND PROCEDURAL HISTORY

Huffman owns approximately one hundred acres of farmland in Carter County. He uses this property for agricultural purposes, growing tobacco and hay on the land, and grazing cattle. The Appellee, Bald Eagle Home Sales, Inc. (hereinafter "Bald Eagle"), is a Kentucky corporation engaged in the business of real estate development and mobile home sales, and is an adjoining landowner with Huffman.

Huffman noted that Bald Eagle's predecessors-in-title put the land now owned by Bald Eagle to agricultural use. A line of fencing stands on Huffman's land, described as six to nine strands of wire attached to metal posts. The purpose of this fence is to restrain Huffman's cattle and prevent the livestock from wandering away from his property. Huffman testified in deposition that he had an informal agreement with Bald Eagle's predecessor-in-title that they would share the cost of maintaining the fence, under which Huffman would personally perform the repairs and his neighbor would reimburse him for half the cost of materials.

In the winter of 2003-2004, an ice storm struck the area, and several trees standing on Bald Eagle's property fell on the fence, damaging it in several places. Huffman took it upon himself to repair the damaged portions of the fence, expending approximately $1,200.00. He then sought to have Bald Eagle reimburse him for the expense, which Bald Eagle refused.

Huffman then initiated this action in Carter District Court. His complaint sought three specific forms of relief in its prayer: 1) that Bald Eagle be required to remove vegetation to facilitate repairs to the fence, 2) that Bald Eagle be required to reimburse Huffman for the expenses related to the repairs already performed, and 3) that Bald Eagle be required to perform upkeep on half of the fence in the future. Though not referenced in the complaint, KRS 256.042 specifically authorizes these forms of relief.

After some motion practice, the parties completed discovery and the matter was assigned for a bench trial. However, the trial proceedings did not take place in full. The district court halted the proceedings early on in order to conduct a personal viewing of the property. The district court later relied on that viewing and the depositions of Huffman and Edgar Everman, a shareholder and officer of Bald Eagle, in arriving at its ruling to dismiss the complaint.

The district court specifically ruled that KRS 256.042, a statute on which Huffman relied in his argument that Bald Eagle was obligated to construct and maintain the fence, did not apply. The trial court made four "findings of fact." First, the trial court found that the fencing was adequate and did not need to be replaced, and therefore the statute was inapplicable. The court next found that no agreement, either formal or informal, existed between the parties about maintenance of the fence. Third, the trial court found that the ice storm was an act of God. The trial court's final "finding of fact" was that Bald Eagle was not liable for the damages caused by naturally growing trees on its property.

In reaching its conclusion that dismissal of the complaint was appropriate, the trial court relied on *Schwalbach v. Forest Lawn Mem'l Park*, 687 S.W.2d 551 (Ky.App. 1985), which applied the common law of negligence. In *Schwalbach*, this Court held that the owner of property on which trees were located is not liable for the "natural processes and cycles of trees" where the tree was not dead and "likely to fall and cause injury." *Id.* at 554. Bearing that rule in mind, the trial court concluded that Huffman could not prevail as a matter of law.

Huffman filed a Notice of Appeal on April 19, 2007. The appeal was properly perfected, and the circuit court held oral arguments and took the matter under submission on November 19, 2007. The matter then sat dormant without explanation for more than six years before an order affirming the district court was entered on July 28, 2014.

The instant motion for discretionary review followed. Huffman requests that this Court review the matter, and reverse the lower courts on the basis that they applied the incorrect law to the facts presented, and further that the trial court erred in issuing its ruling without taking evidence.

II. ANALYSIS

A. STANDARD OF REVIEW

The central issue for this Court to consider in this matter is whether the district court and circuit court below applied the appropriate body of law. The applicability of a statute is unquestionably an issue of law for which the

appropriate standard of review is *de novo*. *Nash v. Campbell County Fiscal Court*, 345 S.W.3d 811 (Ky. 2011).

B. THE PROVISIONS OF KRS CHAPTER 256 APPLY TO THIS CASE

Huffman urges this Court to reverse the lower courts, contending that the provisions of KRS 256.042 operate to impose an obligation on adjoining agricultural landowners to share responsibilities for fences on their common boundaries. The most pertinent subsections provide as follows:

> (2) The owner of a parcel of real estate used for agricultural purposes may file an action in the District Court to require the initial construction or replacement of a boundary line fence or any portion thereof on the boundary between any parcel of real estate adjacent to the real estate of the plaintiff.
>
> . . . .
>
> (6) In all instances for purposes of maintenance of or construction of a fence on a common boundary line, the boundary line shall be divided between the parties and each landowner's portion shall be determined by assigning to him that portion of the boundary line which is on the right when facing the boundary from that landowner's real estate.

KRS 256.042(2), (6).

The district court found that the provisions of KRS 256.042 did not apply because "the boundary line fence in question is adequate and does not need to be replaced." The court instead applied the common law rule of negligence espoused in *Schwalbach*. However, liability for damages in negligence was not the question posed to the trial court.

Huffman asked the trial court to interpret KRS 256.042, which it failed to do. The Kentucky Supreme Court has previously held:

> [A]lthough adherence to *stare decisis* is the default approach in our jurisprudence, it is not an immutable rule. This Court will depart from previous decisions where "there are sound legal reasons to the contrary." *Hilen v. Hays*, 673 S.W.2d 713, 717 (Ky. 1984). A statute directly on point—and ignored by earlier decisions—surely fits that bill.

Benningfield v. Zinsmeister, 367 S.W.3d 561, 566 (Ky. 2012). "It almost goes without saying that absent a constitutional bar or command to the contrary, the General Assembly's pronouncements of public policy are controlling on the courts, as this Court has ruled countless times." *Carter v. Bullitt Host, LLC*, 471 S.W.3d 288, 296 (Ky. 2015). This Court has specifically held that statutes control over common law rules as well. *See Schwartz v. Hasty*, 175 S.W.3d 621, 628 (Ky.App. 2006).

The interpretation of KRS 256.042 by the district court went beyond the duty of courts to interpret statutes so as to avoid producing unreasonable results. *Castle v. Commonwealth*, 411 S.W.3d 754, 757-58 (Ky. 2013). The district court interpreted the statute, which deals specifically with situations like the one at bar, in such a way that deprived it of all operative value. As the Kentucky Supreme Court held in *Pearce v. Univ. of Louisville*, 448 S.W.3d 746 (Ky. 2014), "an interpretation of statutory law that renders portions of law nugatory is contrary to our canons of statutory interpretation, and borders upon repeal by implication, which is disfavored." *Id.* at 768.

The trial court's application of the common law principles of negligence as opposed to the statute is contrary to both the statute itself, and our case law governing the interpretation of statutes. It is, therefore, reversible error.

C. FURTHER EVIDENCE IS REQUIRED IN ORDER TO DECIDE THIS MATTER

In light of our decision on the applicability of KRS 256.042, further factual findings are necessary. Before disposition of the matter is authorized, the statute requires the trial court to make specific findings which were not made in this case. That the district court terminated the proceedings before the introduction of evidence necessary to make such findings showcases the needs for further proceedings.

This Court concludes that further evidence is necessary to enable the trial court to make the required findings. Remand is therefore appropriate.

III. CONCLUSION

This Court, having conducted a *de novo* review of the trial court's application of the law to the facts presented, finds reversible error. Therefore the order of the Carter District Court dismissing Huffman's complaint and the opinion of the Carter Circuit Court affirming the same are both hereby REVERSED, and the matter is REMANDED to the Carter District Court for further proceedings consistent with this opinion.

VANMETER, JUDGE, CONCURS.

COMBS, JUDGE, CONCURS IN RESULT ONLY.

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