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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000924-MR
AND
NO. 2004-CA-001864-MR

CHARLES H. WESTERFIELD;
GLENDA K. WESTERFIELD;
MONTY MAZE AND JUDY MAZE

APPELLANTS

v. APPEALS FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CI-00324

JOHN ILER

APPELLEE

AND

NO. 2004-CA-000927-MR

JOHN ILER

CROSS-APPELLANT

v. CROSS-APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CI-00324

CHARLES H. WESTERFIELD;
GLENDA K. WESTERFIELD;
MONTY MAZE AND JUDY MAZE

CROSS-APPELLEES

AND

NO. 2004-CA-001901-MR

JOHN ILER

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CI-00324

CHARLES H. WESTERFIELD;
GLENDA K. WESTERFIELD;
MONTY MAZE AND JUDY MAZE

APPELLEES

AND

NO. 2004-CA-001916-MR

CHARLES H. WESTERFIELD;
GLENDA K. WESTERFIELD;
MONTY MAZE AND JUDY MAZE

CROSS-APPELLANTS

v. CROSS-APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CI-00324

JOHN ILER

CROSS-APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND HENRY, JUDGES.

DYCHE, JUDGE: John Iler, Charles and Glenda Westerfield (Westerfields), and Monty and Judy Maze (Mazes) all own adjoining property in Ohio County, Kentucky. This case concerns a disputed access roadway called the Cromwell-Hines Mill Road that traverses the various properties.

John Iler brought suit against the Westerfields and Mazes alleging that they had impermissibly hindered his right to use the roadway. (For the sake of convenience, the appellants will be referred collectively herein as "the Westerfields.") The trial court found that the roadway in question was formerly maintained by Ohio County. The issue of who had rights to the roadway pursuant to KRS 178.116 was tried before a jury. The jury found that the roadway provided necessary access to Iler's property ("Sandefur farm") and judgment was entered in his favor. These appeals follow.

The Westerfields first argue that KRS 178.116 is unconstitutionally vague and ambiguous because it defines "necessary access" as "access to any farm, tract of land, or dwelling. . . ." KRS 178.116(5). This issue was not presented to the trial court and is not properly preserved for appellate review.

Next, the Westerfields argue that they were entitled to a directed verdict because the evidence established that Iler

had other access to his property and therefore the road in question could not be deemed "necessary access."

Appellate review of the denial of a directed verdict is limited to a determination of whether the jury's verdict was flagrantly contrary to the evidence presented at trial.

Stringer v. Wal-Mart Stores, Inc., 151 S.W.3d 781, 787 (Ky. 2004). A reviewing court must take all evidence which favors the prevailing party as true and is not at liberty to determine the credibility and weight of the evidence. Id. Additionally, the prevailing party is entitled to all reasonable inferences that may be drawn from the evidence. Id.

The Westerfields point to evidence that Iler owned other adjoining property and that his mother owned property that allowed him access to the Sandefur farm. Regardless of the veracity of that evidence, it does not bear directly on Iler's right to use the roadway as ingress to the Sandefur farm under the definition of "necessary access" in KRS 178.116. Our review of the record indicates that this evidence is insufficient to overturn a jury verdict on this issue.

Third, the Westerfields argue that the trial court erred by determining the parameters of the roadway to be eighteen feet in width and relying on evidence taken at a post-trial hearing.

The determination of the location and dimensions of a passway are within the discretion of the trial court. Daniel v. Clarkson, 338 S.W.2d 691, 693 (Ky. 1960). Although some evidence was taken at trial, there was no explicit finding made concerning the dimensions of the roadway. Therefore, it was reasonable for the trial court to take evidence at a post-trial hearing. Our review of the record indicates no abuse of discretion.

Next, the Westerfields argue that they were entitled to a jury instruction on adverse possession. We disagree.

The establishment of a claim through adverse possession requires evidence of possession of a disputed property under a claim of right that is hostile to the title owner's interest. Phillips v. Akers, 103 S.W.3d 705, 708 (Ky.App. 2002). Additionally, the claimant must demonstrate that the possession was actual, open and notorious, exclusive, and continuous for a period of fifteen years. Id.

Our review of the record indicates that the trial court properly refused to instruct on adverse possession because there was insufficient proof of exclusive possession of the roadway.

It is next contended that the trial court should have dismissed the suit for Iler's failure to join his ex-wife as an indispensable party. The trial court correctly refused to

dismiss the suit because the sole issue at trial was whether the roadway provided necessary access for Iler himself. The joinder of Iler's ex-wife would have had no bearing on the rights of the parties in this matter.

The Westerfields also argue that the trial court erred by allowing evidence of settlement negotiations. However, the record indicates that the trial court sustained the objections to this evidence and admonished the jury. No further request for relief was made and we find the trial court's admonition properly cured any error in this regard.

It is argued that the trial court erred by allowing Iler's daughter, April Cardwell, a registered nurse, to testify regarding the mental health of her grandmother, who was a witness for the Westerfields. Specifically, they argue that the nurse was not qualified to state an expert opinion on this matter. We find that Cardwell was not offered as an expert and stated a permissible lay opinion regarding the mental health of her grandmother.

Finally, the Westerfields argue that the trial court erred by refusing to allow evidence that one of Iler's tenants who resided in a mobile home on his adjoining property was arrested on methamphetamine charges. We find that this evidence is irrelevant to this case and that the trial court properly refused to admit it.

On cross-appeal, Iler argues that the trial court was without jurisdiction to make findings concerning the dimensions of the roadway because appeals had already been filed to this Court. The appeals that Iler references were not in response to a final judgment, so jurisdiction remained in the trial court. All other issues on cross-appeal are moot based on our findings above.

The judgment of the Ohio Circuit Court is affirmed in all respects.

ALL CONCUR.

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