

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000976-MR

RAY D. DAVIS; BILLY GREEN;
AND BETTY GREEN

APPELLANTS

v. APPEAL FROM PERRY CIRCUIT COURT
HONORABLE WILLIAM ENGLE, III, JUDGE
ACTION NO. 12-CI-00040

DAVID CAUDILL AND DIANE CAUDILL

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND NICKELL, JUDGES.

NICKELL, JUDGE: The primary issue in this appeal is whether there was substantial evidence supporting the conclusion of the trial court that an easement provides access to property owned by David Caudill and his wife, Diane Caudill, across property owned by Ray D. Davis, Billy Green and Betty Green. Having examined the record in light of the arguments presented, we affirm.

There appears to be no dispute as to many of the facts precipitating this appeal. Caudill purchased two tracts of land in Perry County, Kentucky, in 2009. The access to one of these tracts is in issue. Davis owns a tract adjoining Caudill's property and Green owns a tract adjoining Davis.¹ All of the properties lie along Upper River Road. Cliff Lane runs off of Upper River Road along the edge of the Green tract. The easement in question runs a distance of approximately seventy-five to eighty yards from Cliff Lane across the lands of Caudill's heirs, then across Green, and then Davis, before entering Caudill's property and terminating at the former location of a homeplace. The house formerly located there had been occupied by Maxie and Bertha Combs—David Caudill's grandparents—until their deaths in 1980 and 1990, respectively. Their son, Carlos,² continued residing in the home until his death in 2008. When Caudill purchased the property in 2009 the house was uninhabitable so he burned it to the ground.

Before construction of Upper River Road in the 1980's, sole access to the home site on Caudill's property was by fording the Kentucky River or crossing a swinging bridge. After Upper River Road was completed, access was obtained by way of Cliff Lane and the easement in dispute. The swinging bridge was removed sometime in the mid to late 1990's. The easement remained open and in

¹ The parties to this action are all related by blood or marriage. Davis is Betty Green's father. Davis's mother and David Caudill's grandfather were siblings.

² Carlos is interchangeably referred to by the parties as Carl and Carly (or Carley). For clarity, we shall use his proper name.

use by Carlos, those caring for or visiting him, and anyone making deliveries of groceries, coal, and other necessities. The county road department cleared the roadway on a couple of occasions. When Carlos became ill, an ambulance used the easement to reach the home.

Following Carlos's death, strands of barbed wire were erected³ along the sides of the easement approximately eight feet apart. Sometime later, the strands were moved closer together—to a width of approximately three and one-half to four feet—and marked with hand-lettered signs designating the easement as a “walking path only.” A conflict then arose between Caudill, Davis and Green regarding use of the easement accompanied by a dispute as to the location of the Caudill/Davis line. Green placed a gate across the easement, thereby blocking Caudill's access. In response, Caudill placed a cable across the easement on the lands of his heirs, thereby restricting access for Green and Davis. Green then dug a large hole and began construction of a barn or garage in the middle of the road.

To avoid further problems, Caudill began construction of a road from Upper River Road down to the old homeplace. He was unable to complete the work because Davis protested that the road was being located too close to the disputed boundary line and demanded all work remain 100 feet away from the line.

Unable to reach an amicable resolution to his differences with his neighboring landowners—who also happened to be his relatives—Caudill instituted the instant action seeking to quiet title in the easement and determine the

³ No credible proof was presented to the trial court as to who installed the barbed wire strands.

disputed boundary line. Following mediation, the boundary line matter was resolved. Issues regarding the easement continued to a bench trial conducted on February 1, 2013. The trial court took testimony and evidence from the parties, neighbors, and others familiar with the property and its history. Based on the nature of the suit, some conflicting evidence was presented. With consent of the parties, the trial court personally visited and viewed the property. On May 8, 2013, the trial court entered a detailed order which ultimately granted Caudill a prescriptive easement in the roadway. This appeal followed.

The sole argument presented on appeal is that the trial court's finding of a prescriptive easement for vehicular use was unsupported by substantial evidence. Although Davis and Green concede existence of an easement for purposes of a walkway, they contend Caudill failed to introduce sufficient testimony to establish use of the roadway by vehicular traffic for the required statutory period. Thus, they urge reversal.

It is well-settled that a reviewing court will not substitute its judgment on factual issues for those of a trial court unless they are clearly erroneous with due regard given to the trial court's opportunity to view and judge the credibility of the witnesses. CR⁴ 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). *See also Monin v. Monin*, 156 S.W.3d 309 (Ky. App. 2004). Factual findings are not clearly erroneous if supported by evidence of substance. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998); *Uninsured*

⁴ Kentucky Rules of Civil Procedure.

Employers' Fund v. Garland, 805 S.W.2d 116, 117 (Ky. 1991). Substantial evidence is evidence, when taken alone or in light of all the evidence, having sufficient probative value to induce conviction in the mind of a reasonable person. *Golightly*, 976 S.W.2d at 414; *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002); *Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982). The trial court's conclusions of law, however, are subject to independent *de novo* appellate determination. *A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc.*, 998 S.W.2d 505, 509 (Ky. App. 1999); *Morganfield National Bank v. Damien Elder & Sons*, 836 S.W.2d 893 (Ky. 1992). With these standards in mind, we will address the issue presented.

This Court discussed the matter of prescriptive easements at length in *Cole v. Gilvin*, 59 S.W.3d 468, 475 (Ky. App. 2001), where it was noted

[t]he law of prescriptive easements is derived from the principles underlying adverse possession of property interests generally. As a general matter, in order 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." A prescriptive easement is a property right in one landowner (dominant tenement) representing a privilege to use the land of another (servient tenement) and is based on a presumed grant that arises from the adverse, uninterrupted, and continued use for a 15-year statutory period. "[T]he adverse possession of a grantee may be tacked on to that of his grantor to complete the statutory period."

In *Pickel v. Cornett* [285 Ky. 189, 147 S.W.2d 177 (1941)], the former Court of Appeals noted that while the elements for obtaining a prescriptive easement were similar to those for obtaining a fee simple title to land by

adverse possession, the former represented an incorporeal hereditament with a less stringent standard of use.

A private passway may be acquired by prescriptive use although a right of way is not strictly a subject of continuous, exclusive, and adverse possession. It is sufficient if the use exercised by the owner of the dominant tenement is unobstructed, open, peaceable, continuous, and as of right for the prescribed statutory period [citations omitted].

(Internal footnotes and citations omitted).

As previously stated, it is undisputed Caudill proved entitlement to an easement across the roadway in question and the trial court's determination on this point is not contested on appeal. Rather, Davis and Green protest the trial court's conclusion concerning the extent of the permissible use of the easement granted. They contend the evidence is insufficient to support a finding that Caudill's predecessors in title used vehicles on the easement, thus rendering the trial court's decision to grant such use to Caudill infirm. We disagree.

The evidence adduced at trial was conflicting as to the uses to which the easement was put. Several witnesses were presented to testify regarding their use of the roadway and to the use by others. Witnesses for both parties stated the Caudill homeplace had been accessed by vehicles using the easement for delivery of groceries to Carlos on at least a weekly basis and coal on a semiannual basis, and by the ambulance service on more than one occasion. The county had performed maintenance or repair work at least two times. The witnesses testified

to seeing these activities at different times, dating back to the 1980's when Upper River Road was first in existence. Taken as a whole, the combined testimony clearly supports the trial court's finding that the roadway was used by all persons who wanted to access the homeplace and its surrounding lands and that it had been in continuous use by Caudill, his predecessors, and others for the requisite time period, and was open to vehicular traffic as late as the date of Carlos's death in 2008. Although contrary evidence was introduced by Davis and Green, it cannot be said that this conflicting evidence was so compelling as to require a finding in their favor. Accordingly, the trial court's finding cannot reasonably be held to be in error.

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

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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