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Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001442-MR

BOBBY L. WILSON, SR.

APPELLANT

APPEAL FROM CASEY CIRCUIT COURT
v. HONORABLE SHEILA ISAACS, SPECIAL JUDGE, JUDGE
ACTION NO. 08-CI-00075

BILLY G. DOUGLAS

APPELLEE

AND

NO. 2010-CA-001443-MR

WILLIAM R. JULIAN, MILDRED L.
JULIAN, THOMAS R. JULIAN, REBECCA
G. JULIAN, JOSEPH L. JULIAN AND
VEOLA DALE JULIAN

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OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

VANMETER, JUDGE: These appeals are taken from a judgment which granted a directed verdict to Billy G. Douglas in a dispute with neighboring landowners over the status of a road. We affirm.

In the early 1970s, Bobby L. Wilson acquired two tracts of land in Casey and Boyle counties. The tracts are connected by an unpaved road, known as the North Sand Knob Road.

In 1987, Billy G. Douglas bought a tract of land in Casey County that adjoins Wilson's property. Douglas installed a gate at the entrance to the North Sand Knob Road, which is also the entrance to the driveway to Douglas's residence.

In 1998, the Julian family, consisting of two brothers, their spouses and their father, bought land adjoining the Wilson and Douglas properties along the North Sand Knob Road. After the Julians acquired the property, Douglas allowed a mechanism to be installed that enabled the Julians to use the gate.

In 2008, Douglas filed a complaint against Wilson and the Julian family seeking to forever bar and enjoin the defendants from using the North Sand Knob Road.¹ The defendants responded that the road was a county or public road, and

¹ Two other defendants, William and Ruth Fuller, were dismissed as parties to these appeals because they voluntarily relinquished any interest in the road to Douglas.

that it could not be discontinued because it provided necessary access to their properties. In the alternative, they argued that they had acquired a prescriptive easement for the use of the road.

During the course of the trial, the court granted a directed verdict for Douglas on Wilson's claim for a prescriptive easement.² At the close of the trial, the court granted a directed verdict to Douglas on all claims upon determining that since the county had not maintained the road within three years and no public need or private necessity was served by the road, by law the road was discontinued under KRS³ 178.116 and reverts back to the owners. The trial court permanently enjoined Wilson and the Julians from using or accessing the North Sand Knob Road.

On a motion for directed verdict, the trial judge must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion. When engaging in appellate review of a ruling on a motion for directed verdict, the reviewing court must ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party. Once the issue is squarely presented to the trial judge, who heard and considered the evidence, a reviewing court cannot substitute its judgment for that of the trial judge unless the trial judge is clearly erroneous.

Bierman v. Klapheke, 967 S.W.2d 16, 18 (Ky. 1998).

In granting a directed verdict to Douglas, the trial court considered the effect of KRS 178.116, which provides that a county road will be deemed discontinued

² The Julians withdrew their claim for a prescriptive easement.

³ Kentucky Revised Statutes.

and revert back to the owners of the land to which it originally belonged unless at least one of the following three conditions exist: (a) a public need is served by the road; (b) the road provides a necessary access for a private person; or (c) the road has been maintained and policed by the county or state within a three year period. KRS 178.116(1). The trial court ruled that no evidence had been presented by the defendants that the North Sand Knob Road serves a public need, provides necessary access for a private person, or has been maintained or policed by the county or state in the last three years. The trial court concluded that even if the road had been a county road at one time, it was discontinued by operation of the statute. These appeals followed.

The appellees argue that the trial court erred in not allowing the jury to determine whether the road provided “necessary access” to the Wilson and Julian tracts. The issue is one of statutory interpretation, a matter of law. *Wheeler & Clevenger Oil Co., Inc. v. Washburn*, 127 S.W.3d 609, 612 (Ky. 2004). The interpretation of a statute is a question of law, and is not appropriate for a jury’s determination. *Kenton County Fiscal Court v. Elfers*, 981 S.W.2d 553, 556 (Ky.App. 1998) (citations omitted). We review questions of law *de novo*. *Kentucky Pub. Serv. Comm’n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 376 (Ky. 2010) (citation omitted).

KRS 178.116(5) states that “[f]or the purposes of this chapter ‘necessary access’ shall be construed to include access to any farm, tract of land, or dwelling, or to any portions of such farm, tract of land, or dwelling.” The appellees contend

that under this provision, all that a claimant must show is that the road is required to access a farm, tract of land or dwelling or any portion thereof. Recently, a panel of this Court in an unpublished opinion stated that subsection (5) does not directly define “necessary access,” stating instead that “we believe that it merely specifies that certain types of property are entitled to access where appropriate, i.e., farms, tracts of land, dwellings, or parts of such.” *Chesser v. Hasty*, 2010-CA-001414-MR, 2011 WL 3516863, at *3 (Ky.App. Aug.12, 2011). The opinion further states that “necessary” means “needed, essential, or indispensable” and cautions that access is not “necessary” “merely because it is preferable or more convenient to a party.” *Id.*

Thomas Julian testified that approximately sixty acres of the Julian farm abut the North Sand Knob Road. These sixty acres are separated from the rest of the farm by a bluff. Julian testified that without access to the North Sand Knob Road, it would be difficult for him to transport bales of hay and equipment such as a hay baler and rake from the sixty-acre tract over the bluff to the remaining property. Richard Mitchum, who owned the property before the Julians, testified that it was possible to get a tractor over the bluff, but not a truck. Kenneth Rothwell, who baled hay for the Julians on two occasions, testified that Douglas gave him permission to use the North Sand Knob Road to access the property because it was easier than going the other way. He testified that he would not have gone over the bluff because it would “tear up” his baler and put his equipment in danger. Joseph Julian testified that a new road would have to be built in order to

cultivate the sixty acres safely. The evidence also showed, however, that a road leading from the front to the back of the Julians' property had been allowed to fall into disrepair.

As to the Wilson property, Wilson testified that he used the North Sand Knob Road for his logging business; if he was barred from using it, he would have to go over fifteen miles farther to haul the logs.

In discussing its ruling from the bench, the trial court observed that the defendants had access to all of their land, and the fact that they could have better or more profitable access to their land from the North Sand Knob Road was not enough to show necessity. The trial court stressed that "necessary" does not mean "preferred" or "easier." The trial court also commented that since the defendants own the land directly adjacent to the road, they are free to build a track immediately beside it if they so choose.

The trial court's ruling comports fully with the statute. Although the testimony certainly showed that access to the road was convenient and economical from the appellants' point of view, in that a portion of the Julians' farm will no longer be readily accessible to certain types of farm equipment, and Wilson will have to use an alternative and lengthier route to haul logs, it was not sufficient to meet the requirement of showing necessity.

Next, Wilson argues that the trial court erred in not instructing the jury on a prescriptive easement. He does not specify what evidence he presented that would have warranted giving such an instruction to the jury, beyond stating that he had

claimed a prescriptive easement in his answer to Douglas's complaint. "[A] prescriptive easement can be acquired by actual, hostile, open and notorious, exclusive, and continuous possession of the property for the statutory period of fifteen years." *Allen v. Thomas*, 209 S.W.3d 475, 478 (Ky.App. 2006). According to Douglas, the court held that Wilson's own testimony showed that his use of the road was not hostile or adverse and was not continuous for the statutory period. Wilson has made no references to evidence in the record which supports his claim for a prescriptive easement. Therefore, we are provided with insufficient grounds to support a reversal on this claim.

Finally, the Julians argue that the trial court erred in denying their motion to dismiss the action for failure to join a necessary party, Casey County. CR⁴ 19.01 provides that a person shall be joined as a party if:

(a) in his absence complete relief cannot be accorded among those already parties, or (b) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

The Julians contend that the judgment was inequitable because it terminated a county road and by extension, the property right of the county, an absent party.

Richard A. Montgomery, the Casey County surveyor, testified that the North Sand Knob Road appeared on county road maps issued in 1968 and 1972.

⁴ Kentucky Rules of Civil Procedure.

Montgomery testified that he was unable to find the resolution by which the fiscal court adopted the road as a county road. The next county map, dated 1978, does not show the road as a county road. Bernetha Foley, who was employed as a secretary for the county road service, testified that the North Sand Knob Road was listed on a 1980 inventory list sent to Frankfort for the purpose of obtaining road maintenance funds. The next inventory list was published in 1987 and did not list the North Sand Knob Road. Thus, the last mention of the road made in connection with the county occurred over thirty years ago. The Julians have not cited to any evidence in the record that the county performed maintenance on the road at any time or that the road served the general public. There is no indication that the county had any current or ongoing interest in the road. Thus, no showing was made that the joinder of the county was necessary under either subsection (a) or (b) of CR 19.01.

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

ALL CONCUR.

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