

RENDERED: NOVEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002350-MR

CHRIST CHURCH, UNITED METHODIST, INC.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
ACTION NO. 02-CI-003195

GENE BROWN TANDY AND
NORMA BAILEY TANDY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Christ Church, United Methodist, Inc. (Christ Church) brings this appeal from an October 18, 2005, order of the Jefferson Circuit Court ordering Christ Church to remove a parking lot constructed over a 60-foot right-of-way easement.

We affirm.

In May 2002, Gene Brown Tandy and Norma Bailey Tandy (the Tandys) filed a complaint in the Jefferson Circuit Court

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

seeking a declaration of rights as to the existence of a 60-foot easement and seeking a permanent injunction enjoining Christ Church from constructing a parking lot over part of said easement. The 60-foot easement at issue was created by a 1957 deed when Christ Church acquired title to its property from Luther M. Goose and Virginia T. Goose. In the deed to Christ Church, the Gooses specifically reserved a right-of-way easement, which benefited the Tandys' property² and was described as follows:

As part of the consideration for this conveyance, the Grantors hereby retain and reserve an easement 60 feet wide, as hereinafter described, for use as a means of ingress and egress to and from Brownsboro Road, or U.S. Highway 42, and for the use and benefit of any portion of their remaining property, and the tract hereinabove conveyed to the Grantee.

Christ Church sought to expand its parking lot onto part of the land encumbered by the right-of-way easement. In October 2002, the circuit court entered an order denying the Tandys' petition for permanent injunction. The court determined that the parking lot expansion would, indeed, encroach upon a portion of the 60-foot easement, but this encroachment was on

² Gene Brown Tandy and Norma Bailey Tandy acquired title to their property by a 1959 deed from Virginia T. Goose. This was part of the remaining property retained by Luther M. Goose and Virginia T. Goose referenced in their deed to Christ Church, United Methodist, Inc., and subject to the easement created therein.

part of the easement not utilized by the Tandys. The court ultimately concluded that Christ Church:

[P]roceed with the parking development, under the caveat that Defendant's usage of a portion of the easement will not destroy Plaintiffs' usage of any portion of the 60 foot easement that becomes necessary in the future. In the event that the Plaintiffs decide to develop their property into parcels, which requires the usage of the full 60 foot easement for ingress and egress to and from the parcels, for instance, the Plaintiffs will be entitled to fully utilize the 60 foot easement, and a portion of Defendant's improvement may be in jeopardy.

Being dissatisfied with the circuit court's order, the Tandys appealed to the Court of Appeals. In Appeal No. 2002-CA-002328-MR, a panel of this Court, by opinion rendered November 7, 2003, reversed and remanded the circuit court's decision.³ Specifically, our Court held:

It is undisputed that the church's expansion of its parking lot would interfere with the Tandy's ability to use the full sixty-foot width of the easement for ingress and egress. Thus, the circuit court erred by requiring the Tandys to show that the parking lot interfered with their actual use of the easement before it would grant them relief. As stated above, the law in Kentucky is that when the language of an easement expressly delineates its dimensions, the owner of the dominant parcel need not show actual use of the full width of the easement in order to enjoin encroachment by the servient landowner onto

³ Christ Church filed a Motion for Discretionary Review of the Court of Appeals' opinion, which was denied by the Kentucky Supreme Court on August 18, 2004.

a yet unused portion of the encumbered land.
(Footnote omitted.)

The judgment is reversed and this case is remanded to Jefferson Circuit Court with directions to issue the permanent injunction sought by the Tandys.

Upon remand, the circuit court, on January 14, 2005, entered a permanent injunction and specifically ordered:

Christ Church, United Methodist Inc. a/k/a Christ Methodist Church, Louisville, Jefferson County, Kentucky, any agents, servants, employees, or contractors acting on behalf of said entity, are hereby restrained and enjoined from commencing any paving or surfacing, or resurfacing, of any portion of that easement or dedicated public roadway adjacent to the existing parking lot of the church property, said easement and dedicated public roadway being 60 feet in width and more particularly described in the Complaint and exhibits attached thereto in this pleading action; the purpose of this Injunction being to prevent immediate and irreparable harm to the property interest of the Plaintiffs, which would occur if commencement of any paving or resurfacing were to be permitted.

Although the permanent injunction enjoined Christ Church from commencing any paving or resurfacing of any portion of the easement, Christ Church initiated and completed the construction for the parking lot expansion during the pendency of the appeal. Thus, a portion of Christ Church's parking lot was encroaching upon the 60-foot easement at the time the permanent injunction was entered. By order entered October 18, 2005, the circuit court specifically required Christ Church to "remove all

modifications to the physical surface of the 60 foot easement” This appeal follows.

Christ Church’s argument on appeal is that the specific language of the permanent injunction enjoined Christ Church from “commencing any paving or surfacing, or resurfacing, of any portion” of the 60-foot easement. Christ Church argues that the permanent injunction did not require it to remove the existing parking lot expansion. The only order compelling it to remove its parking lot expansion was the October 18, 2005, order. Christ Church maintains that this order is properly characterized as an enforcement order of the permanent injunction. Christ Church also maintains that there has never been a properly entered permanent injunction requiring it to remove its parking lot expansion from the physical surface of the 60-foot easement.

We disagree with Christ Church’s assessment of the circuit court’s order of October 18, 2005. This order clearly supplements and enforces the injunction entered pursuant to the directive of this Court in Appeal No. 2002-CA-002328-MR. The circuit court was acting within its jurisdiction and authority in ordering Christ Church to remove all modifications to the physical surface of the 60-foot easement. See Wormald v. Macy, 349 S.W.2d 199 (Ky. 1961).

Christ Church's attempt to relitigate the enforceability of the Tandys' easement through semantical gerrymandering is disingenuous at best. In Wormald, the Court fully addressed the propriety of a circuit court enforcing a permanent injunction in making the following analysis:

We may concede the appellant's propositions that an injunction is to be strictly construed, that it will not be extended to cover acts not fairly and reasonably within its meaning, and that a party should not be punished for contempt for failing to do a certain act if the injunction is reasonably capable of a construction that it does not require the doing of such act. However, in the cases announcing these propositions the question has been whether the injunction extended to certain kinds of acts other than those specifically and unequivocally covered by its terms. In the instant case, by reason of the factual circumstances, the question simply is whether the injunction requires a particular act to be done or is completely meaningless.

The rule of strict construction does not mean that an injunction must be construed literally to the point of absurdity. Compliance with the strict letter of an injunction is not enough if there is a violation of its obvious spirit; injunctions must be honestly and fairly obeyed.

An injunction order is to be construed with reference to the nature of the proceeding and the purpose sought to be achieved as shown by the pleadings and the relief prayed for. It is important to consider the objects for which relief was granted as well as the circumstances attending it.

Id. at 201 (citations omitted).

We adopt the Wormald Court's reasoning in its entirety and note that under the facts of this case, the purpose, spirit, and intent of the circuit court's injunction was violated by the modifications performed by Christ Church. As the circuit court noted, Christ Church constructed the improvements at its own risk, knowing that an appeal of the original ruling was pending. The fact that the improvements were made during the appeal did not change the legal issues or alter the rights of the parties. To the extent Christ Church believes it may be injured or harmed by having to remove the modifications made on the easement, such consequences are self-inflicted. Thus, we conclude that the circuit court's order to remove all modifications to the property subject to the easement was properly entered.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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