

RENDERED: JUNE 3, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001969-MR

PEGGY LOU JONES AND HER
HUSBAND, FILMORE JONES;
CAROLYN SUE ALEXANDER AND HER
HUSBAND, ZANE (BUD) ALEXANDER;
JEWELL MCKENZIE; HAYSE DICKERSON;
AND RALPH DICKERSON AND
HIS WIFE, PEGGY DICKERSON

APPELLANTS

V. APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
CIVIL ACTION NO. 01-CI-90107

RANDALL CROUCH AND
HIS WIFE, VIRGIE CROUCH;
AND FRED MANLEY AND
HIS WIFE, IRENE MANLEY

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; MINTON, JUDGE; AND MILLER, SENIOR
JUDGE.¹

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 and KRS 21.580.

MINTON, JUDGE: This is an appeal from a summary judgment of the Bath Circuit Court dismissing claims that Reeves Lane, a road in Salt Lick in Bath County, is a county road or a public road and that a right-of-way exists between Reeves Lane and the property referred to as the Dickerson land. The circuit court properly concluded that Reeves Lane is not a county road because there was no evidence submitted that it was ever formally adopted as such by Bath County. But the informal dedication of a road as a public road may evolve through its use by the public for a substantial number of years. And there is a genuine factual dispute in the evidence about whether Reeves Lane is a public road. Similarly, there remains a genuine factual dispute about whether there is access to Reeves Lane from the Dickerson land. Since these genuine issues of material fact exist, summary judgment was improperly granted; so we must reverse and remand.

Etna Pearl Dickerson, now deceased, owned land in Bath County, Kentucky (the "Dickerson land"). Following her death, the Dickerson land came under the ownership of Thomas Dickerson and his siblings. Thomas and his wife, Anna Mabel Dickerson, own two distinct sections of the Dickerson land while his siblings jointly own a separate tract.

Thomas and Anna filed a complaint against Peggy Lou Jones and her husband, Filmore Jones; Carolyn Sue Alexander and her husband, Zane (Bud) Alexander; Jewell McKenzie; Hayse

Dickerson; and Ralph Dickerson and his wife, Peggy Dickerson (the "Dickerson heirs"). The complaint alleged that the Dickerson heirs had exercised control over a portion of Thomas and Anna's property which interfered with the "quiet enjoyment, possession and use" of their land. The complaint further alleged that beginning with their purchase of the land, Thomas and Anna "owned, and still own, the right to use a roadway . . . providing the sole access to said land, across the adjoining land of [the Dickerson heirs] from a state roadway,² for the passing of themselves, their family, their servants and their tenants at their free will and pleasure" Allegedly, the Dickerson heirs had erected a fence that blocked Thomas and Anna's access from the state highway to a driveway and a mobile home.

The Dickerson heirs counterclaimed alleging that Thomas continued to operate an unsightly junkyard on his property in violation of an earlier injunction.

At some point during the litigation of this claim, it was apparently stipulated that Thomas and Anna did indeed have an easement allowing them access to a nearby road; however, the Dickerson heirs argued that the easement did not cross their portion of the Dickerson land and did not connect with the state

² The "state roadway" alluded to in the complaint is assumedly Kentucky Route 211.

highway. Rather, they argued that Thomas and Anna's easement was in the form of a right-of-way that "cornered up" with a different road, Reeves Lane.

The Dickerson heirs then filed a motion to join indispensable parties. Particularly, they moved to join the Bath County Fiscal Court; Randall Crouch and his wife, Virgie A. Crouch; and Fred Manley. The Dickerson heirs asserted that there was a dispute regarding the location of Thomas and Anna's alleged right-of-way on to the Dickerson land from Reeves Lane; that the "easement language" in their deed indicated that the right-of-way connected up to Reeves Lane; that Randall Crouch or Fred Manley had erected a barbed wire fence blocking the right-of-way; and that after informing the Bath County Fiscal Court of the fence, it did nothing to force removal of the obstruction. The circuit court granted the Dickerson heirs leave to assert these claims in a third-party complaint.

In the third-party complaint, the Dickerson heirs reiterated the claims made in their earlier motion arguing that Thomas and Anna could not be afforded complete relief "so long as the right-of-way road continues to be unlawfully obstructed by Crouch and Manley." The heirs also asserted that Crouch and Manley were improperly asserting a right to that portion of the Dickerson land allegedly adjoining Reeves Lane.

Crouch and Manley denied the allegations made by the Dickerson heirs; and, following a period of discovery, they filed a motion for summary judgment. Crouch and Manley argued that Reeves Lane was not a county road, a "public passway," or a "public easement." Therefore, they requested the court enter summary judgment in their favor.

In granting summary judgment for Crouch and Manley, the circuit court ruled that Reeves Lane was not a county road because it was never "dedicated" or "impliedly dedicated." The court further determined there was no indication in the record that Reeves Lane was ever "used as a public passway or easement providing access to the property of the [Dickerson heirs], let alone continuously used in that fashion for fifteen years." This appeal follows.

Summary judgment is only appropriate if the movant's "right to judgment is shown with such clarity that there is no room left for controversy."³ Summary judgment must be "cautiously applied," and the trial court should not render a summary judgment "if there is any issue of material fact."⁴

The Dickerson heirs claim that the circuit court erroneously entered summary judgment in favor of Crouch and Manley. Specifically, they argue there are genuine issues of

³ Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 482 (Ky. 1991).

⁴ *Id.* at 480.

material fact concerning whether Reeves Lane is, in fact, a county or public road and whether a right-of-way exists between their property and Reeves Lane.

To fully understand the issue in this case, it is necessary to describe the history and current state of Reeves Lane. Jimmy Russell Reeves originally owned the property upon which Reeves Lane is located. The property runs between Caney Road on the west, and the Dickerson heirs' property on the east. At some point, Reeves developed his property into separate residential lots. And, because of the limited access to Caney Road, each property owner in Reeves' development was granted a perpetual easement "for the purpose of ingress and egress over said lands of the Grantor" The easement allowed each property owner "a 24' wide roadway from lands of the Grantees to Caney Avenue [sic], said easement being the same as presently used as a means of ingress and egress by other owners in the subdivision." This easement is what is now referred to as Reeves Lane.

Crouch and Manley own the two lots on the far eastern end of the original Reeves property. Their property lines directly abut the Dickerson heirs' property, with Reeves Lane running in between the south side of Manley's property and the north side of Crouch's property. From what we can ascertain, the paved portion of Reeves Lane ends shortly before the

Dickerson property line. Beyond the paved portion of the road, Crouch, with Manley's consent, created a parking lot for his truck, boat, and camper. There is nothing in the record to indicate that the land upon which Crouch's parking lot was built belongs to either Crouch or Manley; rather, it appears that the parking lot is located on what would otherwise be the end of Reeves Lane. Therefore, Reeves Lane currently "dead-ends" into Crouch's parking lot. Beyond the parking lot is a mowed lawn maintained by Crouch and Manley, and a fence separating the Dickerson property.

Our analysis of this issue necessarily begins with a discussion of the legal distinction between a "county road" and a "public road." The dedication of a road as a "county road" is statutory in nature and requires "a formal order of the fiscal court."⁵ KRS 178.010 defines county roads as "public roads which have been accepted by the fiscal court of the county as a part of the county road system." It is well settled that a road may be public without being a "county road."⁶ As stated by the Supreme Court in Sarver, "[t]he obvious reason for this particular distinction is, of course, a public policy against holding counties responsible for the upkeep of any and all

⁵ Sarver v. County of Allen, Fiscal Court, 582 S.W.2d 40, 41 (Ky. 1979).

⁶ *Id.*

highways and biways that chance to become 'public' through processes of dedication or prescription over which the counties have no choice or control."⁷

In contrast, the establishment of a "public road" does not require any formality. A road may become a public road upon proof of "general public use and control and maintenance by the government for 15 years."⁸ A public road may be established "under the theory of dedication by estoppel" or "by prescription by adverse user for a period of 15 years."⁹ In Whilden v. Compton, the court relied on evidence such as "use of the roadway by residents along the roadway, use by customers of a resident who ran a blacksmith shop, repair and annual grading of the roadway by the county, and use for mail service to residents" as proof that a road was public.¹⁰

Based on this distinction and the quoted statutory language, we must disagree with the Dickerson heirs' argument that Reeves Lane is a county road.

As previously stated, the determination of whether a road constitutes a "county road" is purely statutory. But the Dickerson heirs claim that Reeves Lane is a county road because

⁷ *Id.*

⁸ Cole v. Gilvin, 59 S.W.3d 468, 473 (Ky.App. 2001).

⁹ Whilden v. Compton, 555 S.W.2d 272, 274 (Ky. 1977).

¹⁰ Sarver, *supra* at 473-474, *citing Whilden, supra*.

it was "used for more than 15 years as a route to reach, among other places, the Dickerson land." They also allege that "county officials considered Reeves Lane to be a county road"; that "[t]he surveyor appointed by the court also found that Reeves lane [sic] was considered to be a county road"; and that "[t]he county records and the governmental actions showing control over Reeves Lane on the part of Bath County, and/or the City of Salt Lick, indicate that Reeves lane [sic] is a county/city road."

The Dickerson heirs' argument on this issue is clearly flawed. They have failed to point to any evidence that establishes, under KRS 178.010(1)(b), that Reeves Lane was ever formally dedicated as a county road. The record lacks any proof that the road was ever "accepted by the fiscal court" of Bath County as a county road. The evidence they do rely on in support of their claim is scant, to say the least. The record does reflect that Ray Bailey, the former County Judge-Executive of Bath County, said that "from the City Limit of Salt Lick to the end of Reeves Lane is a County Road." But the report from the court-appointed surveyor made no mention of a county road. Further, the Bath County resolutions and orders included in the record only establish that Caney Road, which runs perpendicular to Reeves Lane, was repaved by an agreement between the Commonwealth of Kentucky, Bath County, and the City of Salt

Lick. Reeves Lane is not mentioned in any of these documents nor is there mention of a formal dedication of Reeves Lane. Although we recognize that Reeves Lane was paved by the county when Caney Road was resurfaced, this evidence does not make Reeves Lane a county road. Therefore, we affirm the circuit court's conclusion that submitted evidence fails to establish Reeves Lane as a county road of Bath County.

Alternatively, the Dickerson heirs contend that Reeves Lane is a public road. The heirs claim there has been "open, notorious and hostile use" of the road "as access route [sic] to the Dickerson homeplace and Dickerson land for a period of more than the lawful, requisite number of years." Because of this use, the Dickerson heirs argue that a prescriptive easement has been established "from the paved portion of Reeves Lane to the Dickerson land."

This assertion intertwines two separate arguments: first, that Reeves Lane is a public road; and, second, that there exists a prescriptive easement that allows the Dickersons a right-of-way from Reeves Lane onto their property. Both parties to this action, as well as the circuit court, unnecessarily combined these two issues. For clarity, we will address each issue separately.

As discussed, the dedication of a road as a public road "may be inferred from use by the public for a substantial

number of years."¹¹ A roadway may be deemed "public" upon proof of "general public use and control and maintenance by the government for 15 years."¹²

We believe there clearly exists a genuine issue of material fact as to whether Reeves Lane is a public road. There is abundant evidence that Crouch, Manley, their predecessors in ownership, and their neighbors have openly and notoriously used this road for a substantial number of years. There is also proof that the county paved Reeves Lane when Caney Road was repaved and that there has been sporadic county maintenance of the road since that time.

As we said in Watson v. Crittenden County Fiscal Court, "the facts necessary to constitute an informal dedication by prescription present a question of law, but whether those facts, when in dispute, do or do not exist, is one for the fact finder."¹³ Therefore, with regard to the issue of Reeves Lane's status as a public road, we must reverse and remand for further findings by the circuit court. On remand, the court is "directed to determine the existence or nonexistence of facts requisite for prescription—namely, public use and county control

¹¹ Cole v. Gilvin, *supra* at 473.

¹² *Id.*; see also KRS 178.025.

¹³ 771 S.W.2d 47, 49 (Ky.App. 1989).

(i.e., maintenance) for a period of fifteen years."¹⁴ If the court finds there to be sufficient evidence, then Reeves Lane must be deemed a "public road" for purposes of the disposition of this matter.

Another issue exists as to the Dickerson heirs' access to Reeves Lane. The Dickerson heirs claim that a right-of-way exists from their property to Reeves Lane and that there has been sufficient use of the right-of-way for the past fifteen years to establish a prescriptive easement. The heirs argue that but for the existence of Crouch's parking lot and the fence separating their property line from the road, they would have access to Reeves Lane. Crouch and Manley argue to the contrary that the record is void of any evidence "suggesting that Reeves Lane has ever been used, maintained or improved beyond the point where the blacktop ends at Crouch and Manley's driveways." Crouch and Manley assert that Reeves Lane ends at their property line and that the Dickerson heirs have failed to establish a prescriptive easement permitting them access from Reeves Lane to the Dickerson land.

Again, this argument raises a genuine issue of material fact. Particularly, there is a genuine issue as to the existence of an alleged right-of-way from Reeves Lane to the Dickerson land. The court-appointed surveyor believed that "it

¹⁴ *Id.*

was the intention of the developer and the surveyor of these lots to leave a 24-foot right-of-way for Reeves Lane terminating at the west property line of the Dickerson heirs." Likewise, Ray Bailey's affidavit indicated that a portion of Reeves Lane "extends from the end of the pavement to the Dickerson line"

This evidence, along with the Dickerson heirs' contention that they have "regularly" used the right-of-way to access their land, is sufficient to establish a genuine issue of material fact that must be addressed by the circuit court. Therefore, we also reverse and remand with regard to whether there is a right-of-way easement connecting Reeves Lane to the Dickerson land. If the court finds that Reeves Lane is a public road and that access exists, the Dickersons must be granted access to their property via this route.

For these reasons, the decision of the Bath Circuit Court is affirmed with regard to the issue of Reeves Lane's status as a county road. The decision is reversed and remanded as to whether Reeves Lane is a public road and whether a right-of-way exists between Reeves Lane and the Dickerson land.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Charles Stanford West
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BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

Earl Rogers III
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