



NUMBER 13-22-00140-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

OTTO RATLIFF,

Appellant,

v.

RAY BRIAN ULOTH,

Appellee.

**On appeal from the 18th District Court
of Somervell County, Texas.**

MEMORANDUM OPINION

**Before Justices Tijerina, Silva, and Peña
Memorandum Opinion by Justice Tijerina**

Appellant Otto Ratliff appeals a declaratory judgment concerning a disputed strip of property (the property strip), which lies at the boundary delineating Somervell County, Texas from Bosque County, Texas. Ratliff owns property north of the strip in Somervell County, and appellee Ray Brian Uloth owns property south of the property strip in Bosque County. Following a bench trial, the trial court declared the property strip as “Somervell

County Road No. 423.” By three issues, which we reorganize, Ratliff asserts: (1) there was legally and factually insufficient evidence to support a finding that a county road runs along the property strip; (2) “the evidence is factually insufficient to support the trial court’s refusal to find that he holds fee-simple title” to the property strip; and (3) the trial court should reconsider its award of attorney’s fees. We affirm.

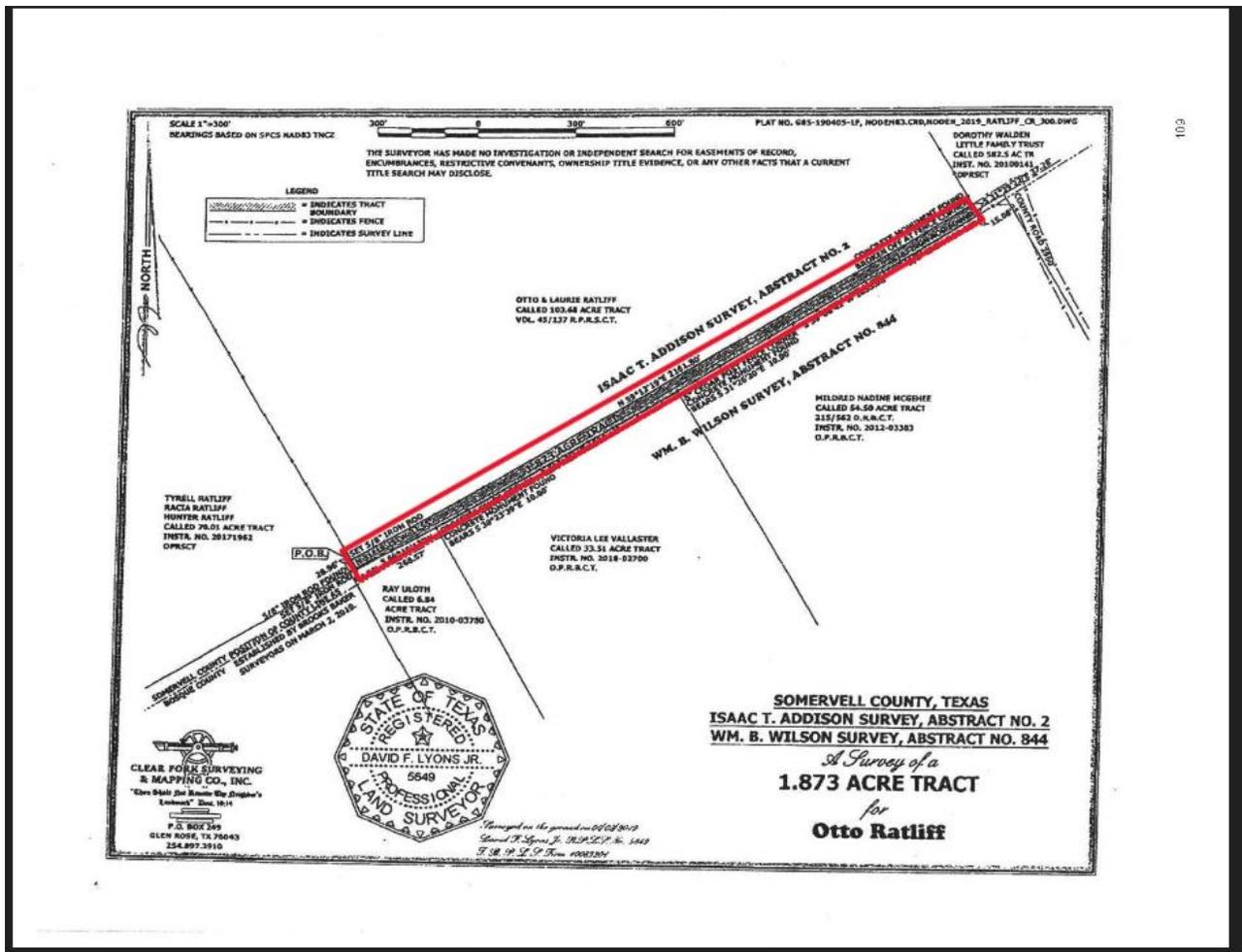
I. BACKGROUND¹

On July 1, 1996, Ratliff purchased 103.68 acres in Somervell County from the Thompsons. The cash warranty deed contains a metes and bounds description of Ratliff’s 103-acre tract and includes a description that the 103-acre tract is located “at a concrete marker in the North side of a County Road.” Further metes and bounds descriptions of the 103-acre tract refer to concrete markers of its boundary lines along “an old abandoned road.”

In 2010, Uloth purchased fifty-four acres in Bosque County from the Burns Family, south of Ratliff’s 103-acre tract. The property strip is composed of caliche, directly adjoins and separates Ratliff’s 103-acre tract from Uloth’s 54-acre tract, and separates Somervell County from Bosque County. Uloth’s deed contains a metes and bounds description as “being in the South line of County Road No. 423,” and “being in the South line of an old county road.” The property strip is about 1.87 acres, beginning west of the Dorothy Walden Little Family Trust, and west of County Road 2860, and ending east of Tyrell

¹ This case is before this Court on transfer from the Tenth Court of Appeals in Waco pursuant to a docket-equalization order issued by the Supreme Court of Texas. See TEX. GOV’T CODE ANN. § 73.001.

Ratliff's property (Ratliff's son). To the south, the property strip adjoins Mildred McGehee's property, Victoria Vallaster's property, and Uloth's property, as shown below.²



In March 2011, Ratliff requested that Somervell County abandon Somervell County Road No. 423. On March 14, 2011, “no opposing opinion was presented,” and Somervell County commissioners abandoned Somervell County Road No. 423. The order provides that “County Road No. 423 is a very short stretch of road on the very southern edge of the Somervell County and Bosque County line, and is able to be accessed only after

² We have made a non-substantive alteration to the image by adding a red border around the property in dispute.

driving several miles across both State FM roads and Bosque County [r]oads.” One month later, however, Somervell County rescinded its order abandoning Somervell County Road No. 423, returning County Road No. 423 to its “former status” as a county road. The commissioner’s order provided that other owners in the area used Somervell County Road No. 423 as ingress and egress to their respective properties.

A. Uloth filed Suit

On August 13, 2020, Uloth filed suit against Ratliff, requesting a declaratory judgment and injunctive relief. According to Uloth, Ratliff “began to construct a fence and gate on County Road No. 423 which has and will prevent [Uloth] from access to his property.” In his petition, Uloth stated that the property strip is designated as “Somervell County Road No. 423” and is his only means of ingress and egress. Uloth stated that “County Road No. 423 was confirmed to still be an active county road on April 11, 2011 by the Somervell County Commissioner’s Court.” Uloth attached a survey of the 54-acre tract, which included the surrounding properties. On the survey, the property strip is designated as “Somervell County Road No. 423.” Uloth requested that the trial court declare the property strip a county road and the boundary line for Somervell County. Uloth further requested a temporary restraining order and a temporary injunction prohibiting Ratliff from preventing access to Uloth’s property. Lastly, Uloth requested attorney’s fees.

B. Ratliff filed a Counterclaim

On September 22, 2021, Ratliff filed a counterclaim, requesting declaratory judgment. According to Ratliff, the “private lane” on his property was a “misnomer,” and Uloth did not have a prescriptive easement or an easement by estoppel over the property

strip. Ratliff stated that “[a]t one time there was an old unnamed road that ran east and west and was located south” of his 103-acre tract “that was believed to be on the county line between Bosque County and Somervell County,” but “[a]s shown by the maps, the unnamed road was abandoned years ago.” Ratliff insisted that “the private lane has been mistakenly identified and misnamed as Somervell County Road [No.] 423 by a surveyor who surveyed a nearby tract of land.” Ratliff requested that the trial court determine that the property strip “is NOT and never has been Somervell County Road [No.] 423,” declare that the fee simple interest of the property strip is wholly owned by him, and declare that Uloth’s claim to any alleged easement be denied, and to reform his deed to “include the metes and bounds description” evidencing his ownership in fee simple interest.

C. Bench Trial

On September 29, 2021, the trial court held a bench trial. Uloth testified that the only access to his property was via the property strip and that he used the property strip to access his 54-acre tract well before he purchased it in 2010. Without access to this property strip, Uloth would have to purchase an access easement from neighboring owners. He explained that when he purchased the 54-acre tract, his survey indicated the property strip was marked as “Somervell County Road No. 423,” and there was a sign marker placed on the property strip, indicating it was Somervell County Road No. 423. According to Uloth, he leases his 54-acre tract for grazing and deer hunting and all lessees access Uloth’s 54-acre tract via the property strip. Uloth agreed that the county does not maintain the property strip.

Registered Surveyor Bret Polk testified that he surveyed Uloth's 54-acre tract when Uloth purchased it. When Polk visited the 54-acre tract, he noticed a sign marker located on the property strip that read "423." In assessing Uloth's 54-acre tract, Polk relied on W.F. Gunn's survey for Ratliff's 103-acre tract, as the adjoining landowner. Gunn's survey identified the property strip as "the south line of County Road [No.] 423" as well as "an old county road." At the property location, Polk found a "monument" that "made a reference to this being the south side of County Road [No.] 423."³ Polk has followed and always found Gunn to be accurate in his surveys; thus, Polk agreed that the property strip was Somervell County Road No. 423. Polk's survey was admitted into evidence, identifying the property strip as Somervell County Road No. 423. Polk further clarified that if a surveyor had any questions about property designation, they would normally consult the North Central Texas Council of Governments (NCTCG) as far as 911 addressing. In this case, the NCTCG showed the property strip "to be County Road [No.] 423."

Brenda Tiller testified that her family previously owned the 54-acre tract before her siblings sold it to Uloth. She currently owns seventeen acres south of 54-acre tract. Tiller is very familiar with the 54-acre tract because she used to fish and hunt on it as a child. For the past "60 some-odd years," Tiller and her family used the property strip to access the 54-acre tract as well as to access the 17-acre tract she currently owns. According to Tiller, the property strip is the only access into her 17-acre tract. Tiller explained that her father owned the 54-acre tract since the 1930s, and her father always accessed the property strip, which she described as always being "a gravel caliche road." Tiller

³ Polk explained that Gunn set rebar monuments at the property strip's corners.

remembers there was a county road sign on the property strip, but “it disappeared at some point after [her] dad passed away.” She stated that right after she inherited the 54-acre tract, Ratliff put up a gate to obstruct her use of the property strip. To Tiller’s knowledge, the property strip has always been a county road. Like Uloth, if she can no longer access the property strip, she will be landlocked.

Ratliff testified that the property strip has always been a “trail” that was used by his predecessors, the Thompsons. Ratliff conceded that Uloth’s predecessors used the property strip to access the 54-acre tract since the 1970s. When Ratliff purchased the 103-acre tract in 1996, the Burnses were using the property strip to access the 54-acre tract. Ratliff stated that the Burnses installed a fence separating the property strip from Uloth’s 54-acre tract. When Ratliff bought the 103-acre tract in 1996, he, too, installed a fence separating the property strip from the 103-acre tract.

Ratliff stated that before Uloth purchased the property, he informed Uloth “he needed to find another easement.” According to Ratliff, Uloth had an easement through another property, and he based this opinion on the fact that “nobody drives up [the property strip], everybody drives out.” Therefore, Ratliff believed that Polk was mistaken when Polk testified that Uloth has no other access to enter the 54-acre tract.

Ratliff explained that the Somervell county attorney tried to claim the property strip as a county road by trying to “put the 423 sign up,” but the county “couldn’t legally claim the road.” Thus, the sign designating the property strip as a county road only “lasted about four days” before “the county” removed it. Ratliff asserted that the property strip was not

County Road No. 423 because Ratliff “built it”: he “cut the dead trees off of it . . . cleaned it up . . . hauled the caliche . . . poured the concrete . . . [and] fixed everything.”

On July 26, 2019, Ratliff executed a “non-exclusive easement for use as a roadway” for a .66-acre tract within his 103-acre tract. The easement references that it is located within “a portion of an abandoned county road,” “[b]eginning at a broken concrete monument found marking the southeast corner of a called 103.68 acre tract.”⁴

Ratliff testified that in 2020, someone left the gate open to Uloth’s property and about twenty of his cattle entered the 54-acre tract. Ratliff stated that he informed Uloth that Uloth could no longer access the property strip following this incident, and Uloth filed suit thereafter.

Somervell County Judge Danny Chambers testified that in 2008, the county issued an “Order Adopting County Road Map” pursuant to Chapter 258 of the transportation code. See TEX. TRANSP. CODE ANN. § 258.002. Somervell County Road No. 423 was not included in the map grid. Nonetheless, Judge Chambers identified the property strip as County Road No. 423.

County Commissioner Wade Busch testified that he previously served as the Somervell County road supervisor. Consistent with Judge Chambers’ testimony, Commissioner Busch also identified the property strip as County Road No. 423. Commissioner Busch stated that as county road supervisor, he was once in charge of

⁴ This easement dedication purports to convey Ratliff’s property in Bosque County. However, we note that Ratliff does not own property in Bosque County, and a Somervell County notary and a Somervell County judge signed the easement dedication.

maintenance work for a portion of the property strip. Therefore, at one time, the county maintained it.

Gary Gilley, a registered surveyor, stated that he reviewed all deed history for the 103-acre and 54-acre tracts. Gilley opined that Ratliff owned a 2.98-acre strip situated between the 103-acre and 54-acre tracts that was excluded from Ratliff's chain of title. According to Gilley, Ratliff owned that 2.98-acre strip under the Strips and Gores Doctrine.⁵ Gilley further testified that the property strip was not Somervell County Road No. 423 as indicated by the Somervell County Commissioners in the "Order Adopting County Road Map." According to Gilley, Somervell County Road was located in another location—not the property strip.

D. Judgment

Following a bench trial, on December 10, 2021, the trial court entered a judgment declaring the property strip as Somervell County Road No. 423, denying Ratliff's requests for declaratory judgment and attorney's fees, and granting Uloth reasonable and necessary attorney's fees. Ratliff requested findings of fact and conclusions of law in which the trial court declared the same. Ratliff then filed a motion for new trial, arguing that the record contains factually insufficient evidence to support the trial court's declarations. The trial court denied the motion for new trial, and this appeal followed.

II. SUFFICIENCY OF THE EVIDENCE

By his first issue, Ratliff argues "Uloth presented no evidence that a county road runs along the disputed strip." Alternatively, Ratliff argues that "the evidence is factually

⁵ The property strip lies within the 2.98-acre strip.

insufficient to support a finding that a county road runs along the disputed strip.” Thus, Ratliff challenges the legal and factual sufficiency of the evidence.

A. Standard of Review

In a legal sufficiency assessment, we determine whether the evidence supporting the challenged findings rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *City of Keller v. Wilson*, 168 S.W.3d 802, 807, 827 (Tex. 2005). Evidence is legally insufficient to support a disputed fact finding when (1) evidence of a vital fact is absent, (2) rules of law or evidence bar the court from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of the vital fact. *Id.* at 810.

“When reviewing the factual sufficiency of the evidence, we examine the entire record, considering all the evidence both in favor of and contrary to the challenged finding.” *Vast Constr., LLC v. CTC Contractors, LLC*, 526 S.W.3d 709, 723 (Tex. App.—Houston [14th Dist.] 2017, no pet.). When a party attacks the factual sufficiency of the evidence pertaining to a finding on which the party did not have the burden of proof, we may set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Bennett v. Comm’n for Law. Discipline*, 489 S.W.3d 58, 66 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *Torres v. Cameron County*, No. 13-20-00568-CV, 2022 WL 17844210, at *5 (Tex. App.—Corpus Christi—Edinburg Dec. 22, 2022, no pet.) (mem. op.).

We view the evidence in the light most favorable to the judgment and indulge every reasonable inference that would support it. *City of Keller*, 168 S.W.3d at 822. The factfinder is the sole judge of the weight and credibility of the evidence. *Id.* at 819. When the evidence is conflicting, we must presume that the factfinder resolved the inconsistency in favor of the challenged finding if a reasonable person could do so. *Id.* at 821. We do not substitute our judgment for that of the factfinder if the evidence falls within this zone of reasonable disagreement. *Id.* at 822.

B. Applicable Law

When a landowner transfers private land to the public for any general or public use, a dedication occurs. *Shelton v. Kalbow*, 489 S.W.3d 32, 44 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (citing *Hatton v. Grigar*, 66 S.W.3d 545, 554 (Tex. App.—Houston [14th Dist.] 2002, no pet.)). A landowner who dedicates land reserves no rights in the property that are incompatible with the full enjoyment of the public. *Id.* A dedication can be express or implied, but here, the parties dispute the sufficiency of the evidence regarding the doctrine of implied dedication. *See id.* (citing *Stein v. Killough*, 53 S.W.3d 36, 42 (Tex. App.—San Antonio 2001, no pet.)).

The four elements to establish an implied dedication are as follows: (1) the person must have fee simple title before he can dedicate his property; (2) a public purpose is served by the dedication; (3) there must be an express or implied offer; and (4) the public entity must accept the offer. *Id.* (citing *Stein*, 53 S.W.3d at 42 n.2). “In order to constitute dedication by estoppel or implication there must exist a clear and unequivocal intention on the part of the landowner to dedicate the same to public use and an acceptance

thereby by the public.” *Betts v. Reed*, 165 S.W.3d 862, 868 (Tex. App.—Texarkana 2005, no pet.). In addition to the owner’s acquiescence, there must be some additional evidence that implies donative intent, such as: (1) permitting public authorities to grade, repair, or otherwise improve the roadway; (2) selling parcels of land from a plat or plan showing the roadway as a means of access to the parcels; (3) construction of facilities for general public use; (4) an express representation by the owner of a road to a land purchaser that the way is reserved for public use; (5) fencing off the roadway from the remainder of the land; or (6) obtaining a reduction in the purchase price commensurate with the area of the roadway. *Id.* Direct evidence of a landowner’s intent is not required. *Id.* at 868–69; *Supak v. Zboril*, 56 S.W.3d 785, 790 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

“The long and continuous use of the road by the public raises a presumption of donative intent. When the origin of the road cannot be determined, evidence of long and continued use by the public raises a presumption that the landowner intended to dedicate the road.” *Betts*, 165 S.W.3d at 869. “For this presumption to apply, the ownership of the land when the road originated must be ‘shrouded in obscurity’ so that no evidence of the intent of the owner is available.” *Id.*

C. Discussion

In this case, the ownership of the land at the origin of Somervell County Road No. 423 is “shrouded in obscurity,” and no evidence of the intent of the owner who established it was introduced. *See id.* (finding that the origin of Tyson Road is “shrouded in obscurity,” and no evidence of the intent of the owner who established the road was introduced). Although Ratliff testified that he “built” the strip, he conceded there was a pre-existing trail

that adjacent landowners or the public used for decades. Ratliff testified that before he purchased the property, he was aware that Uloth's predecessors used the property strip to access the 54-acre tract. There was evidence that Uloth's surrounding property owners also used the property strip to access their properties. Importantly, Tiller described the strip as a "gravel caliche road," and there was a sign denoting it as a county road while additional evidence showed that the county maintained it as a county road prior to Ratliff's acquisition. Moreover, "there was legally and factually sufficient evidence of long and continuous use by the public." *Id.* For example, "[e]vidence that the public had used the road, the county had maintained the road, and the road had been fenced on both sides was introduced at trial." *Id.* The evidence at trial showed that the property strip had been used by the Burnses since the 1930s, had been fenced on both sides, and at least a portion of it had been maintained by Somervell County.⁶

Additionally, several witnesses considered the road a public road, including Somervell County employees. "The trial court was entitled to weigh the credibility of the witnesses and we will not substitute our judgment for that of the fact[.]finder." *McCulloch v. Brewster County*, 391 S.W.3d 612, 618 (Tex. App.—El Paso 2012, no pet.). Therefore, based on the evidence presented, the trial court was entitled to believe that there had been a long and continuous public use of the road, the road had been open to the public and in use for many years, and that the county maintained the road. See *id.* (holding that there was more than a scintilla of evidence of an implied dedication based on the

⁶ While Somervell County did maintain the property years ago, it ceased maintaining the road before Ratliff purchased the property in 1996, according to the witnesses.

following: long and continuous public use of the road; the fact that neither of the predecessors in title tried to assert that the road was a private road; the fact that the road was open to the public and in use since the 1940s; the fact that the county maintained the road; and the fact that the road appeared on a historical map and at least one plat). Significantly, for the exceptions of actions taken by Ratliff, no witnesses testified that the road was kept private or that any person was ever denied permission to use the road during its long history of use. See *Graff v. Whittle*, 947 S.W.2d 629, 638 (Tex. App.—Texarkana 1997, writ denied) (finding that the evidence of long, continued, unquestioned use of the road supports a finding that the landowner’s predecessors in title acted to induce the public’s belief that the road was impliedly dedicated to public use). In fact, in his counterclaim, Ratliff acknowledges that there was an “old county road” but insisted that it was “abandoned.” See *Betts*, 165 S.W.3d at 870 (finding that there was no evidence of abandonment when the road was still being used for the same purpose for which it had been used in the past).

Ratliff’s and Uloth’s deeds are particularly telling; both deeds described their properties as adjoining “County Road No. 423” and “an old abandoned road.” Polk also testified that the NCTCG showed the property strip to be County Road No. 423. See *Gutierrez v. County of Zapata*, 951 S.W.2d 831, 841 (Tex. App.—San Antonio 1997, no writ) (“The record further reflects that the road is essential for fire, police, and other emergency services to the area.”). Furthermore, in 2011, Somervell County acknowledged Somervell County Road No. 423 in its order.

Ratliff states that because the road is only used by neighboring landowners, it is not a “public” road. However, “[a] public road does not depend upon its length, nor upon the places to which it leads, nor upon the number of persons who actually travel upon it.” *Gutierrez*, 951 S.W.3d at 841. “If it is free and open to all who have occasion to use it, it is a public road.” *Id.*; see also *Owens v. Hockett*, 251 S.W.2d 957, 958 (Tex. 1952) (finding an implied dedication based upon evidence that (1) the road in question had been used by the public for many years prior to the time the landowner erected a fence across it, (2) the landowner knew the road was being used by the plaintiffs and the general public, (3) the landowner and others knew that the County had repaired and graded the road on many occasions, and (4) the property along the roadway was fenced). Moreover, Ratliff did not explain how Somervell County’s order adopting its county road map in any way indicates that Somervell County Road No. 423 did not exist. See *Graff*, 947 S.W.2d at 638 (“Graff does not explain how these photographs [of the county’s road maps] show that the road did not exist then.”). Although the actual location of the county road was not included on the grid, we note that the index expressly references “County Road [No.] 423 . . . aka PAST-Bob Ratliff.” See *Gutierrez*, 951 S.W.2d at 841 (“It is of no import that the County never designated the road as a public road or officially accepted it as a public road.”). Lastly, there is no evidence that Ratliff ever disagreed with the designation of County Road No. 423 as stated in the metes and bounds description of his deed or that he disapproved of any surveys establishing the location of Somervell County Road No. 423. In fact, Ratliff approached the Somervell county commissioners and requested that

they abandon County Road No. 423, demonstrating that he acknowledged the existence of County Road No. 423.

When viewed in a light most favorable to the verdict, more than a scintilla of evidence exists that the public used Somervell County Road No. 423 for a long and continuous time. See *Betts*, 165 S.W.3d at 870. Further, “[w]hen viewed in a neutral light, the great weight and preponderance of the evidence does not indicate that the trial court’s finding was clearly wrong or unjust.” *Id.* “Because the origin of the road is shrouded in obscurity, the evidence of long and continued use by the public raises a presumption that [a] landowner intended to dedicate the road.” *Id.*; see also *O’Connor v. Gragg*, 339 S.W.2d 878, 883 (Tex. 1960) (“[W]here ownership of the land at the time of such origin is shrouded in obscurity, and no proof can be adduced to show the intention of the owner allowing the use, the law raises a presumption that the requisite intention and acts disclosing it were present.”). Ratliff presented no evidence disputing the presumption of implied dedication. See *Betts*, 165 S.W.3d at 870. Therefore, the evidence is legally and factually sufficient to support the trial court’s finding that the property strip had been impliedly dedicated to the public and was properly identified as Somervell County Road No. 423. See *id.* We overrule Ratliff’s first issue.

By his second issue, Ratliff asserts that he established that he holds fee-simple title to the disputed property strip or that the evidence is factually insufficient to support the trial court’s refusal to find that he holds fee-simple title. However, Ratliff concedes that “[h]is ownership of the disputed [property] strip has no bearing on whether it constitutes or includes a county road,” and we agree with Ratliff. A proposed declaratory judgment

vesting Ratliff ownership in fee simple of the property strip would not constitute specific relief to him or affect legal relations regarding the property strip's status as a county road. Therefore, we need not address Ratliff's second issue as it is not dispositive. See *Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 767–68 (Tex. App.—Austin 1999, no pet.) (stating that an opinion is advisory when judgment sought would not constitute specific relief to a litigant or affect legal relations); see also *Betts*, 165 S.W.3d at 870 (“A landowner cannot revoke the dedication or use the property contrary to the original purpose of the dedication once a dedication is accepted.”); *Cowan v. Worrell*, 638 S.W.3d 244, 255 (Tex. App.—Eastland 2022, no pet.) (“[L]andowners who purchase land abutting a public road acquire a right to use the road as a means of ingress and egress.”).

Ratliff's third issue regarding the reconsideration of attorney's fees is contingent on this Court reversing the trial court's declaratory judgment. Because this Court confirmed the existence of Somervell County Road No. 423, we need not remand the issue of attorney's fees to the trial court for reconsideration. We overrule Ratliff's third issue. See TEX. R. APP. P. 47.1.

III. CONCLUSION

We affirm the judgment of the trial court.

JAIME TIJERINA
Justice

Delivered and filed on the
4th day of January, 2024.