RENDERED: March 4, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000137-MR

ERVIN MOTT — APPELLANT

v.

APPEAL FROM SPENCER CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 99-CI-00067

MODENIA ROMINE GRIFFIN;
TERRY DEAN GRIFFIN; AND
OLD MILL, LLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, KNOPF, AND TAYLOR, JUDGES.

KNOPF, JUDGE: Ervin Mott appeals from a summary judgment of the Spencer Circuit Court finding that Modenia Romine Grifffin and Terry Dean Griffin have a valid easement across his property. He argues that the easement reserved in his deed was merely a personal right and there were genuine issues of material fact which precluded summary judgment. Finding no error, we affirm.

On April 21, 1995, Modenia Romine Griffin and Terry Dean Griffin, mother and son, executed a deed conveying a 35.62 acre tract to Barbara J. Mott. The tract conveyed to Mott was

part of a larger tract which the Griffins retained. In addition to the property description, the deed reserved to the Griffins the following easement across Barbara Mott's property:

> IT IS FURTHER UNDERSTOOD AND AGREED between the parties that first parties [Griffins] shall have the right to use of driveway. Cost and upkeep will be shared by first parties and second party [Mott]. However, if second party decides to blacktop then first parties will not be required to participate.
> TO HAVE AND TO HOLD the above described real estate together with all and singular the appurtenances thereunto belonging or in anywise appertaining unto the said second party, her heirs or assigns, in fee simple absolute with Covenant of General Warranty.

Subsequently, in a deed dated March 16, 1999, Benita Kaye Tullis, executrix of Barbara Mott's estate, conveyed the tract to Ervin Mott, Barbara Mott's former husband. Shortly thereafter, on May 14, 1999, Mott filed this action seeking to terminate the Griffins' right to use the driveway easement. During the course of discovery, the Griffins tendered requests for admissions and productions of documents to Mott. Mott acknowledged receipt of the discovery requests, but did not file responses to them or seek an extension of time.

After the time for Mott's responses had passed, the Griffins filed a motion for summary judgment on Mott's claim regarding the easement. They argue that the easement was clearly appurtenant to the land. Mott opposed the motion,

arguing that the deed merely gave the Griffins a personal right to use the driveway. In an order entered on March 12, 2002, the trial court granted the Griffins' motion. Based on Mott's failure to respond to the discovery requests, the trial court concluded that, as a matter of law, the Griffins' easement remained valid. Mott now appeals.[1]

As the Griffins correctly point out CR 36.01 allows a party to serve upon any other party a written request for admissions. The matter shall be deemed admitted unless the request is answered within thirty days after service.[2] Because Mott failed to respond to the admissions, the Griffins argue that there was no genuine issue of material fact precluding summary judgment.

We agree with the Griffins that Mott is deemed to have admitted to the matters contained in their request for admissions. However, these admissions, by themselves, do not mandate a judgment in the Griffins' favor. Construction of a deed is a matter of law.[3] The basic principle followed in the

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[1] Following entry of the summary judgment, Mott's tract was sold at a foreclosure sale. Old West Annuity and Life Insurance Company was the purchaser at that sale. Old Mill, LLC is the successor to Old West's interest and was substituted as a party to this appeal. However, Old Mill has not actively participated in this appeal.

[2] CR 36.01(b).

[3] Phelps v. Sledd, 479 S.W.2d 894, 896 (Ky. 1972).

construction of deeds is to determine the intention of the grantor as gathered from the four corners of the instrument.[4] Mott has merely admitted that the 1995 deed contains an agreement which grants the Griffins the right to use the driveway. The effect of that provision is a question of law, which we review *de novo*.[5]

"If an easement is to be exercised in connection with the occupancy of particular land, then ordinarily it is classified as an easement appurtenant."[6] The land benefited by the easement is known as the dominant tenement, and the land burdened by it is the servient tenement.[7] Furthermore, an appurtenant easement exists for the benefit of the dominant estate as an entirety, and not for any particular part thereof.[8] In contrast, an easement in gross is merely a personal right to use the land of another, and does not run with the land. There

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[4] Gabbard v. Short, 351 S.W.2d 510, 511 (Ky. 1961).

[5] Carroll v. Meredith, 59 S.W.3d 484, 489 (Ky.App. 2001).

[6] Martin v. Music, 254 S.W.2d 701, 703 (Ky. 1953).

[7] Scott v. Long Valley Farm Kentucky, Inc., 804 S.W.2d 15, 16 (Ky.App. 1991); *citing* Lyle v. Holman, 238 S.W.2d 157 (Ky. 1951).

[8] 25 Am. Jur. 2d Easements and Licenses § 10, p. 578 (1996 & 2004 Supp.).

is no dominant or servient estate.[9] Easements appurtenant pass with the land to which they are appurtenant without mention in the deed.[10]

Mott argues that the easement granted in the 1995 deed was personal in nature. He points out that the deed grants the Griffins the right to use the driveway, but not specifically their heirs, successors, and assigns. Thus, Mott asserts that the Griffins' right to use the driveway was merely an easement in gross.

However, easements in gross are not favored in the law, and an easement will never be presumed to be a mere personal right when it can fairly be construed to be appurtenant to some other estate.[11] The easement set out in the 1995 deed is exercised directly in connection with the occupancy of the Griffins' retained tract. Furthermore, while the clause of the deed containing the easement does not state that the right shall pass to the Griffins' successors, the following paragraph does

[9] Inter-County Rural Elec. Co-op. Corp. v. Reeves, 294 Ky. 458, 171 S.W.2d 978, 983 (1943). See also 25 Am. Jur. 2d Easements and Licenses § 11, p. 579.

[10] Smith v. Combs, 554 S.W.2d 412, 413 (Ky.App. 1977); *citing* KRS 381.200(1), "[e]very deed, unless an exception is made, shall be construed to include all buildings, privileges and appurtenances of every kind attached to the lands therein conveyed." *See also* Thomas v. Brooks, 188 Ky. 253, 221 S.W.542 (1920).

[11] Martin v. Music, *supra* at 703.

provide that all appurtenances do. When the deed is read as a whole and in the absence of any contrary evidence, the easement may reasonably be characterized as appurtenant. Therefore, the trial court did not err in granting the Griffins' motion for summary judgment.

Accordingly, the judgment of the Spencer Circuit Court is affirmed.

ALL CONCUR.

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