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AUGUST 18, 2004 (2004-SC-0049-D)

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-002328-MR

GENE BROWN TANDY and
NORMA BAILEY TANDY

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
CIVIL ACTION NO. 02-CI-003195

CHRIST CHURCH UNITED METHODIST, INC.
a/k/a CHRIST METHODIST CHURCH

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * * * *

BEFORE: BAKER and SCHRODER, Judges; HUDDLESTON, Senior Judge.¹

HUDDLESTON, Senior Judge: Gene and Norma Tandy appeal from a
Jefferson Circuit Court judgment which held that Christ Church

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

United Methodist, Inc., could expand its parking lot onto land over which the Tandys retain an easement. The Tandys argue that although they currently use but a twenty-four foot road across the easement for ingress and egress, the language granting the easement delineated a sixty-foot width; therefore, the entire sixty feet should be available for their use if they desire it.

Because a complete recitation of all the facts is unnecessary, we will summarize only those facts needed for an understanding of the legal question presented. In 1957, Christ Methodist acquired title to the property it currently owns from Luther M. and Virginia T. Goose. The deed specifically reserved an easement described as follows:

As part of the consideration for this conveyance, the Grantors hereby retain and reserve an easement 60 feet wide, as hereinafter described, for use as a means of ingress and egress to and from Brownsboro Road, or U.S. Highway 42, and for the use and benefit of any portion of their remaining property, and the tract herein above conveyed to the Grantee.

The Tandys acquired title to their property from Virginia Goose² in July, 1959. Their deed of conveyance makes specific reference to the easement. In September 1959, Virginia

² In the interim, Luther Goose had died.

Goose executed a recorded document entitled "Agreement and Dedication" which dedicates as a public roadway an expansion of the easement retained in the original deed to the church.

On the land encumbered by the easement there is a paved road twenty-four feet in width which the Tandys use to access their property from Brownsboro Road. The remaining width of the easement is covered with grass, bordered by trees and shrubs. It is common for members of the church to use the grassy areas for parking their cars and to use the paved road for access to Brownsboro Road.

The church informed the Tandys that it intends to expand its parking lot onto land encumbered by the easement and by the public roadway³ dedicated by Virginia Goose in September, 1959. The Tandys immediately sought a declaration of rights with respect to the easement and a permanent injunction against the construction of the parking lot.

The circuit court acknowledged that the church's planned construction would infringe upon the easement granted to the Tandys. However, its reasoning was that since the Tandys are not currently using the land upon which the parking lot will

³ The circuit court's statement regarding this parcel of land was as follows: "It is unclear whether any of [the church's] proposed improvements extend[] into this 60 foot roadway; however, it is clear that [the church] does not have a right to do so. It would take the approval of a public body to close all or a portion of this dedicated right-of-way."

be located, the improvement would not interfere with their use or enjoyment of the easement. Further, the court issued the caveat that

[the church's] usage of a portion of the easement will not destroy [the Tandys'] usage of any portion of the 60 foot easement that becomes necessary in the future.^[4] In the event that [the Tandys] decide to develop their property into parcels, which requires the usage of the full 60 foot easement for ingress and egress to and from the parcels, for instance, [the Tandys] will be entitled to fully utilize the 60 foot easement, and a portion of [the church's] improvement may be in jeopardy.

While we appreciate the circuit court's efforts to achieve an equitable result, its compromise conflicts with established Kentucky law. In Hester v. Johnson,⁵ Kentucky's highest court was presented with arguments similar to those before us in this case. In that case, neighboring landowners were involved in a dispute over a thirty-foot easement across

⁴ The court took judicial notice that Jefferson County municipal subdivision regulations require a sixty-foot right-of-way for local streets as a possible explanation for the delineation of sixty feet in the original grant.

⁵ Ky., 335 S.W.2d 574 (1960).

which a fifteen-foot roadway had been constructed. The servient landowner (analogous to the church) had built various ditches and culverts on the encumbered land in order to control water in his field. The dominant landowners (analogous to the Tandys) sought to enjoin any activity which would preclude them from using the full thirty feet of the easement as a passway. In upholding the injunction issued in favor of the dominant landowners, the Court said:

In the case now before us the [dominant landowners] have never used more than 15 feet of the 30-foot width prescribed in the deeds of division, from which it is argued that the easement must therefore be so limited. By its very terms, however, the principle is inapplicable to this case for the reason that the deeds creating the easement in 1900 did specify its course and dimensions. Not only did they provide that the right-of-way should be 30 feet in width, but also that its course should be "along the roadway now used up and down said creek." The wisdom and foresight of the county court commissioners in laying out these definite and tangible ground rules

is aptly demonstrated by their dispositive role in the resolution of this controversy.⁶

It is undisputed that the church's expansion of its parking lot would interfere with the Tandys' ability to use the full sixty-foot width of the easement for ingress and egress. Thus, the circuit court erred by requiring the Tandys to show that the parking lot interfered with their actual use of the easement before it would grant them relief. As stated above, the law in Kentucky⁷ is that when the language of an easement expressly delineates its dimensions, the owner of the dominant parcel need not show actual use of the full width of the easement in order to enjoin encroachment by the servient landowner onto a yet unused portion of the encumbered land.

The judgment is reversed and this case is remanded to Jefferson Circuit Court with directions to issue the permanent injunction sought by the Tandys.

ALL CONCUR.

⁶ Id. at 578.

⁷ See also Aboud v. Bailen, 289 Ky. 536, 159 S.W.2d 410 (1942).

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