

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000384-MR

PATRICIA RAGLAND MCGEHEE
AND RICHARD MCGEHEE

APPELLANTS

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 06-CI-01508

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; D. LAMBERT AND J. LAMBERT,
JUDGES.

LAMBERT, D., JUDGE: Patricia Ragland McGehee and Richard McGehee bring
this appeal from two orders entered by the Hardin Circuit Court in favor of the
Kentucky Transportation Cabinet (“KYTC”). Specifically, the McGehees ask this

Court to review the Hardin Circuit Court’s ruling authorizing the Master Commissioner of the Hardin Circuit Court to execute a deed of conveyance and whether the Hardin Circuit Court properly imposed sanctions on them pursuant to Rule 11 of the Kentucky Rules of Civil Procedure (“CR”). After careful review of the record, we find no error and affirm.

I. FACTUAL AND PROCEDURAL HISTORY

This appeal stems from a petition filed by the KYTC on August 21, 2006, seeking to condemn a portion of the real property owned by the McGehees. The KYTC sought to extend Kentucky Highway 3005 to meet the Western Kentucky Parkway, a project colloquially known as the “Ring Road Extension.” This project necessitated the KYTC exercise its power of eminent domain over a 7.7 acre portion of the 85-acre tract owned by the McGehees.

The McGehees—particularly Patricia—have a fierce attachment to this property, it having been Patricia’s childhood home. Following an eligibility study submitted on September 11, 2006, their property was accepted onto the National Register of Historic Places. The McGehees vehemently opposed the KYTC’s exercise of eminent domain, utilizing nearly every conceivable avenue for resistance.

The KYTC moved for an interlocutory order for possession of the subject portion of the McGehees’ property on October 17, 2006. The McGehees

filed an answer and counter-claim on October 19, 2006. The Hardin Circuit Court¹ held a bench trial on the motion from December 14 through December 19, 2007.

While awaiting ruling on the KYTC's motion for an interlocutory order, the McGehees filed an original action² in Franklin Circuit Court on April 2, 2008, seeking a declaration of rights. The Franklin Circuit dismissed the complaint, holding that the McGehees lacked standing to pursue a claim challenging the construction project under KRS 45A.245. The McGehees appealed that ruling, and this Court affirmed the Franklin Circuit.³

The trial court issued its ruling on the interlocutory order on May 30, 2008 (though the order was not entered until June 2, 2008). The trial court held that the KYTC had satisfied its statutory burden of proving entitlement to condemn the property under KRS 416.540-416.680, and further held that the McGehees had failed to meet their burden of proving the KYTC had acted in bad faith, committed fraud, or abused its discretion (which would have precluded condemnation). The order noted that it was final and appealable as to the issues of the KYTC's right to condemn and right to immediate entry, leaving the issue of compensation to be resolved later.

¹ For the sake of clarity, due to the various courts deciding multiple issues in this matter, this Court intends its use of the phrase "trial court" to refer to the Hardin Circuit Court.

² This action was designated as Franklin Circuit Court Civil Action No. 08-CI-00608.

³ The unreported opinion affirming the Franklin Circuit Court action was issued on January 14, 2011, by this Court in 2009-CA-00611-MR.

The McGehees filed a motion pursuant to CR 59.05 to alter, amend, or vacate, on June 17, 2008, and before the trial court could issue a ruling on the motion, the McGehees filed a Notice of Appeal on June 26, 2008. Due to the pending CR 59.05 motion, this Court dismissed the appeal as premature.⁴ The trial court, having regained jurisdiction following the dismissal of the McGehees first appeal in the Hardin Circuit Court action, issued an order denying the CR 59.05 motion on August 6, 2008. The McGehees filed their second Notice of Appeal in the Hardin County action on August 20, 2008.

On appeal, the McGehees presented two arguments to this Court. First, they argued that the KYTC had failed to issue proper service of process. Second, they argued that the trial court erred in ruling that the KYTC had the right to condemn the subject property. In an unreported opinion rendered on February 19, 2010,⁵ this Court affirmed the trial court's ruling in its entirety, specifically affirming that the KYTC had offered sufficient proof to merit condemnation and that the McGehees had offered insufficient proof of bad faith, fraud, or abuse of discretion, on the part of the KYTC. The McGehees then sought discretionary review, which the Kentucky Supreme Court denied.⁶

⁴ 2008-CA-001231-MR.

⁵ 2008-CA-001568-MR.

⁶ 2010-SC-000317-DR.

With the matter once again within the trial court's jurisdiction, the KYTC moved for possession. On March 3, 2011, the trial court granted the motion and authorized the Master Commissioner to execute a deed of conveyance.

At this point, the McGehees filed an action in the Federal District Court for the Western District of Kentucky on March 15, 2011. Their complaint sought a declaratory judgment and an injunction to prevent enforcement of the trial court's judgment. The District Court denied the initial request for injunctive relief, and then again denied the same relief upon subsequent motion by the McGehees.

The District Court ordered the parties to mediate on September 6, 2011, which resulted in a settlement agreement. The settlement agreement not only established the amount of compensation the McGehees would receive from the KYTC, but also contained language that released their claims in the Hardin County action. The settlement agreement also recognized the validity of the trial court's interlocutory judgment: "[T]itle to such property is vested in KYTC pursuant to the Interlocutory Judgment entered in the [Hardin County] action immediately referenced above...."

The KYTC moved the trial court on December 23, 2011, to enforce the September settlement agreement from the federal mediation. The District Court dismissed the federal matter as settled on January 6, 2012. On January 9, 2012, the trial court ordered the KYTC to remit the settlement proceeds to the

Hardin Circuit Clerk's Office, and within seven days of such transfer, the McGehees were to execute a deed of conveyance, or if they failed to do so, the Master Commissioner was to execute a deed of conveyance.

The trial court also issued two orders on February 6, 2012. The first was an order concluding that the settlement agreement was enforceable. The second was an order imposing Rule 11 sanctions on the McGehees personally, after the trial court concluded that any pleadings filed after the KYTC's right to take was conclusively established by this Court were so filed for the impermissible purpose of delay or harassment.

At the same time, the McGehees had filed an appeal to the Sixth Circuit Court of Appeals, arguing the settlement agreement was not binding due to duress. The Sixth Circuit ultimately affirmed the District Court's dismissal, agreeing that the settlement was a binding contract. The McGehees moved the Sixth Circuit for rehearing, which was denied on May 6, 2013, at which time the federal rulings became final.

The McGehees filed the instant Notice of Appeal on February 24, 2012,⁷ seeking this Court to review the propriety of the trial court's orders directing the Master Commissioner to execute the deed, and the imposition of sanctions. However, after the filing of the initial brief, the McGehees relieved

⁷ Though the Notice of Appeal was filed in 2012, this Court did not act immediately in order to allow the federal litigation to conclude and ensure the issues had fully ripened for our review.

their counsel of further representation, and have proceeded *pro se* from that point, including filing a supplemental brief asserting various attacks on the trial court's prior conclusion that the KYTC had the right to condemn the property.

II. ANALYSIS

A. THE TRIAL COURT ACTED WITHIN ITS AUTHORITY WHEN ORDERING THE MASTER COMMISSIONER TO EXECUTE THE DEED

The McGehees contend that the trial court abused its discretion by ordering the Master Commissioner to execute the deed while their unsuccessful federal appeal was pending. A judicial action is an abuse of discretion when it is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004).

The trial court had already made the requisite statutory findings necessary to allow condemnation. Further, this Court had affirmed those findings, making them the binding law of the case. “The law of the case doctrine is ‘an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been.’” *Brooks v. Lexington-Fayette Urban County Housing Auth.*, 244 S.W.3d 747, 751 (Ky. App. 2007) (quoting *Union Light, Heat & Power Co. v. Blackwell's Adm'r*, 291 S.W.2d 539, 542 (Ky. 1956)). This Court specifically held in 2009-CA-01568-MR that the trial court

“did not err in entering an interlocutory order condemning the property.” That conclusion, under the law of the case doctrine, became inescapably binding on the trial court, depriving the trial court of any discretion to act in a manner inconsistent with the ruling. The trial court was thus authorized only to enforce the ruling.

Statute empowers the circuit courts to provide for the conveyance of condemned property to the condemnor to the extent condemned. KRS 416.610(2)(d). Further, the Master Commissioner is authorized by statute to execute deeds of conveyance pursuant to orders of the circuit court. KRS 426.570; KRS 426.571.

In light of this authority, this Court must conclude that the trial court acted in a manner consistent with established precedent and other binding authority. The trial court did not abuse its discretion in ordering the execution of the deed by the Master Commissioner.

**B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN
IMPOSING SANCTIONS ON THE MCGEHEES**

Rule 11 does not provide any substantive right to a party, but rather is a procedural mechanism by which courts can prevent and/or punish abusive litigation practices. *Lexington Inv. Co. v. Willeroy*, 396 S.W.3d 309, 312 (Ky. App. 2013). While the rule itself does not provide language establishing a standard of review, case law has provided such. *See Clark Equip. Co., Inc. v. Bowman*, 762

S.W.2d 417 (Ky. App. 1988). First, a reviewing court examines the trial court's findings of fact for clear error. *Id.* at 421. Next, the reviewing court examines the trial court's legal conclusions that a given behavior amounts to a violation *de novo*. *Id.* Finally, the reviewing court examines the nature and severity of the sanction imposed for abuse of discretion. *Id.*

The McGehees only contend that the trial court made erroneous conclusions in its order imposing sanctions on them. Therefore, our review will be confined to the first element of the *Clark Equipment* test. The McGehees take specific issue with the trial court's finding that they had continued to engage in motion practice after the decision that the taking was appropriate had become final. They argue this finding was in error because the issue of the propriety of the taking was still pending in federal court.

However, the trial court's May 2008 order became final following the Kentucky Supreme Court's denial of discretionary review. The KYTC did not move for sanctions, as a part of its motion for the deed, until well after the state court ruling had become final. Also noteworthy, the McGehees attached to their response to the KYTC's motion for the deed a voluminous affidavit detailing the entire procedural history of the litigation, which the trial court referred to as a "47 page diatribe," that failed to state any basis for preventing the execution of the deed aside from the ill-fated federal appeal. Further, the McGehees contend that

the affidavit was filed to highlight not whether the KYTC had the right to take, but rather the issue of whether the KYTC had complied with the various federal statutes in selecting the location of the Ring Road Extension. However, the issue of compliance with those statutes is a component of the determination of the right of the KYTC to take. The affidavit, which the McGehees attempt to characterize as asserting separate issues, in reality serves as an attempt to relitigate settled and concluded issues.

Substantial evidence exists in the record that supports the trial court's findings, in the form of multiple and voluminous pleadings filed in opposition to the KYTC's already well-established right to condemn. The trial court was within its authority, after reviewing the documents filed by the McGehees, to determine that they served no purpose other than to delay or harass.

C. THE MCGEHEES' SUPPLEMENTAL BRIEF PRESENTS NO JUSTICIABLE ISSUES

The McGehees' *pro se* supplemental brief offers primarily conclusory allegations and little in the way of binding authority. It asserts challenges to the trial court's findings that the KYTC had the right to condemn, which, as this Court noted above, is part of the law of the case. It asserts challenges to the settlement agreement, which by this point, has been approved by both the Western District Court and the Sixth Circuit in addition to the trial court.

Finally, it asserts an unpreserved error that one of the many judges to have issued rulings on this case should have recused, but the ruling about which the McGehees complain was not made by the same judge they contend was impermissibly biased.

The allegations in the supplemental brief amount to a collection of settled issues and an unpreserved claim for which no relief exists even had it been preserved. There are simply no justiciable issues presented therein.

III. CONCLUSION

This Court, having carefully reviewed the record, and finding no error, hereby affirms the trial court.

ALL CONCUR.

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