ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CA 07-462

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| LARRY A. BRADSHAW AND JUDITH E. BRADSHAW<br>APPELLANTS | December 12, 2007<br>APPEAL FROM THE STONE COUNTY CIRCUIT COURT<br>[NO. CIV2005-67-4] |
| V. | HONORABLE TIMOTHY M. WEAVER, JUDGE |
| C.D. STICE AND MARY STICE<br>APPELLEES | AFFIRMED |

Appellants Larry and Judith Bradshaw appeal from an order finding that appellees had an easement that fully extended to a road and that appellants were in contempt of a previous order for blocking the easement. Appellants contend on appeal that the trial court's decision regarding the extent of the easement was in error and that the trial court erred in its finding of contempt. We affirm.

In July of 2003, three couples from Crittenden County, Perry and Irene Morris, appellants Larry and Judith Bradshaw, and appellees C.D. and Mary Stice, purchased from Patrick and Cheri Stair Lot 1 of the Blue Cove Subdivision in Stone County. The deed also conveyed a twenty-foot wide easement that ran along the western border of the property that connected to a road called

Blue Cove Loop, which ran along the northern boundary of the property. Filed with the deed was an attachment, which all three couples signed, and which provided that each couple could place one mode of residence on the .65-acre lot and that each would have a permanent easement for common drives, power, water, sewer and other shared amenities added to the property. At the outset, the couples shared utility services such as electricity, water, and a septic system. Together, they also constructed a ten-foot-wide, gravel driveway on the eastern border of the lot that connected with and ran south from Blue Cove Loop to a shed that the couples shared. The couples used this drive for ingress and egress to their respective residences.

In January of 2005, the couples parted company and divided the property into three separate lots. Appellants received the northernmost lot, appellees received the middle lot, and the Morrises received the southernmost lot. The deed setting out appellants' share of the property stated that the conveyance was subject to "all existing easements, both public and private, including Blue Cove Loop along North side and easements along East and West Sides." A survey done by Donald Beckham was incorporated into the deed which laid out and described each couple's newly-formed lot. At the time of the division, the couples also entered into an agreement formalizing their practice of jointly owning one water service, one electrical service, and one septic system with related lines and hook-ups, and equally dividing the bills for those services.

The couples, however, soon fell into dispute and amended their agreement in May 2005 to make different arrangements regarding the utilities. In particular, the couples continued to share water service, but they obtained separate electrical services. With respect to the sewage system, the couples agreed that:

> 3. Presently, the water/electric/sewer lines all run together in one trench which runs across the multiple lots owned by the parties hereto. In the future, should the Bradshaw's sewer line need repairs

> that cannot be accomplished without digging up the sewer line for repair/replacement, the parties agree that the Bradshaws will, at their own expense, run a new sewer line from the west end of their RV at a direct angle to the jointly owned septic tank/field line and make connection to the hook-up at the septic tank. The Stices and Morrises agree that they will not build on or block the route needed to run a new sewer line, if needed by the Bradshaws.

Appellees and the Morrises also purchased appellants' interest in the storage shed.

In September 2005 appellants filed suit against appellees seeking a mandatory injunction, alleging that appellees had violated the terms of the May 2005 agreement. Appellants contended that appellees had placed a mobile home, a privacy fence, an electrical cord, and a pipe across their property which would prevent appellants from running a new sewer line to the septic tank. Appellants asked for an injunction to require appellees to remove these alleged obstacles. In their response, appellees asserted that appellants had placed a metal post on the eastern easement (gravel driveway) at the point where it met Blue Cove Loop, and they asked that appellants be ordered to remove the post and leave the easement unobstructed.

After a hearing, the trial court entered an order on May 23, 2006, ruling in favor of appellees. The trial court found that appellants' complaint was premature because the alleged violations of the agreement were relevant only should it be necessary for appellants to run a new sewer line, which had not yet occurred. The trial court also found that appellants had agreed "as a neighborly accommodation" to move the metal post, and the court ordered appellants to move the metal post "so that it cannot be construed to be obstructing the easement."

On September 25, 2006, appellees instituted the present action for contempt. Appellees alleged that appellants were in violation of the May 2006 order with respect to the easement because appellants had replaced the metal post with a piece of rebar, then metal posts with

reflectors, and presently had placed a cross-tie over the easement, completely blocking access from the easement to Blue Cove Loop. At the hearing, appellants took the position that they had the right to obstruct the easement because it was on their property. Appellants contended that their deed gave them title to the middle of Blue Cove Loop and that the Beckham survey showed that the easement stopped eight feet short of Blue Cove Loop. Appellees acknowledged that appellants' deed gave the title to the middle of Blue Cove Loop, but they maintained that appellants' deed made the conveyance subject to the easement all the way to Blue Cove Loop. After hearing the testimony of appellant Mr. Bradshaw and appellee Mr. Stice, the trial court ruled as follows:

> I'm going to find that the parties entered into - - well, first of all, I remember this case from the first time. And seems to me you folks don't have enough to do; however, in spite of that I'm going to find that the parties did enter into an - - the original agreement - -it's obvious they did. They bought this property as one piece and then they subsequently had some sort of an agreement to split it up. Mr. Bradshaw got lot 1A. I think the Stice's got 1B. And I forget - -is it Morrises got 1C. And its particularly based upon Plaintiff's Exhibit Number 4, the Beckham survey, which shows that the 10 foot easement goes up to what I find is the south side of Blue Cove Loop. And I find that those crossties are placed across that area. And Blue Cove Loop is obviously – and there's nothing that indicates otherwise, is a - - either a county or city road. It's obviously a public thoroughfare.
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> And I'm going to find that the crosstie is an obstruction to the easement. Otherwise, there - - that easement would be an absurdity if you were able to block it off for a foot or two. But I find there's no proof that there is a foot or two that is not part of either the thoroughfare or part of the easement. And that shall be removed, immediately, and nothing else put there to obstruct the use - - to gain ingress or egress from Blue Cove Loop to the 10 foot easement.

The trial court also found that appellants were in contempt of the previous order not to obstruct the easement, and the court sentenced appellants to six months in jail, which was suspended on the

condition that appellants engage in no further contemptuous conduct. Appellants have appealed from the order memorializing the trial court's decision.

As a preliminary matter, appellees assert in their brief that appellants' claim that the easement stopped eight feet short of Blue Cove Loop is barred because appellants failed to appeal from the May 2006 order commanding them not to block the easement. The May 2006 order, however, stated that appellants had "*agreed* as a neighborly accommodation" to remove the stake from the easement. It is settled law that a party cannot agree with an order and then attack it on appeal. *See Lawson v. Madar,* 76 Ark. App. 23, 60 S.W.3d 497 (2001). Therefore, we conclude that appellants could not have successfully brought an appeal from the May 2006 order.

Appellants' argument on appeal is that the survey prepared when the property was divided, which was attached to appellants' deed, shows that the easement on the east side (the driveway) does not go all the way north to the northernmost boundary of their lot. They contend that it begins at what was referred to as the sixteen-foot offset pin and travels south to the storage shed. Appellants thus argue that the easement stops some eight feet short of Blue Cove Loop and that they had the right to place obstacles on that part of the drive which they consider their property. Appellants further contend that the trial court stated no basis for its decision, and that there is no evidence supporting the establishment of either an easement by implication or necessity.

In reviewing matters concerning easements, this court conducts a de novo review and will not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Sluyter v. Hale Fireworks Partnership,* ___ Ark. ___, ___ S.W.3d ___ (Sept. 13, 2007). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.*

We have examined the deed and the survey drawing.[1] The deed unmistakably states that the conveyance is subject to "all existing easements, both public and private, including Blue Cove Loop along the North side and easement along East and West Sides." Although the survey shows appellants' north property line extending to the middle of Blue Cove Loop, the boundaries of both Blue Cove Loop and the easement are clearly marked and those boundaries touch one another. As did the trial court, we see no evidence that the easement stopped short of Blue Cove Loop. We are thus not able to say that the trial court's decision is clearly erroneous.

As their second point, appellants contend that the trial court erred in finding them in contempt of the May 2006 order. We do not reach the merits of this argument because the trial court suspended the sentence imposed for the contempt conditioned upon their future compliance with the order. A suspension of the punishment for contempt is in effect a complete remission. *Cooper Tire & Rubber Co. v. Angell,* 75 Ark. App. 325, 58 S.W.3d 396 (2001). This renders the contempt issue moot. *Id.* We do not decide cases that are moot, render advisory opinions, or answer academic questions. *K.S. v. State,* 343 Ark. 59, 31 S.W.3d 849 (2000).

Affirmed.

GLOVER and BAKER, JJ., agree.

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[1] To the extent that appellants are relying on a survey designated as "Lot # 1," appellees correctly point out that this survey was not admitted into evidence. We have repeatedly and consistently stated that matters outside of the record will not be considered on appeal, and it is the appellant's burden to bring up a record sufficient to demonstrate that the trial court was in error. *McDermott v. Sharp,* ___ Ark. ___, ___ S.W.3d ___ (Nov. 8, 2007).