

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001169-MR

DONNA K. GRIFFIN

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NOS. 90-CI-00097 & 91-CI-00061 & 99-CI-00132

UNION COUNTY, KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Donna K. Griffin appeals from a Union Circuit Court order granting summary judgment to Union County, Kentucky.¹ We affirm.

¹ The body of the notice of appeal designates the appellees as “Union County, et al.” The caption of the notice lists numerous defendants, three of whom (George L. Drury, Sam McLeod and James D. Veatch) were dismissed by order of the circuit court entered on October 22, 2001. There is no evidence that any of the parties listed in the caption, except for Union County, were served with the notice of appeal as required under Kentucky Rules of Civil Procedure (CR) 73.03. Under these circumstances, we have treated Union County as the sole appellee.

In 1981, Griffin purchased a farm at auction which included a cemetery and an access road connecting the cemetery to the main road. Several years passed before Griffin, who did not reside on the property, became aware that burials were still being performed at the cemetery. She filed an action in Union Circuit Court in 1990, alleging that the access road leading to the cemetery was a private passway. The defendants included the individuals from whom she purchased the property, the Crooks, the Traverses and the Stewards, and the Union County Fiscal Court. A separate action was filed in 1991 by the relatives of the late Ethel Steward, alleging that Griffin had attempted to interfere with the use of the cemetery. Both sides moved for summary judgment.

On November 11, 1991, the circuit court entered judgment in favor of the Crooks, the Traverses and the Stewards, and the Union County Fiscal Court. The court found that the access road to the cemetery had been listed as a county road for some time and had been maintained by the county for many years. The court concluded that the roadway was necessary for ingress and egress to the gravesites and that the fiscal court had the right to continue to maintain the roadway. The action against Griffin proceeded to trial and a verdict in the amount of \$6,000 for mental and emotional pain and suffering was entered in favor of the heirs of Ethel Steward against Griffin for outrageous conduct.

An appeal and cross-appeal followed. The Court of Appeals initially reversed the circuit court judgment but, upon a petition for rehearing, rendered an

opinion on July 15, 1994, affirming the judgment.² *See Crook v. Griffin*, (Ky.App. 1994) (1991-CA-002899-MR & 1991-CA-002929-MR).

Griffin then filed an action in federal district court, contending that she had been deprived of her lawful right to her property, but admitting that the ultimate issue concerning property ownership had been litigated in state court. The action was dismissed for lack of jurisdiction in February 1998.

On July 14, 1999, Griffin filed a *pro se* complaint to quiet title in the Union Circuit Court. The complaint alleged that the sole defendant, the Commonwealth of Kentucky, had caused a private road to be used as a county public road without due process of law. Griffin requested injunctive relief, a decree confirming her fee simple interest, and compensatory and punitive damages.

The Commonwealth moved to dismiss the complaint for failure to state a claim or, in the alternative, for a more definite statement. Griffin then filed a pleading styled “amended complaint to quiet title, civil action for preliminary injunction, permanent injunction, declaratory judgment and civil action for compensatory and punitive damages.” She also named several additional defendants, including Union County and Judge Wathen, who presided over the earlier actions.

² According to the appellee, Griffin subsequently conveyed the subject property to Dennis Cheatham on November 21, 1995. A copy of the deed of conveyance is attached to the appellee’s brief but no citation to the record on appeal is provided. The appellee does not argue that the conveyance divested Griffin of standing in this matter; accordingly, we will not address the implications of the deed.

On October 25, 1999, the Commonwealth renewed its motion to dismiss for failure to state a claim upon which relief could be granted. A special judge was appointed on November 18, 1999. On March 22, 2000, the circuit court entered an order dismissing Judge Wathen and the Commonwealth as defendants. The defendants filed an amended answer to the amended complaint, and a motion for summary judgment, raising the defenses of sovereign immunity and *res judicata*. An attorney then entered his appearance on behalf of Griffin and, on October 2, 2000, the trial court granted his motion for a stay and leave to file an amended complaint.

On December 5, 2000, Griffin filed a motion arguing that the more expedient and appropriate way to address the matters at issue would be for the court to stay the pending motion for summary judgment and allow her to seek a declaratory judgment regarding the status of the access road. The circuit court granted the motion but more than a year passed without any action on Griffin's part. Union County filed a motion to dismiss for failure to prosecute. Griffin then filed an amended complaint on December 22, 2003, requesting that the access road be removed from the county road inventory and seeking damages from the defendants, including those who had already been dismissed from the action. She also requested that the November 11, 1991 judgment, which had been affirmed on appeal, be vacated. The defendants moved to dismiss the complaint. No action was taken during 2004. On June 1, 2005, the circuit court entered an order dismissing the action for failure to prosecute. On appeal, this Court vacated the

order and remanded the matter to the circuit court. *See Griffin v. Commonwealth*, 2008 WL 399314 (Ky.App. 2008) (2006-CA-001402-MR).

On April 3, 2008, Griffin filed a motion seeking to file a second amended complaint and successfully moved the court to consolidate the present case with the 1990 and 1991 cases. Union County filed a motion for summary judgment on September 14, 2009. The circuit court granted the motion on May 19, 2010, on the grounds that the 1994 Court of Appeals' opinion decided the rights of the parties and that Union County was entitled to all rights afforded a county road with regard to the access road. This appeal followed.

Griffin argues that the 1994 Court of Appeals' opinion failed to adjudicate the status of the cemetery access road. She contends that it is clear that the ownership of the access road was reserved to Griffin, with use of the road restricted only to those defendants with a familial connection to the cemetery, when the opinion is read in conjunction with the circuit court judgment which it affirmed.

At no point in the circuit court judgment or the Court of Appeals' opinion is the road described as a "private" road belonging to Griffin. The opinion states, in pertinent part, as follows:

Griffin alleged in her complaint that the County had infringed upon her right to restrict access to a private road located on her property. Griffin claimed that the access road was a private road since the County had not complied with the statutory procedure for accepting or acquiring a roadway. While we agree that technically the road is not a county road as having been officially

brought into the county system, nevertheless it undoubtedly enjoys the status of a “public” road. *See Sarver v. County of Allen, Ky.*, 582 S.W.2d 40 (1979). We fail to see any difference the “county” or “public” road distinction makes in this case. We therefore affirm the circuit court on this issue.

The opinion further describes the circuit court judgment as having “allowed the Union County Fiscal Court to maintain an access road to the cemetery as a public road[.]” It then quoted the following findings of fact from the circuit court judgment:

The roadway leading to the cemetery has been listed as a County road for some time, and there was testimony at the Injunction Hearing that it had been maintained by the County for many years. It was admitted by the plaintiff [Griffin] for the purpose of settlement that the Union Fiscal Court should have the right to maintain a passageway 20-foot wide to the cemetery; and the Court rules that it is necessary for ingress and egress to the gravesites.

Griffin nonetheless describes these statements as “cryptic” and argues that they conflict with the following directive of the circuit court:

said parties [the defendants and those in a family relationship] and/or the Fiscal Court shall further have the right to maintain a 20 foot wide roadway which now exists for ingress and egress to the graves; and also other parties are currently enjoined from having any access to the property or from having any right to have any future burials without the express permission of the Plaintiff[.]

Griffin contends that when these passages are read together, the meaning is clear that the ownership of the access road was reserved to Griffin with a right of ingress and egress limited to a certain number of people with familial ties

to the cemetery. She argues that the road does not belong to the county and is not a public road.

“A judgment must be construed as a whole, so as to effectuate the intent and purpose of the court.” *Farmer v. Cassinelli*, 303 S.W.2d 555, 557 (Ky. 1957). We see no contradiction in the ruling that the disputed road is a public road which may be used to access the cemetery, which is open to those individuals with a familial relationship to those interred there.

Furthermore, a request to clarify any purported ambiguities in the opinion of the Court of Appeals should have been made at the time the opinion was rendered, not in a complaint filed five years later. “The law of the case doctrine is ‘an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been.’” *Brooks v. Lexington–Fayette Urban County Housing Authority*, 244 S.W.3d 747, 751 (Ky.App. 2007) (quoting *Union Light, Heat & Power Co. v. Blackwell’s Adm’r*, 291 S.W.2d 539, 542 (Ky. 1956)). Griffin argues that her claims are not barred by the operation of the “law of the case” doctrine because the Court of Appeals’ opinion did not actually adjudicate the status of the access road. Although the opinion did explicitly adjudicate the status of the road, her claim would be barred even if it had not because the law of the case doctrine encompasses issues which could have been raised in the earlier appeal:

[A]n extension of the core law-of-the-case doctrine is the rule that precludes an appellate court from reviewing not just prior appellate rulings, but decisions of the trial court which could have been but were not challenged in a prior appeal. . . .

[T]he extension hinges not on a previous appellate decision on the barred issue establishing the law of the case, but instead on the party's inaction in failing to raise the issue in a manner consistent with the court's general policy against piecemeal appeals. *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735 (D.C. Cir. 1995).

Brown v. Commonwealth, 313 S.W.3d 577, 610-611 (Ky. 2010).

Next, Griffin argues that the road is neither a county nor a public road because the requirements set forth in Kentucky Revised Statutes (KRS) 178.425 for establishing such a road were not met. This argument was expressly raised and resolved on appeal. It has become the law of the case and may not be raised again.

Finally, Griffin argues that the circuit court erred in refusing to allow the filing of her second amended complaint. Permission to amend a complaint “shall be freely given when justice so requires.” CR 15.01. “Although amendments should be freely allowed, the trial court has wide discretion and may consider such factors as the failure to cure deficiencies by amendment or the futility of the amendment itself.” *First Nat. Bank of Cincinnati v. Hartman*, 747 S.W.2d 614, 616 (Ky.App. 1988). The second amended complaint contains claims that the 1991 judgment cannot be given prospective application because the access road is not a public road and that from 1990 to 1994 Griffin’s constitutional rights were violated by several Union County officials. The complaint requests punitive

damages against these officials not to exceed \$500,000. These claims either have been litigated or could have been litigated in the earlier proceedings; they are therefore barred by the operation of the doctrine of the law of the case.

The complaint also requests that the original 1991 judgment be vacated pursuant to CR 60.02. Under the terms of that rule, relief from a judgment is available as follows:

- (a) mistake, inadvertence, surprise or excusable neglect;
- (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02;
- (c) perjury or falsified evidence;
- (d) fraud affecting the proceedings, other than perjury or falsified evidence;
- (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) any other reason of an extraordinary nature justifying relief.

The rule further specifies that the motion “shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken.”

Griffin attempted to file her second amended complaint on April 3, 2008, over sixteen years after the entry of the court’s final judgment on November 11, 1991. Thus, any claims pursuant to sections (a), (b), or (c) are barred by the terms of CR 60.02. As to any claims encompassed by the remaining sections of the rule, sixteen years cannot be deemed a reasonable time to wait before bringing the claims to the court’s attention, particularly as the grounds for the claims were known to Griffin at the time of the entry of the final judgment. In light of the

futility of the claims, the trial court did not abuse its discretion in refusing to permit the filing of the amended complaint.

The summary judgment of the Union Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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