

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001214-MR
AND
NO. 2004-CA-001358-MR

PULASKI COUNTY, KENTUCKY, BY:
PULASKI COUNTY FISCAL COURT;
DARRELL BESHEARS, PULASKI COUNTY
JUDGE EXECUTIVE;
JAMES COTHRON, MAGISTRATE;
JIM GIRDLER, MAGISTRATE;
MIKE NEW, MAGISTRATE;
DARRELL WILSON, MAGISTRATE;
KENNY ISAACS, MAGISTRATE;
HOWARD HANSFORD, MAGISTRATE; AND
RALPH TROXTELL, MAGISTRATE

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM PULASKI CIRCUIT COURT
v. HONORABLE WILLIAM T. CAIN, SPECIAL JUDGE
ACTION NO. 01-CI-00703

ELMER INABNITT, AND
BETTY INABNITT, HIS WIFE

APPELLEES/CROSS-APPELLANTS

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: BARBER, KNOFF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The County, through its Fiscal Court, appeals
a judgment entered against it by the Pulaski Circuit Court which

held that a gate erected by Elmer Inabnitt was not on or obstructing Dark Hollow Road, a county road. The Inabnitts filed a protective cross-appeal contending that Dark Hollow Road was not the county road, and that even if it were, it had not been established according to the statutory requirements.

We agree with the trial court that Dark Hollow Road is a county road. However, we agree with the fiscal court that the gate in question blocks public access to said county road. Therefore, we affirm in part, reverse in part, and remand.

The Inabnitts own a parcel of land in Pulaski County off Dark Hollow Road. The Inabnitts claim the road stops at or near their property line and erected a gate at that point to prevent public access. The County counters that Dark Hollow Road is a county road that does not end at the gate, but continues through the Inabnitt property, and others, and comes out in the Bent area. The County sought to have the gate and obstructions removed.

The County's claim begins with an April 21, 1924, petition before the Pulaski County Court for the establishment of a new county road, and a Court Order establishing the same with an inexact metes and bounds description. The description described the property owner's land and the length of road on each of said property but did not pinpoint the location. The County introduced numerous witnesses that lived along the road

who could describe where the road actually ran. The County also hired a professional land surveyor to locate the roadbed of this county road. Initially, the surveyor was skeptical that the roadbed could be pinpointed. However, after searching old county records and finding out who owned what in 1924, he was able to triangulate the road route over these properties. He also found old quad sheets which showed no other roads in the vicinity of Dark Hollow Road, and concluded Dark Hollow Road was the county road referred to in the 1924 County Order. Also, aerials and old county maps revealed evidence of the roadway, as built. The Inabnitts' evidence consisted of Elmer Inabnitt insisting what was on his place was an old logging trail although he could not give a clue as to where the old county road had been located on his land.

The Inabnitts also produced an agreement they signed with the Harrises, another family fronting on Dark Hollow Road but on the locked side of the gate. According to the agreement, the road beyond the gate was considered a private road and the Harrises were granted permission to build the road across Inabnitts' property with both families having a key to the gate.

The trial court visited the road to where the gate had been constructed and ruled that the 1924 Court Order did establish a county road, but that the road across Inabnitts' property was not that county road, but a private road based on

the controlling agreement between the Inabnitts and the Harrises. In a subsequent order, the ruling was amended to reflect the Court's holding that the private agreement was not controlling but given "probative weight" by the Court.

On appeal, the County contends the trial court erroneously based its decision upon the agreement between the Inabnitts and Harrises, and that the court's findings (that the gate is not on the county road) is flagrantly against the evidence. The protective cross-appeal contends the trial court erred in finding the 1924 county road was properly established and even if it were, there was insufficient proof that Dark Hollow Road was that county road.

The first question we must decide is whether the trial court erred in finding that the Inabnitts did not erect the gate on Dark Hollow Road but on a private road. The court's factual findings may not be set aside unless clearly erroneous. See CR 52.01; Weiand v. Board of Trustees of Kentucky Retirement Systems, 25 S.W.3d 88 (Ky. 2000). A factual finding made by the trial court is not clearly erroneous if the finding is supported by substantial evidence. Cole v. Gilvin, 59 S.W.3d 468 (Ky.App. 2001). Substantial evidence means "evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people." Id. at 473. We agree with the County that the trial court's finding was not supported by

substantial evidence and was clearly erroneous. The Inabnitts purchased the property years after the road was established and he testified that he believed the road on his property was merely an old logging trail. After being informed there was at one time a county road over his property, he found no other evidence of a road or trail over his property which could have shown a different location. The Inabnitts' evidence consisted of witnesses who did not know where the roadbed was and an agreement by an adjacent property owner agreeing the road was private. On the other side was a licensed surveyor who did a title search back to the 1924 county court order establishing a road over the property later purchased by the Inabnitts and others, and who triangulated the most accurate roadway according to the distances given. The surveyor also viewed the property, compared the road to old quad maps (geological survey maps) and drove his four wheel drive vehicle from one end to the other. It was his professional opinion that Dark Hollow Road was the 1924 county road and that the gate was obstructing the county road. Elderly lay witnesses also gave testimony that they lived in the area, were familiar with the location of the roadway of Dark Hollow Road, and that the gate was blocking the road. The only affirmative evidence of record supports the conclusion that the gate is blocking part of Dark Hollow Road, a public road,

and not a private road or logging trail. The trial court's finding to the contrary was clearly erroneous.

The trial court found Dark Hollow Road was a county road and the Inabnitts contend in their cross-appeal that the court erred. The distinction between county roads and public roads was explained by our Supreme Court in Sarver v. Allen County, 582 S.W.2d 40, 41 (Ky. 1979)(citations omitted):

Prior to 1914 it was recognized that an "acceptance" by the county could be accomplished informally, e.g., by maintenance of the road at county expense. Since the enactment of Ch. 80, Acts of 1914, however, a formal order of the fiscal court has been necessary to establish a county road. Otherwise, though a road may be "public," it is not necessarily a "county road." The obvious reason for this particular distinction is, of course, a public policy against holding counties responsible for the upkeep of any and all highways and biways [sic] that chance to become "public" through processes of dedication or prescription over which the counties have no choice or control.

In Blankenship v. Acton, 159 S.W.3d 330 (Ky.App. 2004) another panel of this Court dealt with another Pulaski County resident obstructing access to an old road. After recognizing the distinction between "county roads" and "public roads," the Court set forth a significant legal distinction between the two, consequently, a county road adopted by formal action after 1914 may only be abandoned by formal governmental action, but a public road that is not a "county road" can be abandoned without

formal action. Id. at 333. Without formal action by the county to abandon that part of Dark Hollow Road crossing the Inabnitts' property, the obstructions, including the gate, will have to be removed.

The Inabnitts contend that even if the gate is blocking Dark Hollow Road, and that this is the county road established in the 1924 County Order, the road was not established according to the statutory scheme in effect in 1924. We disagree. The 1924 Order recites that the landowners involved had been summoned or entered an appearance, that the proper advertisement had been made and that the Court decided that the public road should be established. The order listed the property owners and the length of road on each person's property, and appoints Joe Whitaker as commissioner to open said road. The surveyor testified the existing Dark Hollow Road appears to be the built county road. The recitals appear to follow the statutory scheme of Section 4301 of the Kentucky Statutes. The Inabnitts' contention that the proprietors did not sign a receipt for just compensation is a red herring that does not change the outcome. The receipt would be a separate document that may have supported a collection claim but would not affect the order establishing the county road. The order established Peter Inabnitt (a predecessor in title) was to be paid \$10.00 for the taking and fencing of his land. We can

presume it was paid. Citizens Coal Co. v. Foley, 278 Ky. 573, 129 S.W.2d 131, 132 (1939).

For the foregoing reasons, the Order of the Pulaski Circuit Court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

John T. Mandt
Somerset, Kentucky

William M. Thompson
Somerset, Kentucky

BRIEF FOR APPELLEES:

John Sanders Gillum
Somerset, Kentucky