

RENDERED: JULY 1, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000432-MR

DAVID ENGLE AND RONDA ENGLE

APPELLANTS

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE THOMAS L. JENSEN, JUDGE
ACTION NO. 14-CI-00326

PETE FIELDS AND ROSETTA FIELDS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, COMBS AND STUMBO, JUDGES.

STUMBO, JUDGE: David and Ronda Engle appeal from the trial court's denial of their motion for directed verdict and their motion for judgment notwithstanding the verdict. Appellants claim that the evidence did not support the easement by prescription claim of Pete and Rosetta Fields. We disagree and affirm the trial court's judgment.

Appellants and Appellees are the owners of separate parcels of land located on opposite sides of a road in Laurel County. Appellants bought their property in 2009. Appellees bought their property in 1987. Appellants' property was previously owned by the Monhollen Family. During the time in which the Monhollens owned the land, a natural gas well was constructed. Evidence was produced during the underlying trial that the Monhollens allowed the Fieldses' predecessors, the Martins, access to the gas well for their own use and a pipeline was built for those purposes. This evidence was in the form of an unrecorded written easement.

Sometime in 2013, a gas leak developed on Appellants' property. During the repair of this leak, the pipeline connecting the gas well to the Appellees' property was discovered.¹ Appellants then requested that Appellees begin compensating them for the use of the natural gas. Appellees refused and Appellants disconnected the pipeline. Appellees then commenced the underlying action in which they asserted the right to enforce a prescriptive easement for the natural gas pipeline.

A jury trial was held in December of 2014. At the conclusion of the trial, Appellants moved for a directed verdict. That motion was denied and the case was given to the jury for deliberation. The jury returned a verdict in favor of Appellees and found that Appellees and their predecessors acquired an easement

¹ The Engles claim this was when they first discovered the Fieldses were using natural gas from the well; however, Mr. Fields testified that he informed Mr. Engles about their use of the natural gas before the Engles purchased the property.

by prescription. Appellants were permanently enjoined from interfering with Appellees' access to the natural gas well. Appellants filed a motion for judgment notwithstanding the verdict, but that motion was denied. This appeal followed.

Appellants' argument on appeal is that the trial court should have granted its motion for directed verdict or its motion for judgment notwithstanding the verdict. Kentucky Rule of Civil Procedure (CR) 50.01 provides:

A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

CR 50.02 states:

Not later than 10 days after entry of judgment, a party who has moved for a directed verdict at the close of all the evidence may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party within 10 days after the jury has been discharged may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Unfortunately, this issue was not properly preserved for our review.

CR 50.01 requires that the grounds for a directed verdict be stated specifically.

Here, when Appellants' counsel moved for a directed verdict, he did not state any specific grounds as to why said motion should be granted.

Where the record does not show the grounds on which the party's motion for a directed verdict is made, the order overruling such motion is not reviewable on appeal. *Scott v. McLean County Board of Education*, 357 S.W.2d 312 (Ky. 1962). Later appellants moved for a judgment notwithstanding the verdict of the jury. This motion was also overruled. As was stated in *Commonwealth v. Ragland Potter Co.*, 305 S.W.2d 915 (Ky. 1957) where such a motion is based upon the erroneous overruling of a motion for a directed verdict at the conclusion of all the evidence and movant had failed to state grounds for its motion for a directed verdict, it is as if no such motion had in fact been made.

Ramey v. Ruth, 376 S.W.2d 292, 294 (Ky. 1964). A motion for judgment notwithstanding the verdict is wholly dependent on the previous motion for directed verdict. *Commonwealth v. Ragland Potter Co.*, 305 S.W.2d 915, 917 (Ky. 1957). Because trial counsel's motion for directed verdict was deficient, Appellants' argument on appeal is not properly before us.

Arguendo, even if the directed verdict and judgment notwithstanding the verdict issues were properly before us, we believe that the trial court correctly denied both motions.

The standard of review for a motion for directed verdict is the same as for a motion for judgment notwithstanding the verdict.

In general, a motion for directed verdict admits the truth of all evidence which is favorable to the party against whom the motion is made. When reviewing such a motion, the court may not consider the credibility of evidence or the weight it should be given; this is a function reserved to the trier of fact. The court must draw all inferences to be drawn from the evidence in favor of the party against whom the motion is made. The trial court must then determine whether the evidence favorable to the party against whom the motion is made is of such substance that a verdict rendered thereon would be palpably or flagrantly against the evidence, so as to indicate that it was reached as a result of passion or prejudice. If it concludes such would be the case, a directed verdict should be given, otherwise the motion should be denied.

Simpson County Steeplechase Ass'n, Inc. v. Roberts, 898 S.W.2d 523, 527 (Ky. App. 1995) (citations omitted).

When engaging in appellate review of a ruling on a motion for directed verdict, the reviewing court must ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party. Once the issue is squarely presented to the trial judge, who heard and considered the evidence, a reviewing court cannot substitute its judgment for that of the trial judge unless the trial judge is clearly erroneous.

Banks v. Fritsch, 39 S.W.3d 474, 478 (Ky. App. 2001) (footnotes and citations omitted).

The 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.”

Cole v. Gilvin, 59 S.W.3d 468, 475 (Ky. App. 2001) (footnotes and citations omitted).

Appellants claim that there was a permissive easement which they terminated in 2013 and that no action on the part of Appellees or their predecessors made the use of the pipeline hostile or adverse. We disagree. The evidence Appellants rely on, the unrecorded written easement, gave the Martins permission to build the pipeline and use the natural gas well. This easement was personal to the Martins and did not run with the land. In addition, the Appellees bought the land in 1987, which would satisfy the 15-year requirement for a prescriptive easement. As for the hostile and adverse use, Mr. Fields testified that he informed Mr. Engles of their use of the natural gas well before Appellants bought the land in 2009. Furthermore, evidence was presented at trial that the gas well had a large junction area and shut-off valve that was above ground and was visible evidence of the pipeline.

We must “ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party.” *Banks, supra*. When reviewing the evidence presented at trial, we believe the trial court did not err in giving the case to the jury. The trial court’s denial of the motions for directed verdict and

judgment notwithstanding the verdict was not clearly erroneous. For these reasons, we affirm the judgment of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Ralph W. Hoskins
Corbin, Kentucky

BRIEF FOR APPELLEES:

Darrell L. Saunders
Corbin, Kentucky