

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002551-MR

BOBBY F. SMITH; AND
SANDRA K. SMITH, HIS WIFE

APPELLANTS

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 00-CI-0256

JUSTIN NICODEMUS; AND
SONDRA NICODEMUS, HIS WIFE

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, BARBER, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellants Bobby and Sandra Smith appeal the trial court's failure to enforce a judgment which they claim was ignored by Nicodemus. We find that the trial court correctly applied the judgment and post-judgment order, and affirm the trial court's ruling.

The parties were involved in a property dispute resulting in a final judgment entered by the trial court. That

judgment found that Nicodemus was entitled to an easement by necessity. Smith was required to grant Nicodemus a 4½ foot easement paralleling the north-south axis of the common property line between the Smith property and the Nicodemus property for a driveway. Smith was also required to permit Nicodemus to relocate a water line on the property. The judgment stated that Smith had to compensate Nicodemus for the expense of constructing a new driveway.

The only portion of the judgment appealed by Smith is that portion which states:

Upon entry of this judgment, plaintiff [Smith] shall make one \$5,000.00 payment to defendants and their attorney. Ostensibly, this payment is compensation in full for any driveway developed by defendants.

The express terms of the judgment do not require Nicodemus to provide documentation of any costs prior to or consistent with the payment of \$5,000.00 by Smith.

Smith filed a motion to alter, amend or vacate the judgment, and submitted to the trial court a proposed order holding that:

1. That plaintiffs shall pay to defendants not more than \$5,000.00 for the construction of a driveway, which at the agreement of the parties and with the approval of this court, shall be located solely upon the property of defendants.
2. Defendants shall submit to plaintiffs cost estimates, contracts and invoices, accompanied by any cancelled checks regarding the installation of said driveway. All improvements associated with

the expenditure of defendants' money shall be related solely to the construction of the driveway.

. . . .

5. Plaintiffs, upon receipt of estimates, contracts, invoices and cancelled checks may challenge same by motion before this honorable court.

The trial court did not enter the proposed order, but affirmed that upon receipt of an invoice or bid for the completion of the driveway, Smith must make the \$5,000.00 payment required by the judgment.

Nicodemus provided Smith with a bill for \$5,000.00 from Aaron Paving and Construction Company upon completion of construction of the driveway. The trial court heard the testimony of David Isaac, who constructed the driveway, showing that the work was done under a \$5,000.00 contract with Nicodemus. Smith refused to pay the full sum awarded by the trial court, that being \$5,000.00, without further documentation supporting the claim. Smith claims that the judgment constitutes a "windfall" to Nicodemus. Smith filed a motion contesting the bill for driveway construction. The trial court ruled that Smith must pay the \$5,000.00 immediately, in accordance with the judgment. Smith paid \$2,000.00 but refused to pay the remaining \$3,000.00 due and owing. Smith appeals the trial court's directive.

Nicodemus asserts that the trial court properly ruled that Nicodemus was entitled to up to \$5,000.00 for the construction of a driveway, and that such a driveway has been constructed. Nicodemus shows that the record contains evidence supporting a finding that the contract for the driveway construction required payment of \$5,000.00. \$2,000.00 was paid by Smith, and \$3,000.00 remains outstanding. Nicodemus asserts that the judgment is not clearly erroneous and must be enforced as written.

A trial court's ruling may only be overturned upon a showing of an abuse of discretion. Largent v. Largent, Ky., 643 S.W.2d 261 (1979). Smith has failed to show any abuse of discretion in the trial court's award of \$5,000.00, the sum it cost Nicodemus to construct a new driveway. Where, as here, the evidence supports the award made by the finder of fact, such award is not reversible. Mudd v. Mudd, Ky. App., 903 S.W.2d 533, 534 (1995). Evidence in the record provided sufficient support for the trial court's finding that construction of the driveway cost \$5,000.00. Under such circumstances, the award must be affirmed. Ellison v. R & B Contracting, Inc., Ky., 32 S.W.3d 66, 74 (2000). For the foregoing reasons, the trial court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Caywood Metcalf
Lancaster, Kentucky

BRIEF FOR APPELLEE:

Cecil C. Sanders
Lancaster, Kentucky