

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001846-MR
AND
NO. 2015-CA-000007-MR

JAMES D. HAMBLIN and his wife,
ANGELA HAMBLIN

APPELLANTS/
CROSS-APPELLEES

APPEAL AND CROSS-APPEAL FROM CALLOWAY CIRCUIT COURT
v. HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 12-CI-00562

ANDY DAVENPORT,
KIMBERLY H. DAVENPORT,
SANDRA LYONS, AND
COUNTY OF CALLOWAY, KENTUCKY

APPELLEES/
CROSS-APPELLANTS

OPINION
AFFIRMING

** ** * * * * *

BEFORE: D. LAMBERT, STUMBO AND THOMPSON, JUDGES.

D. LAMBERT, JUDGE: This is an appeal from the October 16, 2014 order of the Calloway Circuit Court denying the appellants' motion to alter, amend or vacate a previous summary judgment order. The circuit court granted summary judgment

in favor of the appellees after determining the road known as Spicebush Lane was used by the public and was not a private driveway. The circuit court further explained in its October 16, 2014 order that Spicebush Lane was a “public road” under Kentucky law. After review, we affirm.

I. BACKGROUND

In Calloway County, Kentucky, there is a road designated as Redbud Road, and it runs in a northeasterly direction from Roosevelt Road to Palestine Church Road.¹ At about the midpoint of this connection, a spur road called Spicebush Lane extends westward off of Redbud Road for roughly 0.3 miles. The Calloway County Road Department chip sealed Spicebush Lane in 1999 and has maintained the road since that time. Also in 1999, the Calloway County Fiscal Court, by order, adopted the Kentucky Department of Transportation (KDOT) Road Series Map as Calloway County’s official county road system. Spicebush Lane was featured on the map.

Several tracts of land abut Spicebush Lane, and the owners of these tracts are the parties to this appeal. The appellants, James and Angela Hamblin (the “Hamblins”), own two tracts along the southern side of the road, and appellees Andy and Kimberly Davenport (the “Davenports”) own an adjacent tract that purportedly borders Spicebush Lane’s western terminus. The Davenports bought their tract in 2007 from James Hamblins’ former father-in-law, Gerald W. Mills.

¹ Conceptually, Roosevelt Road is in the southwest and Palestine Church Road is in the northeast.

Since buying their tract, the Davenports have used Spicebush Lane for access. A number of people have also utilized Spicebush Lane over the years. Mills testified during his deposition that he and several members of his family, including James Hamblin, exclusively used Spicebush Lane for ingress and egress during the 30 years that he owned the tract. Mills further testified that the Calloway County Road Department routinely maintained Spicebush Lane, both when it was a gravel road and after it was chip sealed, during that same 30-year period by installing culverts, replacing gravel, cutting ditches, mowing the right-of-way, and chip sealing the surface. Sandra Lyons, the owner of a tract situated on the north side of Spicebush Lane across from the Hamblins' tracts, accesses her property via Spicebush Lane. Moreover, the postal service and the school bus utilize Spicebush Lane for mail delivery and child pick-up, respectively.

In 2012, the Hamblins sued the Davenports, along with Calloway County, and sought declaratory and injunctive relief regarding their right to exclude others from using Spicebush Lane. According to the Hamblins, Spicebush Lane was their private drive that they could prevent both the general public and the Davenports from using. In support of this position, the Hamblins produced a copy of a letter from 2009 wherein they purportedly granted the Davenports permission to use Spicebush Lane.² The Hamblins also swore they permitted the mailman and the school bus to use Spicebush Lane as a matter of convenience. The Hamblins

² The letter was written by attorney Hon. Jason D. Howell.

later moved for summary judgment with respect to their claims, but the circuit court denied their motion.

After conducting discovery, the appellees also filed for summary judgment. They argued Spicebush Lane was a “public road” under Kentucky law. Following an initial denial, the circuit court eventually agreed and entered summary judgment for the appellees. In subsequent orders denying the Hamblins post-judgment relief, the circuit court further explained that it had decided Spicebush Lane was a public road based on an application of *Cary v. Pulaski County Fiscal Court*, 420 S.W.3d 500 (Ky. App. 2013). Specifically, the circuit court found that Spicebush Lane was utilized by the public because “mail carriers, school busses, and the like used [Spicebush Lane].” In its final order, *sub judice*, the circuit court also clarified that it was “declin[ing] [the] invitation” from the appellees to declare Spicebush Lane a “county road” under KRS³ 178.010. This appeal and cross-appeal followed.

II. STANDARD OF REVIEW

Summary judgment terminates litigation when “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR⁴ 56.03. Summary judgment is only appropriate when it appears

³ Kentucky Revised Statutes.

⁴ Kentucky Rules of Civil Procedure.

impossible for the nonmoving party to produce evidence at trial entitling him to a favorable judgment. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). On appeal, the reviewing court must appraise “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). The reviewing court does not defer to the trial court’s decision because the trial court only considers legal questions and whether any factual disputes exist at the summary judgment stage. *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001). Moreover, the trial court’s answers to legal questions are reviewed under the *de novo* standard. *Id.*

III. DISCUSSION

On appeal, the Hamblins argue Spicebush Lane is not a public road and specifically contend a factual issue exists as to whether their neighbors, the postal service, and the school system were mere licensees. On the other hand, the appellees argue the circuit court was not only correct in classifying Spicebush Lane as a public road, but also should have continued its analysis under *Cary* and categorized Spicebush Lane as a “county road.” For the following reasons, we disagree with Hamblin and agree with the appellees.

Under KRS 178.025(1), “[a]ny road, street, highway, or parcel of ground, dedicated and laid-off as a public way and used without restrictions on a continuous basis by the general public for fifteen (15) consecutive years, shall

conclusively be presumed to be a public road.” In other words, if the public uses any of the aforementioned properties for at least 15 consecutive years and the government controls and maintains the property during that same time period, then the government acquires title to the property by prescription. *Watson v. Crittenden County Fiscal Court*, 771 S.W.2d 47, 48 (Ky. App. 1989). Importantly, no formal dedication or formal acceptance is required before the government acquires title in this manner: the occurrence of the two conditions is enough for the conclusive presumption. *Id.* (quoting *Louisville & N. R. Co. v. Engle*, 278 Ky. 576, 129 S.W.2d 133, 134 (1939)). Formal acceptance of a public road into the county road system by a county fiscal court, however, causes the public road to become a “county road” as defined in KRS 178.010. *Cary v. Pulaski County Fiscal Court*, 420 S.W.3d 500, 508 (Ky. App. 2013) (citing *Illinois Cent. R. Co. v. Hopkins County*, 369 S.W.2d 116 (Ky.1963)). By accepting a county road into its road system, the fiscal court asserts possession and control of the roadway for public use. *See id.* at 508. Moreover, under the “presumption of regularity,” Kentucky law presumes the fiscal court correctly followed procedures and performed its ministerial acts in adopting a county road. *Cary*, 420 S.W.3d at 506-07 (citing *Tarter v. Wilson*, 269 S.W. 715 (1925)). This presumption can only be overcome with clear and convincing evidence to the contrary. *Id.* at 513 (quoting *Burchell v. Hammons*, 289 S.W.2d 737, 738 (Ky.1956)).

Here, Calloway County formally adopted Spicebush Lane into its county road system in 1999. By that time, as the circuit court observed, Mills and several members of his family had used Spicebush Lane for more than two decades and Spicebush Lane had already been a designated stop on both the local mail delivery and school bus routes. The Calloway County Road Department had also chip sealed the road surface. Accordingly, under the presumption recognized in *Cary*, the burden fell on the Hamblins to show by clear and convincing evidence that the Calloway County Fiscal Court improperly asserted control over Spicebush Lane. The Hamblins failed to carry this burden, as the only evidence they presented was the letter they sent to the Davenports in 2009—ten years after the fiscal court ordered Spicebush Lane into its network and improved the road. *Cary* characterizes such challenges as meritless collateral attacks, *see id.* at 514, and we affirm the Calloway Circuit Court’s summary judgment under precedent.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Gerald Bell
Murray, Kentucky

BRIEF FOR APPELLEE:

George M. Carter
Benton, Kentucky

Lisa D. Carter
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