

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000118-MR

JAMES H. STITH AND JANET
L. STITH, HIS WIFE

APPELLANTS

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 99-CI-00110

MARY L. ROSS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

DYCHE, JUDGE: Appellants James and Janet Stith filed a complaint in the Breckinridge Circuit Court seeking a permanent injunction against appellee, Mary Ross, preventing her from blocking their access to a roadway across her property which the Stiths used to gain access to a portion of their farm. That portion of the Stith farm was cut off from the remainder by a creek, and there was no bridge across the creek.

The issue was joined, and the trial court conducted a bench trial on the matter, taking oral testimony, accepting

exhibits, and allowing supplemental testimony by deposition. The trial court entered Findings of Fact, Conclusions of Law, and a Judgment denying the petition for the permanent injunction. The court concluded that there was no easement by express grant across the roadway, no easement by necessity, and no easement by prescription, as the use of the roadway had, from its inception, been permissive.

The Stiths appeal, making the sole claim that the trial court failed to shift the burden of proof that the use was permissive to Ross, once they had proved the burden on the property for the necessary period of time.

We have examined the supplemented record, including the videotape of the bench trial and the exhibits introduced at the trial, and can find no error by the trial court. The finding of permissive use is supported by the testimony of Paul Brumfield, Robert Mercer, and the appellee Mary Ross.

The Judgment of the Breckinridge Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Steven R. Crebessa
Brandenburg, Kentucky

BRIEF FOR APPELLEE:

Herbert M. O'Reilly
Hardinsburg, Kentucky