

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001550-MR

ED WALTON

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE JOHN KNOX MILLS, JUDGE
ACTION NO. 04-CI-00148

SHERMAN LAWSON, AS THE PUBLIC
ADMINISTRATOR OF THE ESTATE
OF EARL CARTER

APPELLEE

OPINION
AFFIRMING, IN PART, REVERSING, IN PART,
AND REMANDING

** ** * ** * ** *

BEFORE: ACREE, DIXON AND STUMBO, JUDGES.

ACREE, JUDGE: Ed Walton appeals from the July 9, 2012 and August 13, 2012 orders of the Knox Circuit Court granting judgment in favor of appellee Sherman Lawson, Public Administrator of the Estate of Earl Carter. We affirm in part, reverse in part, and remand for additional proceedings consistent with this opinion.

I. Facts and Procedure

A road in Knox County, commonly referred to as J. Goodin Branch Road, is at the heart of this dispute. The road clearly exists. It was originally constructed in the 1970s and originates at U.S. 25 in Knox County. The question is: where does J. Goodin Branch Road end?

In 2000, Knox County paved J. Goodin Branch Road, at least in part, starting at U.S. 25 and ending at a house belonging to Beulah and Bazel Smith, Earl Carter's predecessors in title. The Smiths later sold the land to Carter in 2002 (Carter Tract).¹ Today, there exists a gravel school bus turnaround where the paved road terminates on the Carter Tract. Beyond that point, the record suggests the alleged road is made up of dirt and grass.

Walton owns property adjacent to the Carter Tract (Walton Tract). He does not reside there. In fact, no one has lived on the Walton Tract since 1972. The only means of access to the Walton Tract, according to Walton, is J. Goodin Branch Road.

Walton has long proclaimed, since the early 1990s, in fact, that J. Goodin Branch Road is an official county road that extends through the Carter Tract all the way, and into, the Walton Tract. The Smiths, and later Carter, disagreed; at various times they blocked the road by means of a gate, preventing Walton from accessing his land. Carter claims, and before him the Smiths claimed, that the road terminates at the school bus turnaround point – where the paved portion ends.

¹ Carter passed away in November 2012, and his Estate was subsequently substituted as an appellee in this matter.

Walton filed suit against Carter in 2004, requesting that the circuit court find J. Goodin Branch Road is a county road that passes across the Carter Tract and ends at or on the Walton Tract. Walton amended his complaint several times, adding additional defendants, including Knox County, but his cause of action did not change. The case lingered for several years, culminating in a bench trial on September 21, 2011. At the close of Walton's case-in-chief, the circuit court allegedly issued a verbal order dismissing Walton's claim of a county road. It also entered a written order dismissing Knox County as a party.

Then, for the first time, the issue of whether Walton might be afforded access by way of an easement by necessity arose. The circuit court granted Carter's motion to recess the trial to investigate the claim.

Neither party requested that the trial recommence. Instead, on January 18, 2012, Carter filed a motion for summary judgment on the easement issue. The circuit court granted his motion by order entered July 9, 2012, finding no evidence of either unity of title of the two tracts, or severance of that unity, if it indeed existed.

Walton filed a CR² 59.05 motion to alter or amend the judgment, arguing he is entitled to access to his property as a matter of right – not by means of an easement – by way of an official county road, and the circuit court failed to address the county-road issue in its judgment. By order entered August 13, 2012, the circuit court overruled Walton's motion, stating:

² Kentucky Rules of Civil Procedure.

Following the Court's oral rulings at the bench trial, the issue of the easement was the only remaining question to be ruled upon.

[Walton] contends that because the Court did not specifically address the issue of whether J. Goodin Branch Road extends to his property in the prior order granting judgment in favor of the [Estate], that the issue was not addressed. However, this issue was resolved following the admission of evidence at trial in an oral ruling. The Court sees no reason to disrupt that prior ruling.

(R. at 249). This appeal followed.

II. Standard of Review

Following a bench trial, we review the circuit court's factual findings for clear error, and its legal conclusions *de novo*. *Hoskins v. Beatty*, 343 S.W.3d 639, 641 (Ky. App. 2011). Conversely, “[t]he standard of review on appeal of summary judgment is whether the trial court correctly found there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Carter v. Smith*, 366 S.W.3d 414, 419 (Ky. 2012). Our review is *de novo*. *Mitchell v. University of Kentucky*, 366 S.W.3d 895, 898 (Ky. 2012).

III. Analysis

Walton's arguments on appeal can be categorized as pertaining to one of two issues: (i) whether a county road extends through the Carter Tract and onto the Walton Tract, or (ii) whether Walton is entitled to an easement by necessity.

A. County Road

Walton presents several substantive arguments accentuating his position that J. Goodin Branch Road is a county (and public) road that extends to his property. However, this aspect of his appeal will be resolved on a procedural point.

The circuit court erred when it refused to make written findings and conclusions as required by CR³ 52.01 related to this claim. In all matters tried upon the facts without a jury, CR 52.01 requires the court to “find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment[.]” CR 52.01. The strictures of CR 52.01 are mandatory. When the trial court fails to fully articulate its decisional basis, it inhibits any kind of meaningful appellate review. *Deskins v. Estep*, 314 S.W.3d 300, 304 (Ky. App. 2010).

The Estate concedes the circuit court did not make factual findings and legal conclusions with regard to its alleged oral ruling⁴ during the bench trial.⁵ However, it contends Walton waived the error when he failed to bring it to the circuit court’s attention by way of a CR 52.04 motion requesting additional findings of fact. That rule states that a “final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the

³ Kentucky Rules of Civil Procedure

⁴ We are unable to locate the circuit court’s oral ruling in the record. The audio recording was barely audible at times due to a loud-functioning air conditioning unit. Additionally, much discussion of this case occurred in the trial judge’s chambers, of which we did not have a recording. Perhaps the trial judge issued his ruling there.

⁵ See Appellee’s Brief, p. 13.

trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.” CR 52.04. Fortunately for Walton, his failure to exercise this procedural option does not preclude the relief he seeks.

The Kentucky Supreme Court addressed this very scenario in *Anderson v. Johnson*, 350 S.W.3d 453 (Ky. 2011). After first reiterating that CR 52.01 “embodies a burden” on the trial court to state “specific findings of fact and conclusions of law,” the Court found, “as a matter of policy, when a [trial] court fails to make *any* kind of factual findings as required, the litigant should not be prohibited from asking an appellate court to require the lower court to make such findings. A trial court should be well aware of the requirements of CR 52.01[.]” *Anderson*, 350 S.W.3d at 458 (emphasis added).

CR 52.01 requires that the judge engage in at least a good faith effort at fact-finding and that the found facts be included in a written order. Failure to do so allows an appellate court to remand the case for findings, even where the complaining party failed to bring the lack of specific findings to the trial court’s attention [by means of a CR 52.04 motion].

Id.

We have not summarized all the evidence in this case. It is unnecessary for us to do so to resolve the dispositive issue before us. Suffice it to say there is ample evidence in the record to support each party’s respective position.⁶ We can easily conceive how the circuit court reached its conclusion. However, it was

⁶ Not all of this evidence, however, was submitted at trial for the circuit court’s consideration. This likely occurred because the trial was incomplete. The circuit court is certainly free to reopen the proceedings to ensure any and all documentation is properly made part of the trial record prior to issuing its ruling.

incumbent upon the circuit court to identify the precise factual basis underlying its decision. *Id.* It did not do so. “We remind the circuit court that it speaks only through written orders entered upon the official record.” *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010). Accordingly, we remand this matter to the circuit court for written entry of the requisite findings of fact and separate conclusions of law supporting its decision.

B. Easement by Necessity

Walton also claims an easement by necessity.⁷ The circuit court denied this claim by summary judgment on the ground that countervailing substantial evidence defeated Walton’s ability to prove to the circuit court’s satisfaction unity and severance of title to the parcels at issue. The circuit court’s decision was proper.

“The elements necessary for an easement by necessity are: 1) unity of ownership of the dominant and servient estates; 2) severance of the unity of title by a conveyance of one of the tracts; and 3) necessity of the use of the servient estate at the time of the division and ownership to provide access to the dominant estate.” *Carroll v. Carroll*, 355 S.W.3d 463, 467 (Ky. App. 2011).

We agree with the circuit court that Walton failed to prove unity and severance of title. The only evidence of title contained in the record indicates that the Walton Tract originated as separate three tracts all with different grantors, and

⁷ We find Walton’s argument puzzling in light of his admission at the hearing on his CR 59.05 motion that the parties are unable to trace title back to a common grantor. We address his argument simply because of the ease with which it can be disposed.

that the Carter Tract originated as two tracts, again with different grantors. There is not a single common grantor in the mix.

“[T]he party claiming the right to an easement bears the burden of establishing all the requirements for recognizing the easement.” *Cary v. Pulaski Cnty. Fiscal Court*, 420 S.W.3d 500, 509 (Ky. App. 2013) (citation omitted). Common ownership of the dominant and servient estates, and severance of title are necessary *prerequisites* to the establishment of an easement by necessity. *Carroll v. Meredith*, 59 S.W.3d 484, 491 (Ky. App. 2001). Absent this proof, Walton’s request for an easement by necessity could not survive summary judgment. *City of Florence, Kentucky v. Chipman*, 38 S.W.3d 387, 390 (Ky. 2001) (“The party opposing a properly presented summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing the existence of a genuine issue of material fact for trial.”).

IV. Conclusion

We affirm the circuit court’s July 9, 2012 order granting summary judgment in favor of the Estate on the issue of an easement by necessity, but remand for entry of written findings of fact, legal conclusions, and a judgment related to Walton’s claim that a county road extends to his land.

ALL CONCUR.

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