

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001668-MR

SANDRA GOODWYN AND
FRANCIS E. GOODWYN

APPELLANTS

v.

APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RUSSELL D. ALRED, JUDGE
ACTION NO. 07-CI-00963

MEI-WAH CHENG

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND DIXON, JUDGES; GRAVES,¹ SENIOR JUDGE.

ACREE, JUDGE: Sandra and Francis Goodwyn, *pro se*, appeal from a declaratory judgment of the Harlan Circuit Court finding in favor of Mei-Wah Cheng in a dispute regarding the effect of an easement between adjoining property owners.

Having carefully considered the issues and applicable law, we affirm.

¹ Senior Judge J. William Graves 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.

The adjoining properties in question were once part of a larger parcel of property in downtown Harlan. At some point in time, a home with a separate, two-story garage building and a brick office building, known as the Gunn Building, were built on the property. When the larger parcel was subdivided, the house and driveway were included with the first parcel, while the garage and Gunn Building were included with the second parcel. The first parcel was sold to the Howards in 1989, subject to an easement allowing access from Mound Street, which ran behind the two properties, across their driveway to the adjoining property owner's garage. The Goodwyns purchased the property containing the Gunn Building and the garage in 1993. Francis used the upper portion of the garage as his law office.

Both the Howards and their successors, the Brysons, wished to use the bottom portion of the garage for storage. Consequently, an agreement was reached whereby the Howards paid rent for two spaces in the parking lot owned by Harlan United Methodist Church, which was in front of the Goodwyns' property. The Howards obtained the use of part of the garage for storage, and the Goodwyns used the parking spaces to access their property without crossing the Howards' driveway. When the Brysons purchased the Howards' home in 1995, they continued the practice of renting parking spaces for the Goodwyns in exchange for partial use of the garage. During the time they lived there, the Brysons also parked

two vehicles side-by-side in the driveway, preventing the Goodwyns from using the driveway to access the garage.

In 2004, the Brysons sold their home to Cheng, who did not pay rent for the parking spaces or make use of the Goodwyns' garage for storage. Cheng placed a fence along the Mound Street portion of her property with a gate which opened to allow her to pull into her driveway. The Goodwyns, apparently unaware that rent was no longer being paid to the church, continued to park in its lot for the next three years. Until the church notified them that they needed to begin paying rent by December 2007, the Goodwyns never attempted to use the driveway easement to access the garage. The Goodwyns filed an action seeking a declaratory judgment enforcing their easement across Cheng's driveway.

After a bench trial and a viewing of the property attended by the parties, the court below found in favor of Cheng. The trial court's decision was based on the language of reservation contained in the deeds conveying title of the first parcel to the Howards, and subsequently to the Brysons, and then to Cheng. The easement granted the Goodwyns the right to

a permanent ingress and egress from Mound Street to Carport/Office Structure across the concrete driveway, said right of ingress and egress not to interfere with the grantees [sic] use of said driveway. (See Map.)

The trial court found that the Goodwyns' right of ingress and egress could not interfere with Cheng's use of the driveway. Specifically, the court stated that "anytime [Cheng] is using the driveway for whatever purpose, the right of ingress

and egress of the [Goodwyns] shall be subservient to that use.” (Trial court’s order, dated August 8, 2008). The interpretation of a deed is an issue of law; therefore, our review of this matter is *de novo*. *Florman v. MEBCO Ltd. Partnership*, 207 S.W.3d 593, 600 (Ky.App. 2006).

The Goodwyns argue that the trial court improperly abridged their right to use Cheng’s driveway to access the garage. Their complaint claimed that Cheng, in a telephone conversation, refused to either pay rent for the parking spaces in the church’s lot or to allow them to use her driveway. They further stated a willingness to purchase the half of the driveway adjoining the Gunn Building from Cheng.

Cheng argued that it would be impossible for her to use and enjoy her property if the Goodwyns were allowed to continuously cross her driveway since her own vehicle takes up most of the space in the driveway. Further, she asserted that the chain link fence along the Mound Street portion of her property was necessary for the safety of her children. However, Cheng noted the gate across her driveway is never locked. Also, she offered to temporarily move her vehicle on request from the Goodwyns in order to allow them to enter or exit across her driveway. With these considerations in mind, she asked the trial court to extinguish or limit the Goodwyns’ easement.

On appeal, the Goodwyns rely primarily on the case of *Commonwealth, Dept. of Fish and Wildlife Resources v. Garner*, 896 S.W.2d 10 (Ky. 1995). In that case, the appellee, Garner, had an easement to cross lands

owned by the Department in order to reach a small, private cemetery where his relatives were buried. In order to protect the woods from trespassers and vandals, the Department installed locked gates on several access roads. The gates were only locked during half of the year, and the Department was prepared to provide keys to Garner. Nevertheless, Garner knocked down the gates and sought to enjoin their replacement. We affirmed the trial court's decision granting the injunction. The Kentucky Supreme Court reversed the Court of Appeals, stating that landowners and owners of easements "must be reasonable in their actions and cannot unreasonably intrude on the rights of the other." *Id.* at 14. Under the circumstances, the Court found that it was reasonable for the Department to place locked gates across the access roads, provided that family members of those who were buried in the cemetery were given keys and had unrestricted access to the gravesites.

The Goodwyns contend that the trial court's decision in the case before us constitutes an unreasonable intrusion on their rights, such as was prohibited by *Garner*. This argument ignores the basis of the trial court's decision – the plain language of the deed itself. In its order, the trial court acknowledged that

a better drafted right of way agreement would resolve the issues in this matter clearly in favor of the [Goodwyns]. The fact, however, is that the [Goodwyns] have what they reserved in the chain of title. What they have reserved in the chain of title is a right of ingress and egress that can never interfere with [Cheng's] use of the driveway.

(Trial court's order, dated August 8, 2008). The Kentucky Supreme Court has long recognized "the basic principle followed in the construction of deeds, which is to determine the intention of the grantor as gathered from the four corners of the instrument." *Townsend v. Cable*, 378 S.W.2d 806, 808 (Ky. 1964). The deeds to the Howards, the Brysons, and Cheng plainly state that the right of ingress and egress reserved for the owners of the garage and the Gunn Building cannot interfere with the homeowner's use of the driveway. Thus, the trial court correctly found that the easement reserved for the Goodwyns' benefit did not give them a continuous right to access their property by crossing Cheng's driveway.

We believe the trial court correctly interpreted the subject deed and easement consistently with Kentucky law.

For the foregoing reasons, the judgment of the Harlan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Sandra Goodwyn, *Pro se*
Francis E. Goodwyn, *Pro se*
Harlan, Kentucky

BRIEF FOR APPELLEE:

Karen S. Davenport
Harlan, Kentucky