

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2001-CA-002622-MR

DELTA NATURAL GAS CO., INC.

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT  
HONORABLE RODERICK MESSER, JUDGE  
ACTION NO. 01-CI-00243

JAMES A. MILES, JR.; and  
JAMES A. MILES, SR.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM AND HUDDLESTON, JUDGES.

BARBER, JUDGE: Appellant Delta Natural Gas appeals from a judgment denying it the right to lay additional pipelines over Appellees' property. Appellees, James Miles, Jr., and James Miles, Sr., (the Appellees), show this Court that Delta obtained a ruling permitting it to lay a second pipeline across the land in a separate proceeding, and that this pipe has already been laid. The Appellees ask that the appeal be dismissed as moot as there is no longer an actual case or controversy to be decided.

In the alternative, the Appellees ask that this Court find that the pipeline easement limited Delta to a single line across the property at issue.

Delta argues that the case is not moot, even though it has laid another pipeline across the land based on the ruling in the separate action, because it may in the future desire to place yet more pipelines across the land. We find that there is a present and justiciable controversy that this Court may pass upon. See American U. for Separation of Church and State v. Board of Educ., 369 F. Supp. 1059 (E.D. Ky. 1974).

The Appellees jointly own a tract of property in Knox County, Kentucky. In 1968, the Appellees granted Delta's predecessor in interest, Cumberland Valley Pipeline Co., Inc., a "pipeline right of way contract." The contract granted Cumberland "the right and easement to lay, maintain, operate, repair and remove pipelines for the transportation of gas over, through and across grantors' land. . . ." The contract also permitted Cumberland, its successors or assigns, to "change the size or location of its pipes. . . ." Other paragraphs in the easement refer to "pipe" in the singular. Cumberland laid one pipe across the easement for the transportation of gas. The pipeline has been operated by Delta since 1977.

The suit began when Delta indicated its intention to lay a new pipeline across the property. The Appellees denied

Delta permission to do so. Delta filed a petition for declaratory judgment against the Appellees seeking the right to lay the additional pipeline. The circuit court denied Delta's request reasoning that although Cumberland may have had the right originally to lay more than one pipeline, Delta did not have the right, thirty years later, to lay an additional line but had to stay within the parameters of the longstanding use of the easement.

In its opinion, the trial court stated that Delta may have had the right to change the size or location of its pipeline, but that the terms of the agreement did not permit the laying of an additional pipeline. The trial court cited Pioneer Natural Gas Co. v. Russell, 453 S.W.2d 882 (Tx. 1970), in which the original easement permitted the natural gas company to lay more than one line if it chose to do so. Once only one line was laid and used, however, the company could not go back years later and rely on the earlier agreement to permit it to lay multiple lines.

Delta argues that the trial court improperly modified the original easement, and that Delta has the right to lay additional pipelines in any location at will under the agreement.

An easement is properly limited to the use made of it during the history between the parties. Storms v. Tuck, Ky.,

579 S.W.2d 447, 454 (Tx. 1979). The use of the term "pipelines" in the easement does not automatically allow the company to lay multiple lines in the future. Where the easement does not contain an express provision authorizing expansion of the easement, no such expansion may be permitted by the court. Hall v. Lone Star Gas Co., 954 S.W.2d 174, 176 (Tx. 1997). An easement is not a right or title to the land, but merely a right to pass over it in the manner expressly agreed upon by the parties. Illinois Central R. Co. v. Roberts, Ky. App., 928 S.W.2d 822, 826 (1996).

Kentucky law has long held that "nothing passes under an easement but what is necessary for its reasonable and proper use." City of Williamson v. Ruby, Ky., 336 S.W.2d 544, 546 (1960). All rights not expressly granted by the terms of the easement remain with the grantor. See Sievers v. Flynn, 305 Ky. 325, 204, S.W.2d 364 (1938). An easement may not be enlarged so as to increase the burden on the servient estate. McBrayer v. Davis, Ky., 307 S.W.2d 14 (1954).

The easement at issue gave the gas company right to lay pipelines across the property. The company did so, and it and its successors used those pipelines in accordance with the easement. Delta cannot now alter the use of the easement, or the agreement between the parties. Delta is bound by the history of use between the parties, and the usual meaning of the

words used in the easement. The Kentucky Supreme Court has found that where a party to an easement could have acquired a greater easement at the time the agreement was entered into, but chose not to, the easement granted cannot be increased at a later date. Higdon v. Kentucky Gas Transmission Corp., Ky., 448 S.W.2d 655, 657 (1969). Delta is bound by the terms of the easement, and the past use made of it.

For the foregoing reasons we affirm the ruling of the Knox Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Mel Camenisch, Jr.  
Lexington, Kentucky

BRIEF FOR APPELLEES:

Darrell L. Saunders  
Corbin, Kentucky