

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000622-MR

RONALD HAWKINS

APPELLANT

v.

APPEAL FROM ANDERSON CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
CIVIL ACTION NO. 00-CI-00033

BRUCE L. WADE, FAYE WADE,
BRUCE WAYNE WADE and DEBRA WADE

APPELLEES

OPINION

VACATING AND REMANDING

** ** * * *

BEFORE: EMBERTON, Chief Judge; BAKER and HUDDLESTON, Judges.

HUDDLESTON, Judge: This appeal arises out of a dispute between Ronald Hawkins and the Wade family, who are owners of a tract of land adjacent to Hawkins's land in Anderson County, Kentucky. This matter was tried before the court sitting without a jury. At issue on appeal is the court's failure to make specific findings in support of its judgment.

There is considerable dispute regarding the factual background of this case. Therefore, we will present only those facts necessary for an understanding of the nature of the conflict before us and will refrain from passing on a disputed issue.

Hawkins owns a tract of land containing 41.55 acres in Anderson County, near Kentucky Highway 44. Hawkins's property is bordered on the west by the Wade property, on the east by tracts owned separately by William Gregory Miller and Betty A. Crawford, on the northeast by property owned by James and Terry Greeting, and on the north by Hammonds Creek. In the instant lawsuit, Hawkins alleges that his property is effectively landlocked and that he should therefore be granted an easement across the Wade property in order to access the highway from his property. In arguing the merits of his case before this Court, he presents alternative arguments that he should be entitled to an easement either by necessity or estoppel.¹

The Wades argue that Hawkins is not entitled to an easement by necessity because "[t]here was no severance of the unity of title by a conveyance of one of the tracts, because

¹ Hawkins's complaint originally asked for an easement by necessity, easement by prescription or easement by estoppel. However, he appears to have abandoned his argument for an easement by prescription.

these tracts [i.e., those of Hawkins and the Wades] had been bought as two separate parcels, and sold as two separate parcels." Alternatively, the Wades assert that Hawkins was not required to use the Wades' property for access to his land. Furthermore, the Wades use the allegedly conflicting evidence regarding Hawkins's lack of historical use of the proposed easement to negate his claim for an easement by estoppel.

After a trial without a jury, the circuit court's total analysis of the case was as follows:

Having reviewed the record, the pleadings of the parties and being otherwise sufficiently advised, IT IS HEREBY ORDERED that [Hawkins] has failed to meet any of the burdens of proof required of him to support and sustain his cause of action and therefore this action is DISMISSED.

Following the judgment, Hawkins moved the court, pursuant to Kentucky Rules of Civil Procedure (CR) 52.04, to make essential findings of fact. However, the circuit court summarily denied this motion without explanation or analysis.

According to CR 52.01, "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate

judgment[.]” “One of the principal reasons for the rule is to have the record show the basis of the trial judge’s decision so that a reviewing court may readily understand the trial court’s view of the controversy.”² “The language of CR 52.01 is mandatory.”³

In this case, we have no findings as mandated by CR 52.01, “and are unable to discern the precise reason for [the circuit court’s judgment]; we must therefore vacate the judgment and remand for findings by the trial court.”⁴ “This should not be overly burdensome to the trial court, and will assist in meaningful appellate review.”⁵

By moving the court for specific findings, Hawkins satisfied his obligation under CR 52.04 to bring to the trial court’s attention its omission to make findings on essential issues, a requirement that must be satisfied in order to challenge the court’s omission on appeal.⁶ By making such a

² Reichle v. Reichle, Ky., 719 S.W.2d 442, 444 (1986) (citations omitted).

³ Skelton v. Roberts, Ky. App., 673 S.W.2d 733 (1984), citing Perry v. McLemore, Ky., 414 S.W.2d 141 (1967). See also Standard Farm Stores v. Dixon, Ky., 339 S.W.2d 440, 441 (1960).

⁴ Greathouse v. American National Bank and Trust Co., Ky. App., 796 S.W.2d 868, 870 (1990).

⁵ Id.

⁶ See, e.g., Eiland v. Ferrell, Ky., 937 S.W.2d 713, 716 (1997); Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982).

motion after entry of the judgment, Hawkins preserved his ability to challenge the court's omission.

Accordingly, the judgment is vacated and this case is remanded to Anderson Circuit Court for entry of specific findings of fact, conclusions of law and a judgment from which an appeal may then be prosecuted.

ALL CONCUR.

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