

RENDERED: DECEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001049-MR

LESLIE T. RENN, BEVERLY L. RENN
AND TONYA A. RENN

APPELLANTS

v. APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 98-CI-00268

KENNETH ROSS, ROSILYN POLAN,
DONITA A. LODMELL,
JAMES ROBERT LODMELL,
COURTNEY ENTERPRISES, INC.,
BROWN-FORMAN CORPORATION,
LINDA GILKISON, LAURI GARNER,
STUART LANDRUM, AND HHF, L.L.C.

APPELLEES

AND: NO. 2003-CA-000520-MR

LESLIE T. RENN, BEVERLY L. RENN,
AND TONYA A. RENN

APPELLANTS

v. APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 98-CI-00268

BROWN-FORMAN CORPORATION,
COURTNEY ENTERPRISES, INC.,
LINDA GILKISON, LAURI GARNER,
STUART LANDRUM, AND HHF, LLC.

APPELLEES

AND: NO. 2004-CA-000844-MR

LESLIE T. RENN, BEVERLY L. RENN, APPELLANTS
AND TONYA A. RENN

v. APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 98-CI-00268

COURTNEY ENTERPRISES, INC., APPELLEES
LAURIE GARNER, STUART LANDRUM,
LINDA GILKINSON, DAVID O'NAN,
LINDA O'NAN, AND HHF, L.L.C.

OPINION
AFFIRMING IN PART; REVERSING IN PART;
AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BARBER, JUDGE; MILLER,¹ SPECIAL JUDGE.

MILLER, SPECIAL JUDGE: These appeals arise from orders and judgments of the Woodford Circuit Court concerning the access and use of a private easement. We affirm in part, reverse in part, and remand.

BACKGROUND

In the early 1970's, Freeman and Mary Hockensmith, with an eye toward development, acquired a 418.99 acre tract of land in Woodford County, Kentucky, from Brown-Forman Distillers Corporation. The property was effectively bounded by three

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

county roads: 1) Clifton Road to the west; 2) McCracken Pike to the north; and 3) Rose Lane to the east. The tract was bisected by a gravel road running east-west between Rose Lane and Clifton Road. It was a private passway given to farm use. The road was nevertheless a significant connection between Rose Lane and Clifton Road traversing the entire Brown-Forman acreage. It was noted on federal, state, and local documentation relative to the farm and adjacent area.

Upon acquisition of the Brown-Forman farm, the Hockensmiths immediately divided the property into three separate tracts, retaining a small fourth tract for themselves in the northwestern portion.² All three conveyances took into account the gravel road traversing the farm from east to west. When the Hockensmiths conveyed the first tract to Joseph and Mary Henkel in 1974, they reserved for the remainder of the property an easement appurtenant to Rose Lane. This reservation was sometime referred to in later deeds as the "Henkel Easement."

Through mesnes conveyances, the Renn family acquired a 27 acre tract of land in 1974 and, in 1985, acquired a contiguous 17.89 acre tract from a different grantor. These properties are known as Renn Tracts 1 and 2, respectively, and are situated approximately in the middle of the original

² This parcel is currently owned by appellee, Brown-Forman Distillers Corporation.

Hockensmith land with their northern boundaries being the gravel road. The deed to Renn Tract 1 provided for an easement along the gravel road for access to Clifton Road. The deed to Renn Tract 2, however, did not specifically provide for an easement along the gravel road in either direction. However, the deed was of the traditional variety containing a description of the property conveyed together with all appurtenances. In 1997, the Renns conveyed a 5 acre portion of Renn tract 2 to their daughter for the purpose of constructing a residence with anticipated access westward along the gravel road to Clifton Road. The Woodford County Zoning Board approved the daughter's application.

Debra Dawahare, a neighboring land-owner to the west of the Renn tracts, filed an action in the Woodford Circuit Court claiming that Renn Tract 2 had no legal access westward to Clifton Road.³ The trial court agreed and reasoned that Renn Tract 2, although referencing the gravel road as the northern boundary, did not grant an easement to the west. No appeal was taken from that decision. Perforce, although approved by the Woodford County Planning and Zoning Commission, construction on the daughter's residence was unable to continue for lack of access.

³ Dawahare v. The Versailles-Midway-Woodford County Planning and Zoning Commission, et al, No. 97-CI-00144.

On October 14, 1998, the Renns filed the instant actions seeking access to Renn Tract 2 from either Clifton Road from the west, McCracken Pike from the north, or Rose Lane from the east. The trial court granted summary judgments to landowners to the north and west, foreclosing access in those directions. Then, after a bench trial, the court found that that Renn Tract 2 did not benefit from the easement east to Rose Lane because there was no reservation of the easement in the deed, and that the Renns had failed to establish an easement by implication. These appeals followed. Additional facts will be developed as necessary.

ACCESS FROM THE EAST

In appeal No. 2004-CA-000844-MR, the Renns argue that the trial court erred by finding that Renn Tract 2 did not benefit from the easement reserved by the Hockensmiths for access to Rose Lane because there was no specific reference in the Renn's deed. We agree.

The pertinent reservation is contained in the deed from the Hockensmiths to Joseph and Mary Henkel and states:

. . . a right-of-way will be retained by the First Parties following that portion of the existing farm road bed which follows the East boundary of the farm, said road to be used for agricultural purposes only by the First Parties or the assignee. It is expressly agreed and shall be a covenant running with the land that in the event the land to which the right-of-way extends is

developed, that the right-of-way may be used for and by individuals for purposes of ingress and egress for other than agricultural purposes, provided that said development of the tracts to the rear of and over which access is achieved by said road, will each be no less than a five plus acre tract

In the case of an easement appurtenant, if a dominant estate is divided into lesser parcels, then each of said parcels enjoys the use of the servient estate. See Martin v. Music, 254 S.W.2d 701 (Ky. 1953). Further, when a tract of land is divided and an easement is retained for the benefit of the remaining lands, then that easement is appurtenant to the land and passes to subsequent grantees despite the absence of an express reference to the easement in the deed. Meade v. Ginn, 159 S.W.3d 314, 322 (Ky. 2004)(citing Johns v. Davis, 76 S.W. 187, 189 (Ky. 1903)). In this case, Renn Tract 2 was a part of the lands benefited by the reservation of the easement. The reservation clearly anticipates development of the lands benefited by the easement. The fact that there was no express mention of this easement in the deed to Renn 2 is of no consequence because the easement is appurtenant and runs with the land. It follows that Renn Tract 2 has an easement to access Rose Lane to the east.

We understand the law to be that once an easement appurtenant is attached to a parcel of land it passes with title

thereto and may only be terminated by fulfillment of purpose; release; or operation of law, as in the case of abandonment or merger of title.

Additionally, we note that if the grantor is the owner of the fee and that conveyance is made to a stream, street, or highway the boundary is the middle thereof. 12 Am. Jur. 2d *Boundaries* § 49 (1997); 11 C.J.S. *Boundaries* § 43 (1938). This is also true of private pass-ways. Id. This is true unless the deed clearly demonstrates a contrary intent. Marcum v. Cantrell, 409 S.W.2d 159 (Ky. 1966). Because the gravel road was a significant passageway existing at the time of the initial partition and formed the northern boundary of Renn Tract 2, we are of the opinion that by implication Renn Tract 2 has full access thereto.

The Renns also contend in Case No. 2004-CA-000844-MR that they have an easement by necessity and that they should have been permitted to proceed on a breach of warranty of title claim. Because of our disposition herein, we need not address these issues.

ACCESS FROM NORTH

In Case No. 2003-CA-000520-MR the Renns contend that Renn Tract 2 has an easement running northward across the lands of Courtney Enterprises and Brown-Forman to access McCracken Pike. However, there is not now, nor has there ever been, a

passageway from the gravel road north to McCracken Pike. From our review of the record, we find that the trial court properly granted summary judgment on this issue and affirm.

ACCESS FROM WEST

We decline to address the issues raised in Appeal No. 2002-001049-MR concerning access to the west as Dawahare is not a party to this appeal. Accordingly, we also need not decide whether access from that direction is affected by the doctrine of collateral estoppel as to Ross and Polan.

COUNTY OR PUBLIC ROAD

In appeal No. 2002-001049-MR, the Renns also argue that the trial court improperly found that the gravel road was not a county road. They argue that the location of the gravel road on a 1965 Major Streets Plan for Woodford County constitutes the adoption of the gravel roadway as a county road.

The adoption of a county road must satisfy the conditions of KRS Chapter 178, which requires more than the mere inclusion of a roadway on a map. A fiscal court must accept a road as part of the county road system according to KRS 178.010. Sarver v. County of Allen, Etc., 582 S.W.2d 40, 41 (Ky. 1979). Prior to 1914, a county could accept a road informally, such as by maintaining the road at county expense. Id. After the enactment of Ch. 80, Acts of 1914, a fiscal court must issue a formal order to establish a county road. Id.

While the gravel roadway may have been included on the Major Streets Plan of 1965, there is no evidence in the record that the requirements of KRS 178.010 were satisfied nor is there any evidence that the gravel roadway was ever used by the public or that it had been maintained at county expense. The trial court correctly found that the gravel roadway was not a county road.

PENDING MOTION

As a final matter, appellees Kenneth Ross and Rosilyn Polan have filed a motion to dismiss the appeals for failure to join an indispensable party. The motion is DENIED.

CONCLUSION

Accordingly, the orders and judgments of the Woodford Circuit Court are affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

ALL CONCUR.

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