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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000201-MR

RANDY GLEN CAMPBELL;
ROSE CAMPBELL; GLEN
CAMPBELL; BOBBY J. CAMPBELL;
PAMELA G. HUFFMAN; WILLIAM
WAYNE HUFFMAN; MELISA RICE;
AND RICKEY RICE APPELLANTS

APPEAL FROM GRANT CIRCUIT COURT
v. HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 07-CI-00469

BARRY L. BINGHAM; AND
THE ESTATE OF LINDA
HERALD TURNER APPELLEES

AND NO. 2009-CA-000399-MR

BARRY L. BINGHAM CROSS-APPELLANT

APPEAL FROM GRANT CIRCUIT COURT
v. HONORABLE STEPHEN L. BATES, JUDGE

RANDY GLEN CAMPBELL;
ROSE CAMPBELL; GLEN
CAMPBELL; BOBBY J. CAMPBELL;
PAMELA G. HUFFMAN; WILLIAM
WAYNE HUFFMAN; MELISA RICE;
AND RICKEY RICE; AND THE ESTATE
OF LINDA HERALD TURNER CROSS-APPELLEES

OPINION
AFFIRMING IN PART
AND VACATING IN PART

** ** ** ** **

BEFORE: ACREE, VANMETER, AND WINE, JUDGES.

VANMETER, JUDGE: Randy Glen Campbell, et al.[1] (hereinafter collectively referred to as the Campbells, Huffmans and Rices) appeal from an order of the Grant Circuit Court that awarded Freedis and America Sebastian an easement to run with the land across four tracts of property owned by the Campbells, Huffmans and Rices. Barry Bingham cross-appeals. For the following reasons, we affirm in part and vacate in part.

This appeal arises from an action filed by the Sebastians claiming damages from interference with an easement over a gravel road that connects their property to Kentucky State Route 491 and runs across property owned by the Campbells, Huffmans and Rices. All of the property at issue was once part of a

[1] Randy Glen Campbell, Rose Campbell, Glen Campbell, Bobby J. Campbell, Pamela G. Huffman, William Wayne Huffman, Melisa Rice, and Rickey Rice.

93.8-acre tract owned by Enoch and Linda Turner. In 1973, the Turners hired a surveyor to create a plat of their property, and afterwards subdivided their property into eight tracts in accordance with the plat. The only access to Kentucky State Route 491 for these eight tracts is via a gravel road across an adjoining property referred to in this action as "the Joe Reed farm." Once the gravel road entered the Turner's property, it passed through tracts 1, 2, 7, and 8. The gravel road then went into tract 6, the parcel eventually purchased by the Sebastians, and provided ingress and egress thereto.

The Campbells, Huffmans and Rices now reside on seven of the eight tracts. America and Freedis Sebastian owned tract 6 at the time of this action, and although they never resided there, they often rented the property and allowed their children to reside there. From 1973 until 2006, the Sebastians claim they never experienced difficulty using the gravel road, nor knew of any difficulty their renters experienced. The Campbells, Huffmans and Rices claim during this period any use of the gravel road was at the request of the residents of tract 6 and with their permission. At some point in 2006, the Campbells, Huffmans, and Rices began obstructing use of the road for ingress and egress to tract 6 by standing in the road to block traffic, placing metal stakes in the road, and eventually sending the Sebastians a letter advising them they could no longer use the road. As a result, the Sebastians filed suit seeking an award of an easement and damages for interference with such easement.

The trial court denied the Sebastians' claims of an express or prescriptive easement, but held the Sebastians had an easement by implication, by both way of necessity and quasi-easement. Additionally, the trial court denied the Campbells', Huffmans' and Rices' claim for payment of past upkeep, as well as payment for the easement. The court also imposed a limitation of one residence per tract for each of the eight tracts. Finally, the court held the owners of tracts 1 through 8 responsible for one-eighth of the cost of the upkeep of the gravel road easement to be paid by each owner directly to an independent party. This appeal and cross-appeal followed.[2]

I. Issues Raised on Appeal

First, the Campbells, Rices, and Huffmans argue the trial court erred by finding the Sebastians had a quasi-easement over the gravel road arising by implication under the law. We disagree.

A trial court's findings of fact are reviewed under a clearly erroneous standard. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005) (citations omitted). Such findings are not clearly erroneous if supported by substantial evidence. *Id*. (citations omitted). Substantial evidence is evidence that "has sufficient probative value to induce conviction in the mind of a reasonable person." *Id*. (citations omitted). The trial court's conclusions of law are reviewed de novo. *Id*. (citations omitted).

[2] Following entry of the court's order, the Sebastians sold tract 6 to Barry Bingham by deed dated February 20, 2009. Thereafter, the trial court granted Bingham's motion to intervene as the true party in interest, denied the Campbells', Huffmans' and Rices' motion to set aside the judgment, and substituted Bingham as the appellee/cross-appellant.

This court has previously discussed in length the creation of easements, stating:

> Generally, an easement may be created by express written grant, implication, prescription or estoppel. Easement by implication includes two legal theories: (1) quasi-easement and (2) easement or way by necessity. A quasi-easement arises from a prior existing use of land[.]
>
> A quasi-easement is based on the rule that 'where the owner of an entire tract of land or of two or more adjoining parcels employs one part so that another derives from it a benefit of continuous, permanent and apparent nature, and reasonably necessary to the enjoyment of the quasi-dominant portion, then upon a severance of the ownership a grant or reservation of the right to continue such use arises by implication of law.' Generally, in order to prove a quasi-easement by implication of law, a party must show: (1) that there was a separation of title from common ownership; (2) that before the separation occurred the use which gave rise to the easement was so long continued, obvious, and manifest that it must have been intended to be permanent; and, (3) that the use of the claimed easement was highly convenient and beneficial to the land conveyed.
>
> Factors relevant to establishing a quasi-easement include: '(1) whether the claimant is the grantor or the grantee of the dominant tract; (2) the extent of necessity of the easement to the claimant; (3) whether reciprocal benefits accrue to both the grantor and grantee; (4) the manner in which the land was used prior to conveyance; and (5) whether the prior use was or might have been known to the parties to the present litigation.' The courts imply an easement more readily in favor of a grantee than a grantor because a grantor has the ability to control the language in the deed to express the intentions of the parties. Whether the prior use was known, involves not absolute direct knowledge, but 'susceptibility of ascertainment on careful inspection by persons ordinarily conversant with the subject.' Also, the use must be 'reasonably necessary' meaning more than merely

convenient to the dominant owner, but less than a total inability to enjoy the property absent the use."

Carroll v. Meredith, 59 S.W.3d 484, 489-90 (Ky.App. 2001) (citations omitted).

In this case, the Sebastians demonstrated that the entire 93.8-acre tract was owned by the Turners from 1958 until at least 1973 when the property was surveyed and subdivided into eight tracts. But for the gravel road across which the Sebastians claimed an easement, the entire 93.8 acres as a whole would have been landlocked without access to Kentucky State Route 491. Evidence was presented that the Turners used the benefit of the gravel road prior to conveying tract 6 to the Sebastians. *See Hall v. Coffey*, 715 S.W.2d 249, 250 (Ky.App. 1986) ("[a]s a general rule, a landowner who conveys part of his estate 'impliedly grants all those apparent or visible easements upon the part retained which were at the time used by the grantor for the benefit of the part conveyed, and which are reasonably necessary for the use of that part.'" (citation omitted)). Thus, sufficient evidence exists to support the trial court's finding that the Sebastians held a quasi-easement that runs with the land over the gravel road for ingress and egress.[3]

Second, the Campbells, Huffmans and Rices argue the trial court erred by finding an easement existed over the gravel road because they lacked notice of such an easement. We disagree.

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[3] We decline to review the trial court's finding that the Sebastians held an easement by way of necessity. Since the Sebastians no longer own the property, and Bingham owns property adjoining tract 6 by which he has access to a road, the Campbells, Huffmans and Rices argue the necessity ceases to exist. However, the issue of a way of necessity as it relates to Bingham's ownership of tract 6 was not before the trial court, and therefore we are precluded from addressing the issue. *See Abuzant v. Shelter Ins. Co.*, 977 S.W.2d 259, 262 (Ky.App. 1998) (Appellate courts are precluded from addressing issues upon which the trial court did not rule).

The Campbells, Huffmans and Rices fail to direct us to any authority requiring the burdened property of an appurtenant easement to be put on notice of the dominant property's right to an easement. Furthermore, the record reflects that all parties were aware of the existence of the gravel road by way of the plat attached to each deed depicting the gravel road, and the Sebastians' use of the gravel road for ingress and egress to their property. Accordingly, we find this argument to be without merit.

Third, the Campbells, Huffmans and Rices argue if such an easement exists, Bingham does not have a right to use it because the Sebastians failed to contribute to prior upkeep of the gravel road easement. We disagree.

Again, the Campbells, Huffmans and Rices do not cite any authority supporting the notion that the property owner of an otherwise dominant estate holding a quasi-easement relinquishes ownership of an easement for failure to contribute to its upkeep. Additionally, the Sebastians offered evidence of their participation in a road fund, payment for new gravel, and assistance in spreading gravel on the road for the benefit of the easement. Accordingly, the trial court did not err by finding the Sebastians held an easement over the gravel road.

Fourth, the Campbells, Huffmans and Rices argue the Sebastians' failure to join the owners of the Joe Reed farm was in error. We disagree.

The Campbells, Huffmans and Rices provide no evidence that the owners of the Joe Reed farm contested the Sebastians' use of the portion of the gravel road over their property. Therefore, the only issue before the trial court was

the Sebastians' claim to an easement across property owned by the Campbells, Huffmans, and Rices. We find no merit to this argument.

Fifth, the Campbells, Huffmans and Rices argue the trial court's findings are in error because the burden of the easement on their property is enlarged. We disagree.

The Campbells, Huffmans and Rices argue the trial court's findings potentially enlarge the burden on their property because now that Bingham owns tract 6 and also owns adjoining property he could subdivide tract 6, which would increase the ingress and egress via the easement. However, the issue of Bingham potentially subdividing his property was not presented before the trial court, and therefore, we cannot address that argument here. *See Abuzant*, 988 S.W.2d at 262. (holding that appellate courts are precluded from addressing issues upon which the trial court did not rule).

Sixth, the Campbells, Huffmans and Rices argue if an easement across their property exists, the trial court erred by not awarding them monetary damages for the value of the easement. We disagree.

The trial court held any claim of payment for the easement would be offset by the Sebastians claim of damages for interference with the easement and enjoyment of their property. To support a claim of interference, the Sebastians presented evidence that the Campbells, Huffmans and Rices prevented access to tract 6 by standing across the gravel road to block traffic and by placing large stakes in the road to prevent ingress and egress. Thus, evidence supporting a claim

of interference was presented to the trial court. Accordingly, the trial court's finding that the Campbells, Huffmans and Rices were not entitled to damages was not in error.

Finally, the Campbells, Huffmans and Rices argue the trial court erred by failing ensure an equitable allocation of the cost of upkeep for the easement. We disagree.

The trial court ordered each tract owner responsible for one-eighth of the future cost of the upkeep of the gravel road. We find it reasonable that an independent party could separately bill each tract owner for an equal proportion of the cost for upkeep of the gravel road. Accordingly, the trial court did not err by establishing this payment plan for maintenance of the easement.

II. Issues Raised on Cross-Appeal

Bingham argues the trial court erred by not finding the easement was created by either express grant or prescription. We disagree.

An express easement is created by a written grant in accordance with the formalities of a deed. *Loid v. Kell*, 844 S.W.2d 428, 429-30 (Ky.App. 1992) (citations omitted). In this case, the deed from the Turners to the Sebastians did not specifically designate the right to use the gravel road. The deed did reference the plat, which depicted the gravel road; however, the evidence was insufficient to demonstrate an express grant of an easement.

The theory behind prescriptive easements derives from the same principles underlying adverse possession of property. *Cole v. Gilvin*, 59 S.W.3d

468, 475 (Ky.App. 2001). Generally, "to obtain a right to a prescriptive easement, a claimant's adverse use must be 'actual, open, notorious, forcible, exclusive, and hostile, and must continue in full force . . . for at least fifteen years.'" *Id.* (citation omitted).

In this case, the Campbells, Huffmans and Rices, as well as the Turners, acquiesced in the Sebastians' use of the gravel road from 1973 until 2006. Accordingly, since the Sebastians' use of the gravel road was not hostile during that period, the trial court did not err by finding the Sebastians did not acquire a prescriptive easement.

III. Issue Raised by Both Parties

Both parties allege the trial court erred by limiting tracts 1 through 8 to one residence per tract. We agree.

It appears from the record that both parties oppose the court's limitation on the number of residences per tract and that this issue was not actively litigated. The limitation was imposed by the court *sua sponte* and appears to be an unnecessary restriction at this time. Accordingly, we find the trial court erred by restricting one residence per tract, and thus this portion of the court's order is vacated.

The order of the Grant Circuit Court is affirmed in part and vacated in part.

ALL CONCUR.

BRIEFS FOR APPELLANTS/
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