

RENDERED: APRIL 4, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2001-CA-000996-MR

JAMES LARRY MCGREGOR and  
JANET MCGREGOR, his wife

APPELLANTS

v. APPEAL FROM LIVINGSTON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 95-CI-00021

DARRELL ALVEY; SCARLETT ALVEY,  
his wife; ROY VANCE RAMAGE; MARY  
SUE RAMAGE, his wife; JAMES DAVID  
RAMAGE; THERESA CLAIR RAMAGE, his  
Wife; THOMAS DAVID RAMAGE, and  
JUDY N. RAMAGE, his wife

APPELLEES

### OPINION

### REVERSING

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BEFORE: EMBERTON, CHIEF JUDGE; COMBS AND TACKETT, JUDGES.

EMBERTON, CHIEF JUDGE. This dispute concerns the use by appellees of a lane over property owned by the appellants, James and Janet McGregor. The lane provides ingress and egress to property owned by the appellees, Roy Vance Ramage, James David

Ramage and Thomas Ramage, and their respective spouses. Darrell Alvey and his wife, Scarlett, own property on the north side of the disputed lane and assert a right to use the lane. Also in dispute, though not before this court, is the obligation of the Livingston County Fiscal Court to restore a county road to passable condition, giving the Ramages access to their property. The trial court found that the lane located on the McGregors' property, giving access to the adjoining landowners, is an easement by estoppel and enjoined them from preventing use of the roadway by those needing ingress and egress to their property. The trial court further found that the original county road is now impassable, and therefore, the county may close the road by appropriate statutory steps.

It appears from the record that as early as 1937 there was a county road, identified as Robertson Road, which gave the owners of the property now owned by the Ramages, ingress and egress to their property. Robertson Road originally ran from Bizzell Bluff Road along the north side of the property now owned by the McGregors and through the Ramages' property to Highway 60. The road apparently gave access to a school house located on what is now the Ramage property. The McGregors' predecessor in title, Emma McDowell, testified that over time Robertson Road became impassable and Roy Ramage, the appellees' predecessor in title, was given permission by her to use a farm

lane running parallel to the county road to gain access to his property. Ramage did not seek to have the county restore Robertson Road to a passable state, but continued to use and maintain the farm lane for a period in excess of forty years with permission of the McDowells. Roy died in 1981, and the Ramage brothers inherited ownership of the farm. Donald Ramage, who managed the farm from 1981 to 1986, testified that during that time he maintained the farm lane by graveling, bush hogging, and grading the road.

In 1986, the farm was placed in a government farm program for ten years. From that time little attention was paid to the farm until 1994, when it became apparent that the lane needed repairs. Upon the Ramages' and the Alveys' commencing the repair work, the McGregors, for the first time, became aware of the appellees' claim of right to use the lane.

The McGregors had purchased the property in 1992, at which time they were aware of the farm lane, but were unaware that it was used by the Ramages as a means of ingress and egress to their property. Prior to 1994, however, James McGregor did observe on occasion that the road was used to access the Ramage and Alvey properties.

Upon investigating the history of the lane, the McGregors discovered the existence of the Robertson Road and,

pursuant to KRS<sup>1</sup> 178.050 and 178.070, sought to have the Livingston Fiscal Court close the road. Three viewers were appointed to view Robertson Road and report to the fiscal court. The viewers found that the road should remain open but that over time its location had been moved to the McGregors' property. The McGregors then requested that the road be moved back to its original location. Following a hearing, the fiscal court refused, citing the cost and expense of restoring Robertson Road to a passable condition.

The present action was then commenced in the circuit court seeking to compel the fiscal court to restore Robertson Road and to prevent the Ramages and Alveys from using the existing lane on the McGregors' property. The trial court held that the Ramages and Alveys had an easement by estoppel. Although the court found that Robertson Road had not been officially closed or abandoned, because the Ramages and Alveys had an easement to their property, the road could therefore be officially closed in future proceedings.

The initial question is whether the Ramages and Alveys have an easement. Kentucky law does not recognize a general easement. An easement may be created by express, written grant, implication, prescription, or estoppel. There is no written grant of an easement to either the Ramages or Alveys. The use

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<sup>1</sup> Kentucky Revised Statutes.

of the lane was originally with the verbal consent of the McDowells, the McGregors' predecessor in title. If the right to use a passway is permissive at its inception, the right to use it as a prescriptive easement cannot be acquired no matter how long the use.<sup>2</sup> Easements by implication arise only where there is a severance of common ownership of adjoining land.<sup>3</sup> As stated in Bob's Ready to Wear, Inc. v. Weaver:<sup>4</sup>

When finding an easement by implication, courts in effect infer an unarticulated intention by the owner of property that a particular use of one portion of the property for the benefit of another portion be continued although one or both segments of the whole are conveyed away. Necessarily, the use sought to be imposed upon the servient tract for the benefit of the dominant tract must have been initiated when both tracts were the property of a common owner. Once common ownership is established and the particular use is found to have been initiated prior to severance, the determination whether the creation of an easement was intended will depend upon a number of factors. (Citations omitted).

There is no contention that the McGregor and Ramage tracts were ever a part of a larger combined tract.<sup>5</sup>

An easement by estoppel may be found where the actions of a party induce another party to rely upon those actions or

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<sup>2</sup> Cole v. Gilvin, Ky. App., 59 S.W.3d 468, 476 (2001).

<sup>3</sup> See Kreamer v. Harmon, Ky., 336 S.W.2d 561, 563 (1960).

<sup>4</sup> Ky. App., 569 S.W.2d 715, 718 (1978).

<sup>5</sup> It appears from the record that actually the Ramage property and the Alvey tracts were once owned by the Ramages' predecessor in title, Roy Ramage.

words. It does not run with the land but must pass upon equitable principles to the subsequent party or it is extinguished.<sup>6</sup> There is no dispute that the McDowells gave permission to use the farm lane, and as a consequence, they were induced not to pursue the course of having the county repair Robertson Road to a passable condition. However, to successfully establish an easement by estoppel, the actions or words of the McGregors is the focus of our inquiry. There is nothing in the record establishing that the McGregors took any action that would induce the Ramages or the Alveys to conclude they had permission for continued use of the farm lane. To the contrary, the evidence demonstrates that the McGregors were not aware that the Ramages and Alveys used the farm lane until there was an attempt to restore it to a passable condition. The McGregors immediately objected to the use, which led to the present litigation. The trial court's finding that there is an easement by estoppel is clearly erroneous.

Having no easement, the Ramages and Alveys have, at most, a license. A license to use the land of another, like an easement by estoppel, does not run with the land.

As a general rule, a license is revocable at the will of the owner of the property subject to the license. However, an owner may be estopped to revoke the license when, with the knowledge of the owner, the

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<sup>6</sup> Loid v. Kell, Ky., 844 S.W.2d 428, 430 (1993).

licensee makes valuable improvements in reliance upon the continued existence of the license.<sup>7</sup>

As with an easement by estoppel, a license will not be enforced against a subsequent purchaser of the grantor or licensor unless it passes by equitable principles. As explained in Loid:

[T]he ability to prevent revocation is a remedy applicable against a licensor who has allowed valuable improvements based upon the license. Hence, irrevocability of a license does not travel with the land upon which the license is located. It must pass, if at all, by equitable principles to the subsequent owner. In this instance, appellant was not the licensor at the creation of the license. Further, appellant was not a party to the transactions giving rise to the licensees' reliance upon the license. Finally, appellees have not erected valuable improvements in reliance upon the license.<sup>8</sup>

In this case, the McGregors were not the owners of the property at the time of the creation of the license. Although there was evidence that while the McDowells owned the property the Ramages spent an undetermined amount in preparation for their own use of the farm lane, since the McGregors acquired ownership, there have been no valuable improvements made to the farm lane in reliance upon the license. The license created by the McDowells did not pass with the land and the McGregors are free to terminate the license.

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<sup>7</sup> Bob's Ready to Wear, Inc., supra, at 720.

<sup>8</sup> 844 S.W.2d at 430.

It is not disputed, that at the present, the only passable access to the Ramages' property is the farm lane located on the McGregors' property. Robertson Road is nothing more than a gully having been worn by the passage of time. However, it is also undisputed that Robertson Road was, prior to the Ramages' use of the farm lane, a county road and that it remains a county road. It has not been officially closed pursuant to KRS 178.070.<sup>9</sup> However, the Livingston Fiscal Court is not a party to this appeal; therefore any further action in regard to Robertson Road is beyond the jurisdiction of this court.

The judgment of the trial court is reversed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
APPELLANTS:

Martin W. Johnson  
LOVETT & JOHNSON  
Benton, Kentucky

BRIEF AND ORAL ARGUMENT FOR  
APPELLEES:

J. David Boswell  
BOSWELL, SIMS & VASSEUR, PLLC  
Paducah, Kentucky

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<sup>9</sup> See Freeman v. Dugger, Ky., 286 S.W.2d 894 (1956).