

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001388-MR

RONALD D. REID AND
CONNIE S. REID

APPELLANTS

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-CI-90113

ANTHONY MICHAEL DONITHAN;
ARACELY DONITHAN; STEVE
DONITHAN; TERESA LYNN
DONITHAN; AND BATH
COUNTY, KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, K. THOMPSON, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: Ronald D. Reid and Connie S. Reid bring this appeal from an August 4, 2017, Findings of Fact, Conclusions of Law and Judgment of the Bath Circuit Court determining that Joe Snedegar Road was not a county road. We affirm.

The Reids own real property located in Bath County, Kentucky. The Reids' only means of ingress and egress to their real property is over a roadway known as Joe Snedegar Road. A portion of Joe Snedegar Road transverses real property owned by Anthony Donithan, Teresa Lynn Donithan, Steven Donithan, and Aracely Donithan before it reaches the Reids' real property. The Donithans' property directly abuts both sides of a portion of Snedegar Road.

On September 1, 2016, the Reids filed a complaint in the Bath Circuit Court against the Donithans. Therein, the Reids asserted that Joe Snedegar Road was a county road and that the Donithans had improperly erected four gates across said roadway:

4. [The Reids] purchased their farm on April 21, 1995[,] and that time there was one gate that was opened during the day and only shut at night. At that time, Bath County would maintain the road even though the gate was closed at night.

5. After the [Donithans] bought their farm, they began locking the gate during the day. Thereafter, they added 3 more gates along the county road. Bath County would no longer maintain the road as long as the gates were hanging on posts and could be shut across the road and the roadway deteriorated.

6. The actions by [the Donithans] in erecting the gates have damaged [the Reids], obstructing their access and making unreasonably burdensome their ingress and egress to their own farm and, at times, creating a hazardous condition for the [Reids].

7. [The Donithans'] cattle and livestock have roamed freely over the road further impeding access and causing more damage to the road.

September 1, 2016, Verified Complaint at 1-2.

In the answer, the Donithans denied that Joe Snedegar was a county road, and in their counterclaim, they claimed the gates were necessary for the use and protection of their real property. The Donithans also filed a motion for leave to file a third-party complaint against Bath County. Before this motion was ruled upon by the circuit court, Bath County filed an "answer." Therein, Bath County stated that it took "no position in this matter," but stated that Joe Snedegar Road "was adopted into the county road system by an Ordinance that incorporated a mass of county roads in the early 2000's."

The circuit court ultimately granted the Donithans' motion to file a third-party complaint. The third-party complaint against Bath County was filed on February 23, 2017, and Bath County filed a Formal Answer on March 8, 2017.

Thereafter, Bath County filed a Notice of Filing on August 2, 2017, which read:

Pursuant to the request of the Court, the undersigned requested that Bobby Rogers, Bath County Judge Executive, provide a copy of the roads that were included in a mass adoption in 2003 and any documentation showing when Snedegar Road was adopted by Bath County. Mr. Rogers provided the attached document in response to the request about the mass adoption and advised that there was no documentation still in existence pertaining to Snedegar Road's adoption.

August 2, 2017, Notice of Filing at 1.

The circuit court conducted a trial without a jury on July 12, 2017, pursuant to Kentucky Rules of Civil Procedure (CR) 39.02. By Findings of Fact, Conclusions of Law and Judgment entered on August 4, 2017, the circuit court concluded that Joe Snedegar Road was not a county road. Instead, the court determined that Joe Snedegar was “a private road permanently dedicated for the ingress and egress of the parties.” Additionally, the circuit court held that one gate could be placed across the road, and the gate could only be locked at night. This appeal follows.

To begin, our standard of review is governed by CR 52.01. The circuit court’s findings of fact will only be disturbed on appeal if clearly erroneous. A finding of fact is clearly erroneous where there exists no substantial evidence of a probative value in the record to support it. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Also, the weight of evidence and credibility of witnesses are matters to be determined within the sole province of the circuit court. CR 52.01. We, however, review legal conclusions made by a trial court *de novo*. *Nash v. Campbell Cty. Fiscal Court*, 345 S.W.3d 811, 816 (Ky. 2011).

The Reids contend that the circuit court committed error by concluding that Joe Snedegar Road was not a county road. The Reids assert that

there existed “significant evidence that Joe Snedegar Road is a county road.”

Reids’ Brief at 6. The Reids maintain that Joe Snedegar Road was dedicated as a county road, was listed as a county road on the Bath County Road Index, and was designated as CR-1214 on the Department of Transportation listing of rural and secondary roads in Bath County. The Reids also maintain that Bath County had previously maintained Joe Snedegar Road.

Kentucky Revised Statutes 178.010(1)(b) defines county roads, in relevant part, as “public roads which have been formally accepted by the fiscal court of the county as a part of the county road system.” Our Supreme Court has held that “a formal order of the fiscal court has been required to establish a county road” since 1914. *Ellington v. Becraft*, 534 S.W.3d 785, 790 (Ky. 2017) (quoting *Ky. Props. Holding, LLC v. Sproul*, 507 S.W.3d 563, 569 (Ky. 2016)). And, this Court has specifically held that the adoption of “a given road . . . must be evidenced by proof consisting of an official order, resolution or ordinance of the fiscal court that appears of record.” *Cary v. Pulaski Cty. Fiscal Court*, 420 S.W.3d 500, 507-08 (Ky. App. 2013).

In the case *sub judice*, the Reids failed to cite this Court to any evidence that Joe Snedegar was formally adopted by the Bath Fiscal Court into the county road system. Although Bath County did not participate in the trial, it had admitted that no documentation existed demonstrating that Joe Snedegar Road was

formally adopted by the Bath Fiscal Court. And, it is inconsequential that Joe Snedegar Road was listed as a county road on the state and county road maps or that Bath County allegedly maintained Joe Snedegar Road. Kentucky law is clear. Since 1914, a county road may only be established by the fiscal court formally adopting same by resolution, ordinance, or official order into the county road system. *See Ellington*, 534 S.W.3d at 790; *Cary*, 420 S.W.3d at 507-08. The Reids failed to demonstrate that Joe Snedegar Road was formally adopted by the Bath Fiscal Court; thus, the circuit court did not err by determining that Joe Snedegar Road was not a county roadway.

We deem any remaining contentions of error as moot or without merit.

For the foregoing reasons, the Findings of Fact, Conclusions of Law and Judgment of the Bath Circuit Court is affirmed.

THOMPSON, L., JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEES

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