

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000611-MR

PATRICIA A. RAGLAND MCGEHEE
AND RICHARD MCGEHEE

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE PHILLIP J. SHEPHERD, JUDGE
ACTION NO. 08-CI-00608

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE, JUDGE; BUCKINGHAM,¹
SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Patricia A. Ragland McGehee and Richard McGehee

(collectively referred to as the McGehees) bring this appeal from a February 13,

¹ Senior Judge David C. Buckingham 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.

2009, Opinion and Order of the Franklin Circuit Court granting the Commonwealth of Kentucky Transportation Cabinet, Department of Highways' motion to dismiss the complaint. We affirm.

Patricia A. Ragland (now McGehee) acquired 85-acres of farm land in Hardin County, Kentucky, in 1991. The deed to this property also included the right of access over a passway across an adjoining property to a creek adjacent to that property, which was owned by Frank and Mary Strickler. The passway or right-of-way easement crossing the Strickler property to the creek was for the benefit of the McGehee tract.²

On August 21, 2006, the Commonwealth of Kentucky Transportation Cabinet, Department of Highways (Cabinet) filed a condemnation action against the McGehees in the Hardin Circuit Court, Case No. 06-CI-01508. The Cabinet initiated the condemnation action against the McGehees' property to effectuate the construction, alteration, relocation, and/or extension of Kentucky Highway 3005 to the Western Kentucky Parkway, otherwise known as the "Ring Road Extension." On June 4, 2008, the Hardin Circuit Court entered an order granting the condemnation of the McGehees' property. The McGehees appealed the circuit court's June 4, 2008, order of condemnation, and this Court affirmed by Opinion rendered February 19, 2010. (Appeal No. 2008-CA-001568-MR.) On October 13,

² It has been recognized that a "right-of-way easement is simply the privilege of the owner of one tenement to enjoy the tenement of another. The owner who enjoys the privilege to use another's land is said to possess the dominant tenement, while the owner burdened with the privilege is said to possess the servient tenement." *Illinois Cent. R.R. Co. v. Roberts*, 928 S.W.2d 822, 825 (Ky. App. 1996). As such, an easement is a "property right or interest in land." *Id.* at 826.

2010, the Kentucky Supreme Court denied discretionary review. The Hardin Circuit Court condemnation judgment became final on October 18, 2010.

Notwithstanding the pendency of the condemnation action in Hardin Circuit Court, on April 2, 2008, the McGehees filed this action (a complaint and petition for declaration of rights, Case No. 2008-CI-00608) against the Cabinet in the Franklin Circuit Court. Therein, the McGehees alleged that their ownership interest in the right-of-way easement over the Strickler's property was not properly acquired through condemnation and that the award of a construction contract to develop the Ring Road Extension violated Cabinet policy and the Kentucky Model Procurement Code. Apparently, the Strickler's had reached an agreement with the Cabinet to construct the Ring Road Extension over a portion of their property, which the McGehees assert obstructed or interfered with their right-of-way access thereover to the creek.

By opinion and order entered February 13, 2009, the Franklin Circuit Court dismissed the McGehees' complaint. The circuit court determined that the McGehees lacked standing to pursue a claim challenging the construction contract under the Model Procurement Code (Kentucky Revised Statutes (KRS) 45A.245) and that it lacked jurisdiction to consider the interference of the McGehees' easement across the Strickler property. This appeal follows.

The McGehees contend that the circuit court erred in dismissing their complaint against the Cabinet. The McGehees argue that they have standing and the Franklin Circuit Court has jurisdiction over this action pursuant to the

Kentucky Model Procurement Code (KMPC). The McGehees claim that the KMPC confers standing upon them to contest a public contract that violates the provisions of the KMPC. Also, the McGehees argue that the KMPC was intended “to prevent the Cabinet from awarding a contract that amounts to trespass” or an improper interference with a third party’s property rights. In support of their argument, the McGehees cite this Court to *Commonwealth v. Yamaha Motor Mfg. Corp.*, 237 S.W.3d 203 (Ky. 2007).

We do not believe that the McGehees have standing to bring an action under the KMPC nor does *Yamaha Motor* support their position. In *Yamaha Motor*, the Supreme Court recognized that the KMPC “expanded” standing to unsuccessful bidders in a judicial action challenging the award of a public contract:

“[T]he KMPC has changed the rules of the game, providing access not previously available to challenge and investigate the propriety of government purchasing contracts.” Specifically, with the enactment of the KMPC, the General Assembly elevated the standard of conduct for the Commonwealth's procuring entities, *inter alia*, “to provide safeguards for the maintenance of a procurement system of quality and integrity,” and “to insure fair and equitable treatment of all persons who deal with the procurement system.” (Footnotes omitted.)

Standing was expanded by the KMPC to include a class of disappointed bidders who previously lacked standing.

Yamaha Motor, 237 S.W.3d at 205. The holding of *Yamaha Motors* is merely that unsuccessful bidders have standing to bring a judicial action to challenge a public contract under the KMPC. *Id.*

By contrast, the McGehees are not unsuccessful bidders for a public contract. They have no interest in the award of a public contract in bringing this action but rather seek to challenge the continued performance of the Commonwealth under a public contract with a third party to construct a roadway across the Strickler's property, which they claim constitutes a trespass by interfering with their right to utilize the easement over the Strickler property. Such a challenge is simply not within the ambit of the KMPC. Moreover, the McGehees have not cited this Court to a specific statute under the KMPC conferring standing upon them. Given the underlying facts, we simply do not believe that the McGehees have standing under the KMPC to bring this action in the Franklin Circuit Court.

The McGehees also assert that the circuit court erred by dismissing their declaratory judgment action. Again, we disagree.

A declaratory judgment action brought under KRS 418.040 does not confer a cause of action upon a party to seek relief; rather, it may be utilized only where a party has an independent right to seek relief. The McGehees do not possess a right to seek relief in the Franklin Circuit Court. The easement across the Strickler property is located exclusively in Hardin County, although the circuit court noted there was a dispute as to its exact location. To the extent that the McGehees' interest in this right-of-way easement has been obstructed or interfered with, we agree with the circuit court that this action must be filed in Hardin

County, where both the McGehee and Strickler property is located. KRS 452.400;
see Illinois Central R.R. Co. v. Roberts, 928 S.W.2d 822 (Ky. App. 1996).

As to any other issues raised by the McGehees, we view same to be
either moot or without merit.

In sum, we conclude that the Franklin Circuit Court properly
dismissed the McGehees' complaint.

For the foregoing reasons, the Opinion and Order of the Franklin
Circuit Court is affirmed.

ALL CONCUR.

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