

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001816-MR

RAYMOND LEON BALL;
ARNOLD BALL;
BETTY FRITTS;
CARL BALL; AND
NAN BALL

APPELLANTS

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 01-CI-00560

REBECCA BALL KELTNER;
DONALD BALL; AND
JAN ROSE BALL

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: A mother of eleven children wanted to make sure that all of her children had a place to live on the family farm. To accomplish her goal, she drew up a will which subdivided the family farm into lots for the eleven children. A hand-drawn map was attached to the will, with these instructions to her executor:

. . . execute and deliver deeds conveying said lots to the respective children as noted on said plat. These lots shall contain a restriction that no more than one residence (or mobile home) shall be erected on any lot. The deeds shall further contain a restriction that no lot shall be land-locked and that each lot shall contain a reasonable access to the main road which connects to the Pemberton Road. The owner of each lot shall be responsible for paying his share of the maintenance and upkeep of the main road presently existing upon the land.

The children have no dispute with the lots but with the location and "access to the main road which connects to the Pemberton Road." The map did not show any roads or easements, public or private. The parties somewhat agreed as to the location of the "main road" as built. However, a question arose as to whether the "main road" was to be a through road or a dead-end road.

The Whitley Circuit Court heard numerous witnesses at a bench trial and determined that even if the mother had intended a through road, she and her husband had (before the will) deeded a couple of parcels from the property without an easement or roadway encumbering the property. Therefore, the siblings, and their grantees, would be restricted to their current access points without the court drawing a road through the previously conveyed parcels.

On appeal to this Court, the appellants allege the trial court erred in failing to reopen the "main road" so as to make it a through street. We disagree. Regardless of what or where the mother intended the "main road" to be, she and her husband deeded away some of the land prior to devising the remainder by will, which renders any subsequent restrictions, easements, etc., void as a matter of law, as to those previously deeded parcels. See Scott v. Long Valley Farm Kentucky, Inc., 804 S.W.2d 15, 16 (Ky.App. 1991), wherein the Court stated: "The relative rights and obligations of the parties herein, by virtue of their ownership of the lands involved, are fixed by existing covenants at the time of their respective acquisitions." See also Oliver v. Schultz, 885 S.W.2d 699, 701 (Ky. 1994), wherein our Supreme Court held that restrictive covenants are enforceable under Kentucky law only when the restriction is placed in the deed of conveyance. In discussing easements, the Court in Riddle v. Jones, 191 Ky. 763, 231 S.W. 503, 506 (1921) recognized that "an heir . . . takes no greater interest than was possessed by his ancestor[.]" In our case, the devise in the will has no effect on previously deeded property, and the trial court did not err in refusing to extend the "main road" as a through road.

For the foregoing reasons, the judgment of the Whitley Circuit Court is affirmed.

VANMETER, JUDGE, CONCURS.

McANULTY, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

BRIEF FOR APPELLANTS:

Marcia A. Smith
Corbin, Kentucky

BRIEF FOR APPELLEES:

Martha F. Copeland
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