

RENDERED: AUGUST 19, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000417-MR

JOE K. MEADOR

APPELLANT

v.

APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE JANET J. CROCKER, JUDGE
ACTION NO. 11-CI-00281

GLIDDIE SARVER; RANDALL
HARPER; AND BETTY HARPER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Joe K. Meador brings this appeal from a February 20, 2015, findings of fact, conclusions of law, and order of the Allen Circuit Court adjudicating the width of a prescriptive right-of-way easement. We affirm.

Randall Harper, Betty Harper, Gliddie Sarver, and Joe Meador own abutting tracts of real property located in Allen County. A single-lane roadway (the roadway) is situated upon the real property of the Harpers and of Sarver; it is

located near the Harpers' western boundary line and Sarver's eastern boundary line. The roadway runs from Highway 1147 northerly through the Harpers' and Sarver's property to real property owned by Meador. The roadway is graveled and is approximately 600 feet in length. It provides the Meador property with its sole access from Highway 1147. There is no other road access to the Meador property.

The legal status of the roadway has been the subject of numerous legal proceedings over the years. We will proceed with a brief procedural history related to the roadway. In the seminal case of *Sarver v. County of Allen*, 582 S.W.2d 40 (Ky. 1979), the Kentucky Supreme Court held that the roadway was not a county road and, in so doing, clarified the law regarding county and public roads in this Commonwealth. The Supreme Court also recited historical facts concerning the roadway:

Many years ago [the roadway] was a wagon road and continued on through to the village or community of Petroleum, but not within the past 20 years or so. In modern times it has been used only to reach the Wyatt Sarver farm, where it now ends, and the R. M. Lyles farm, which adjoins the east boundary of the Wyatt Sarver place and corners on the disputed passway at the point where it turns westward into the Wyatt Sarver tract.

....

The Lyles tract is now owned by Joe Meador, but in the interest of clarity we shall call it the Lyles tract and shall likewise refer to the north part of the Sarver tract in which the passway ends as the Wyatt Sarver tract.

In 1958 Wyatt Sarver and his wife resided in a house near the end of the passway. Evidently the old lane leading to Highway 1147 had deteriorated to the

extent that it was not passable for vehicular traffic, so Osco Sarver approached the county judge for help, in order that his father's and mother's home might be accessible in the event of necessity. The county thereupon ditched, widened, graded and gravelled [sic] the passway at Osco's expense. Later, in October of the same year, the fiscal court voted to accept it as part of the county road system if the adjoining landowners executed right-of-way deeds. Admittedly, however, no such deeds ever were executed.

Id. at 41-42.

Subsequently, in Civil Action No. 79-CI-0800 and by judgment entered November 18, 1980, the Allen Circuit Court held that a prescriptive right-of-way easement existed over the roadway for the benefit of Meador.¹ The circuit court determined that Meador and his predecessors in title had utilized the roadway in an open, notorious, exclusive, and hostile manner for ingress to and egress from their property for some 64 years.

A few years later the roadway was again the subject of judicial proceedings. Apparently, Osco Sarver had prevented Meador from removing “shrubs growing alongside the roadway” and from putting gravel upon the roadway. Meador thereupon filed a motion to hold the Sarvers in contempt of court for interfering with his use of the prescriptive right-of-way easement.² In its

¹ Throughout this Opinion, we shall hereinafter refer to the judgment entered on November 18, 1980, in Civil Action No. 79-CI-080 as the “November 18, 1980, judgment.” The November 18, 1980, judgment was affirmed on direct appeal by the Court of Appeals in Appeal No. 1981-CA-000605-MR by Opinion rendered August 21, 1981.

² The motion for contempt was filed in Civil Action No. 79-CI-0080.

findings of fact, conclusions of law and order on November 10, 1982,³ the Allen

Circuit Court held:

IT IS FURTHER ORDERED AND ADJUDGED that, under penalty of contempt of this Court [Meador] shall not cause or permit a bulldozer or any other earth moving equipment to be used upon the roadway in any manner so as to enlarge the easement therein or to displace dirt or gravel outside the easement onto realty owned by [Sarvers]; provided, however, that [Meador] shall be entitled to cause to be made such grading or cutting or improving with gravel as may be required to permit unhindered and convenient use of the prescriptive easement.

The present controversy over the roadway erupted in late 2009 when Meador unilaterally cut trees, cleared bushes, and other vegetation on the property directly abutting the roadway to a total distance of fifteen feet from its centerline. In doing so, Meador cut down several mature trees located on the Sarver/Harper properties and disturbed Harper's fence located near the roadway. Meador claimed that the right-of-way easement was thirty-feet wide, so he could maintain the easement up to fifteen feet from the centerline of the roadway.

As a result of his activities, Meador was charged with the misdemeanor of criminal mischief (09-M-500) in the Allen District Court. The case went to jury trial, and Meador was found not guilty of the charged offenses.

Consequently, on May 31, 2011, Meador filed this action in the Allen Circuit Court seeking declaratory relief pursuant to Kentucky Revised Statutes

³ In Appeal No. 1983-CA-000526-MR, the Court of Appeals affirmed the November 10, 1982, order as to Meador's maintenance of the right-of-way but reversed upon other issues not relevant to this appeal.

(KRS) 418.040 and named Sarver and the Harpers as “defendants.” Therein, Meador sought a declaration that the width of the prescriptive right-of-way easement over the roadway was thirty feet. The Harpers filed an answer and counterclaim, denying that the right-of-way easement was thirty feet in width. In the counterclaim, the Harpers alleged that Meador improperly cut trees from their property abutting the roadway and also disturbed a fence. They sought damages of \$1,500 caused by Meador’s unlawful trespass upon their property. Sarver also filed an answer denying that the right-of-way easement was thirty feet in width.

The matter was heard by the circuit court without a jury pursuant to Kentucky Rules of Civil Procedure 52.01. By findings of fact, conclusions of law, and order entered February 20, 2015, the circuit court concluded that the right-of-way prescriptive easement was not 30 feet in width; instead, the circuit court determined:

This easement encompasses a graveled passway averaging a width of 9.22 feet and abutting right-of-way averaging a total width of 24.52 feet (inclusive of the 9.22 feet graveled lane) and delineated on the east side by the fence row of defendants Harper and on the west side by the fence row of defendant Gliddie Sarver.

This appeal follows.

Meador contends on appeal that the circuit court erred by determining that the prescriptive right-of-way easement over the roadway was not 30 feet in width.⁴ In particular, Meador argues that the November 18, 1980, judgment of the

⁴ This is the only issue raised by Meador in this appeal, and our opinion is thus so limited to this sole issue. We will not address whether the actual width of the easement as determined by the circuit court is in error.

Allen Circuit Court recognized a prescriptive right-of-way easement of “approximately thirty-feet wide” over the roadway. Meador asserts that the width of the prescriptive easement was established as thirty feet by the November 18, 1980, judgment, and the circuit court erred by failing to enforce the terms of the November 18, 1980, judgment.⁵

The interpretation and construction of judgment presents a question of law for the Court. A judgment must be interpreted to give effect to the whole and to the underlying intent of the court. *Farmer v. Cassinelli*, 303 S.W.2d 555 (Ky. 1957). We shall now examine the November 18, 1980, judgment.

In the November 18, 1980, judgment, the circuit court initially identified the issue presented as whether “there is a private easement . . . leading from Highway 1147 to the farm owned by . . . Meador . . . by reason of long and continued use sufficient to establish a right of easement by prescription.” The circuit court then commenced to describe the roadway as “nearly six hundred feet long and approximately thirty feet wide.” The circuit court next set forth the litigious and factual history of the roadway and recited the evidence presented as to the use of the roadway. The circuit court ultimately concluded that Meador and his predecessors in title utilized the roadway in an actual, open, notorious, exclusive, and hostile manner for a period of 64 years (from 1912 thru 1976). Thus, the circuit court recognized that Meador possessed a prescriptive right-of-way

⁵ The November 18, 1980, judgment held that the roadway was “nearly six hundred feet long and approximately thirty feet wide.”

easement over the roadway. However, we do not interpret the November 18, 1980, judgment as concomitantly recognizing that the prescriptive right-of-way easement over the roadway was thirty-feet wide. Rather, the circuit court merely described the roadway generally as being approximately thirty-feet wide, but never recognized the prescriptive right-of-way easement as being thirty-feet wide.

In Kentucky, the law is well settled that “where an easement is acquired by prescription . . . such an easement exists only to the extent of the use.” *Johnson v. Roy*, 279 S.W.2d 20, 21 (Ky. 1955). So, the width of a prescriptive right-of-way easement is fixed by the use of such right-of-way during the prescriptive period. *Johnson*, 279 S.W.2d 20.

In this case, the trial court conducted a bench trial where substantial evidence regarding the road’s storied history was introduced. The evidence also included the testimony of a licensed land surveyor who had been appointed by the court to survey the property at issue and determine the parties’ respective boundary lines in relation to the easement. The evidence established that the roadway existed as a single lane right-of-way and that the traveled portion of the roadway averaged approximately nine feet in width. There was no evidence presented that use of the right-of-way ever extended to a total of thirty feet in width for the entire length of the roadway during the prescriptive period or after such period. And, as previously discussed, we do not interpret the November 18, 1980, judgment as recognizing any use of the right-of-way extending to thirty feet during the prescriptive period.

Accordingly, we are of the opinion that the circuit court properly determined that the prescriptive right-of-way easement over the roadway was not thirty feet in width.

For the forgoing reasons the findings of fact, conclusions of law, and order of the Allen Circuit Court is therefore affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Matthew J. Baker
Bowling Green, Kentucky

BRIEF FOR APPELLEES:

B. Alan Simpson
Bowling Green, Kentucky