

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002031-MR

BRUCE SLACK and
REBECCA SLACK

APPELLANTS

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 97-CI-01054

PAUL BURCKLEY, SR.; NANCY JO
BURCKLEY, his wife; FIRST FEDERAL
BANK; GREGORY BURCKLEY; JACQUELYN
BURCKLEY, his wife; HARDIN COUNTY;
HARDIN COUNTY PLANNING AND ZONING
COMMISSION; ELDEN STRANGE; CAROLE
STRANGE, his wife; ELMER WHITE;
CAROLYN WHITE, his wife; DAVID STRANGE;
SANDRA STRANGE, his then wife; EDWARD
BAYENS; MARILYN BAYENS, his wife;
WAYNE ENGLE; JUDY ENGLE, his wife;
and BANK ONE KENTUCKY

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

EMBERTON, CHIEF JUDGE. This case arises over a dispute

concerning the status of a road known as Henderson Lane, located

on property owned by Bruce and Rebecca Slack. The Slacks contend that Henderson Lane is a private road that cannot be dedicated to the public without compensation. The Burckleys and Hardin County maintain that the road was properly dedicated under KRS¹ 178.115 and by estoppel. The circuit court held that the Slacks are estopped to deny that Henderson Lane has been dedicated as a county road.

On January 2, 1970, various members of the Slack family acquired a parcel of property known as Henderson Farm, including a narrow strip of land that was a roadway leading to the farm residence and known as Henderson Lane. In July 1977, Paul and Nancy Burckley purchased twenty acres of land immediately to the west of Henderson Lane. That same year, David and Sandra Strange purchased nine acres on the east side of Henderson Lane. At that time, the lane was denoted by a fence on both sides and had been maintained by the Slacks and their predecessor in title.

On May 24, 1982, the Hardin County Fiscal Court, by resolution, established regulations for a county roadway system and older roads were brought into the county system. At some point prior to that time, Magistrate Francis Simpson had a conversation with Bruce Slack at which time Simpson recalled that Slack agreed to the county taking Henderson Lane into the

¹ Kentucky Revised Statutes.

county maintenance system. Slack denies that he gave the county permission. On November 19, 1984, the Hardin County Fiscal Court accepted Henderson Lane into its road maintenance system. On December 17, 1984, the Fiscal Court exempted Henderson Lane from having to conform to the county's normal road system and found it in the county's best interest to accept the lane as a public road.

After its acceptance into the county road system, the road department maintained Henderson Lane and eventually improving it to a solid chip-seal surface costing \$2,352.47.

In 1992, Paul Burckley filed an application with the Hardin County Planning and Development Commission for approval to subdivide his twenty-acre property into six lots running along Henderson Lane. A compatibility meeting was scheduled and notices were sent to adjoining landowners, including members of the Slack family. The meeting was held on January 7, 1993, which Rebecca and Lillian Slack attended. Bruce was unable to attend. There is no record of the meeting and there is some dispute about whether Burckley explained that he was dividing the property only for his two sons to build two homes, which the Slacks contend, or if he stated he was dividing the property into six lots. However, a subdivision plat was available at the meeting and plainly shows that Henderson Lane was to access six

lots. The Slacks did not object to the proposed division and the proposal was approved.

Following approval of the subdivision plan, the lots were sold. Henderson Lane was used to construct the new homes and for travel by adjoining landowners. Additionally, Henderson Lane has been used by the United States Postal Service to deliver mail to the Henderson Lane residents. There was no objection to the use of Henderson Lane, however, until August 7, 1996, when Bruce Slack sent a letter to Magistrate Bill Brandenburg requesting that the county stop maintaining the road.

Our standard of review in this case is whether the trial court abused its discretion.² The Slacks contend that the county failed to comply with the provisions of KRS 178.115(1) and KRS 178.120, and that the road was not properly accepted into the county road system. We agree with the circuit court that whether the county followed the procedure outlined in those statutes is not determinative of the outcome in this case. The facts are more than sufficient to support the court's finding that the Slacks' repeated acquiescence in the public's use of the road since 1984, precludes them from now objecting to its status as a county road.

² Kentucky Rules of Civil Procedure (CR) 52.01; Cole v. Gilvin, Ky. App., 59 S.W.3d 468 (2001).

The distinction between a statutory and common-law dedication was explained in Bluegrass Manor v. Mall St. Matthews LTD., Partnership:³

A statutory dedication is a dedication made pursuant to the terms of a statute, and is almost universally created by the filing and recording of a plat. A common-law dedication requires an intention to dedicate expressed in some form, and an acceptance of the dedication by the proper public authorities, or by general public user. It is distinguishable from a statutory dedication, which is in the nature of a grant, Generally, a common-law dedication rests upon the doctrine of estoppel.

The public use does not need to be of the duration required to establish adverse possession or a prescriptive easement. Long-continued use by the public will constitute an implied acceptance of the dedication.⁴

Since 1984, Henderson Lane had been maintained by the county without objection from the Slacks and again, without objection, was adopted into the county maintenance system. In 1993, notice of the Planning Commission's meeting to approve the Burckley subdivision was sent to the Slacks, and at least two of the Slacks attended the meeting. The subdivision plat clearly shows that Henderson Lane was the designated access for the

³ Ky. App., 964 S.W.2d 431, 433 (1998).

⁴ Freeman v. Dugger, Ky., 286 S.W.2d 894 (1956).

subdivision lots. We find the circuit court properly found a dedication by estoppel.

Since the road has been dedicated to public use and not by condemnation, no compensation is owed the Slacks. The judgment is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANTS:

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BRIEF AND ORAL ARGUMENT FOR APPELLEES PAUL BURCKLEY, NANCY JO BURCKLEY, GREGORY BURCKLEY and JACQUELYN BURCKLEY:

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BRIEF AND ORAL ARGUMENT FOR APPELLEES HARDIN COUNTY, KENTUCKY and HARDIN COUNTY PLANNING AND DEVELOPMENT COMMISSION:

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