

RENDERED: AUGUST 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001586-MR

MARY A. COLEMAN

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 02-CI-01655

LONES ADAMS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; NICKELL, JUDGE; GRAVES, □ SENIOR JUDGE.

COMBS, CHIEF JUDGE: Mary Coleman appeals from the findings of fact, conclusions of law, and judgment entered June 22, 2007, by the Pike Circuit Court. The issue before the trial court concerned the status of real property as a public right of way. After considering the evidence, the court concluded that an eighteen-

foot wide strip of land adjoining Coleman's real property in Shelbinia, Kentucky, was not a dedicated public thoroughfare. We affirm.

On November 20, 2002, Coleman filed a civil action against Adams. In her complaint, Coleman alleged that her property was separated from Adams's property by an eighteen-foot wide, dedicated public way. Coleman alleged that Adams was wrongfully claiming title to the strip of property and was otherwise attempting to limit her use of the land. She sought a declaration that Adams had no authority to block her access to the disputed land. A bench trial followed.

At trial, Coleman contended that the property had been dedicated to public use by the recording of a subdivision plat. She introduced as a trial exhibit a photocopied map of East Shelbinia, a subdivision abutting the Big Sandy River in Pike County. The map shows building lots numbered 1 through 84. Several streets are identified as well, and several narrow strips of land are designated as alleyways. One narrow strip of land is designated as a walkway. Coleman's property, lot 74, adjoins the disputed eighteen-foot strip of land that is identified on the map only by its width.

Photographs of the disputed parcel were also introduced. The photographs show a rocky bank adjoining lot 74 and abutting U.S. Highway 460. The bank continues at a steep grade, and Coleman does not contest the fact that it leads directly to the remainder of Adams's property. Adams contends that Sammie Goff deeded the narrow strip of land to him and that his property abuts Coleman's.

The trial court found that there was insufficient evidence to conclude that the disputed land had been dedicated for public use. Concluding that Adams had shown that he had acquired title of the property through a deed from Sammy Goff dated August 4, 1993, the court entered judgment in his favor. Coleman's motion to alter, amend, or vacate the judgment was denied, and this appeal followed.

On appeal, Coleman contends that the trial court erred by determining that Adams held record title to the disputed parcel of land. She argues that the parcel was plainly identified on the recorded plat and that it was dedicated to the public by virtue of the sale of the lots with reference to the map. She claims that any attempt to deed the property to Adams was to no avail since the putative donor retained no rights in the property.

Adams argues that the evidence supports his claim to the disputed property. In the alternative, he contends that the judgment should be affirmed since any public passway that arguably might have existed in the past had been abandoned long ago. He relies on testimony at trial indicating that the property had never been used by anyone as a passway and that it had never been accepted in any manner by the county road system.

In all actions tried upon the facts without a jury, the findings of fact of the trial court shall not be set aside unless they are clearly erroneous, and due regard shall be given to the opportunity of the trial judge to assess the credibility of the witnesses. Kentucky Rules of Civil Procedure (CR) 52.01. Findings of fact are

not clearly erroneous if they are supported by substantial evidence. *Black Motor Co. v. Greene*, 385 S.W.2d 954 (Ky. 1964). Substantial evidence is evidence which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable people. *Sherfey v. Sherfey*, 74 S.W.3d 777 (Ky.App. 2002). The trial court's conclusions of law remain subject to our full, *de novo* review. *Cinelli v. Ward*, 997 S.W.2d 474 (Ky.App. 1998).

Dedication by plat is a common method of reserving property for public use. *Shurtleff v. City of Pikeville*, 309 Ky. 420, 217 S.W.2d 976 (Ky. 1949). In *Cassell v. Reeves*, 265 S.W.2d 801, 802 (Ky. 1954), Kentucky's highest court observed as follows:

It is a settled principle that when a map or plat of a subdivided tract of land is exhibited or recorded and conveyances are made of the lots by reference thereto, the plat becomes a part of the deeds, and the plan shown thereon is regarded as a unity. And, nothing else appearing, it is held that all the streets, alleys, parks or other open spaces delineated on such map or plat have been dedicated to the use of the purchasers of the lots and those claiming under them as well as of the public. They become appurtenances to the lots. It is presumed that all such places add value to all the lots embraced in the general plan and that the purchasers invest their money upon the faith of this assurance that such open spaces, particularly access ways, are not to be the private property of the seller.

While “[i]t is not necessary that dedication to public use should be in writing or in any particular form,” *the donor's intention to dedicate must be evident from the transaction. Id.* at 802-803. See also *Central Land Co. v. Central City*,

222 Ky. 103, 300 S.W. 362 (Ky. 1927). Where the intention to dedicate a public way appears on the face of the plat, no additional evidence is necessary to prove acceptance of the dedication. See *Shurtleff v. City of Pikeville*, *supra*. However, where the donor's intent is not plainly established by the contents of the plat, the intent may be inferred from the context of the plat and evidence of actual public use for the intended purpose. In *Cassell v. Reeves*, *supra*, the court was confronted with the latter situation.

In *Cassell*, a landowner subdivided lake-front property and sold off lots with reference to a recorded plat. The plat showed several streets serving the area. However, the plat also showed two unnumbered lots along the lake front. These two lots were eventually sold. When the purchaser of one of the lots wanted to build a house on the property, the adjoining property owners resisted, asserting that the original developer had represented that the lot was to be reserved for public access to the lake.

The *Cassell* court acknowledged that dedication by plat is a widely accepted method of proving an intention for the reserved property to be dedicated for public use. However, the court held that merely leaving a blank on the plat without a designation of its purpose does not in and of itself indicate a clear intention to dedicate the space to public use. The Court observed that other circumstances and conditions might demonstrate such an intention. It concluded that leaving an unmarked space or strip between a street shown on the plat and a navigable river, coupled with proof of actual public use of that space, was

sufficient evidence to prove the intent of the developer to dedicate the property for public use.

In the case before us, we note that the map does not expressly reserve the disputed strip of land for any purpose. The map clearly designates several thoroughfares and alleyways. It even identifies a walking path between two of the building lots. On the other hand, the disputed strip is identified on the map only by its dimension – namely, its width. No use is designated or readily apparent from the geographical or topographical context. No road, alleyway, pathway, or other thoroughfare was ever built in this space, and the public never made use of the narrow strip of land to access the hilltop.

In light of this evidence, we cannot say that the trial court’s findings of fact are clearly erroneous. The court concluded that the evidence of the unmarked strip of land as depicted on the plat was insufficient to show an intention by the landowner to dedicate the space for public use. We cannot find clear error in that determination.

Therefore, we affirm the judgment of the Pike Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

Lawrence R. Webster
Pikeville, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Stephen W. Owens
Pikeville, Kentucky