

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-000211-MR

DARRELL BECKNELL AND  
RHONDA BECKNELL

APPELLANTS

v. APPEAL FROM OWSLEY CIRCUIT COURT  
HONORABLE WILLIAM W. TRUDE, JR., JUDGE  
ACTION NO. 00-CI-00040

OWSLEY COUNTY AND  
OWSLEY COUNTY FISCAL COURT

APPELLEES

OPINION  
AFFIRMING  
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BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Darrell Becknell and Rhonda Becknell ("the Becknells") appeal from a judgment of the Owsley Circuit Court in their action to rescind a motion of the Owsley County Fiscal Court. We affirm.

On April 10, 2000, the Owsley County Fiscal Court ("Fiscal Court") passed a motion asserting that a passageway running across the Becknells' property was a county road. The passageway, which ran through a creek bed, was described by the Fiscal Court as Reynolds Branch Road.

On April 18, 2000, the Becknells filed a complaint in Owsley Circuit Court seeking an order rescinding the motion and declaring the passageway to be a private thoroughfare. They argued therein that the passageway was at all times a private thoroughfare, and that the occasional user did so only with their consent. The matter was tried by deposition, and upon considering the proof the circuit court rendered a judgment finding that the passageway 1) was not a county road, and 2) was a public passageway by virtue of prescription through adverse use. The Becknells' motion to alter or amend was denied, and this appeal followed.

The Becknells now argue that the circuit court erred in finding that the passageway was a public thoroughfare. They maintain that sufficient evidence was adduced upon which the court should have concluded that the passageway was privately owned, and that persons using it did so only with the consent of the Becknells and their predecessors in interest. They go on to argue that the theory of prescriptive easement and/or adverse use is not applicable to the facts at bar because persons using the passageway did so with their consent.<sup>1</sup>

We have closely studied the record and the law, and find no error in the trial court's determination that the passageway is public. While the record contains deposition testimony supportive of each party's position, the dispositive

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<sup>1</sup>Fiscal Court failed to file a brief in this matter. This failure could have been regarded as a confession of error resulting in reversal of the judgment without consideration the merits of the case. CR 76.12(8).

question is whether the trial court's findings are sustainable by the record, i.e., whether they are clearly erroneous. CR 52.01; Alvey v. Union Inv., Inc., Ky. App., 697 S.W.2d 145 (1985).

Having examined the record, we must conclude that evidence exists upon which the court could have reasonably concluded that the passageway in question is public rather than private. As the trial court properly found, the majority of the testimony indicated that the road had been in use by the general public for several decades, and that a store and post office were once located on the passageway. This evidence, taken alone, forms a sufficient basis upon which we may conclude that the circuit court's findings were not clearly erroneous. Nothing more is required.

For the foregoing reasons, we affirm the judgment of the Owsley Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Kensall Robinson  
Booneville, KY

No Brief filed on behalf of  
Appellees