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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001712-MR

ROY DALE BOWLING AND
SUSAN BOWLING — APPELLANTS

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, SPECIAL JUDGE
ACTION NO. 00-CI-00635

ROBERT SIMPSON AND
EDNA MAY SIMPSON — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: Roy Dale Bowling and Susan Bowling (the Bowlings) appeal a decision of the Laurel Circuit Court which decided a boundary line dispute in favor of Robert Simpson and Edna May Simpson (the Simpsons). The special judge's interpretation of the deed placed the boundary line alongside of a driveway instead of through the center of the driveway. We

believe the trial court's interpretation of the language of the deed was proper, therefore, we affirm.

The Simpsons owned a parcel of land in Laurel County which fronted on Kentucky State Route 687 (also known as the Langau-Congo Road at the Simpsons).[1] On October 11, 1994, the Simpsons sold the Bowlings an unimproved section of their land, which also fronted on Ky. 687. The legal description in question described the parcel retained by the Simpsons:

> Beginning at a stake and a fence post thence west with the Langau-Congo road 224 feet to a stake at the drive way thence with the drive way 384 feet to a stake thence East 31 feet to a stake thence North 259 feet to a Oak tree in the fence thence south with the fence to the beginning corner.

Robert Simpson and his son measured out the legal description. Simpson's description of "224 feet to a stake at the drive way" is actually 223.40' or 223.59' (depending on which survey) from the point of beginning to a U-shaped metal rod. That point places the entire driveway in question in the Simpsons' parcel. However, the Bowlings contend a description to a driveway, under rules of construction, would run to the center of the driveway.

The trial court found the driveway in question separates the Simpsons' property from the Bowlings' property, and that the driveway provided access to the Simpsons' private cemetery and to the Bowlings' residence. At the time of

[1] The surveys show the spelling as Langnau.

conveyance, the Bowlings had frontage on Ky. 687 exclusive of the driveway.

The issue before the court was the interpretation of a call in the deed, “224 feet to a stake at the drive way”. Construction of a deed is a matter of law, and the intention of the parties is to be gathered from the four corners of the instrument. Phelps v. Sledd, 479 S.W.2d 894 (Ky. 1972). Both surveyors agreed that when following a surveyor’s description, a call to a monument (like the driveway) that does not specify to the east or to the west, would normally be to the centerline. The trial court noted that the description was measured and set forth by the Simpsons, who were laymen and used the layman’s description of “224 feet” as the call which placed the driveway within the Simpsons’ legal description.

On appeal to this Court, the Bowlings argue the trial court erred, based on rules of construction used in deed interpretations which prefer monuments over distances, which would place the boundary line in the center of the driveway. The rule of construction the Bowlings are referring to dates back to when deed descriptions simply referred to rocks, trees, creeks, ridges, boundaries, corner posts, etc., to describe boundaries. There was no need to measure or survey the actual distances because everyone could find the markings or monuments. When a distance was given, it was considered surplusage or extra

language. As expected, the earlier courts sometimes found discrepancies between distances mentioned in the deeds and the actual location of the monuments. A rule of construction was made. The courts decided a call to a monument would govern or take priority when a deed refers to a monument as being so many feet, when the distance to the monument is incorrect. Kenmont Coal Co. v. Combs, 243 Ky. 328, 48 S.W.2d 9 (1932); Oliver v. Muncy, 262 Ky. 164, 89 S.W.2d 617 (1935).

In our case, the Bowlings miss the point. The driveway was not the distance monument, the stake was - "[A] stake at the drive way[.]" (Emphasis added). The stake, or the U-shaped piece of steel on the left side of the driveway, which was almost buried in the ground, was almost 224 feet (within inches) from the point of beginning. The driveway is a monument that describes near where the "stake" could be and was found. Therefore, under our rule of construction, the monument (located 223.40' or 223.59' depending on which survey is used) governs over the given distance of 224'. The monument is located on the left of the driveway which means the trial court was correct in ruling that the entire contested portion of the driveway (to the cemetery) belongs to the Simpsons.

The Bowlings also argue that they are entitled to an implied easement or "easement by necessity" over the driveway, otherwise their parcel is landlocked. The law recognizes an

easement by necessity when the grantor sells off a parcel which is landlocked. However, the easement by implication or necessity is over the former land of the grantor (Bowlings) not over an adjacent owner (Simpsons) who had nothing to do with the landlocking. See Hall v. Coffey, 715 S.W.2d 249 (Ky.App. 1986).

Finally, the Bowlings contend they have an easement over the driveway by estoppel, or at least a license over the driveway because they constructed their residence at a cost of $150,000. The Bowlings seem to forget that they purchased a lot with road frontage, built their house, and then sold off the frontage, without any input from the Simpsons. Holbrook v. Taylor, 532 S.W.2d 763 (Ky. 1976) recognizes the difference between easements (an interest in another's land) and a license, noting that a license is normally revocable at the pleasure of the grantor. Lashley Telephone Co. v. Durbin, 190 Ky. 792, 228 S.W. 423 (1921), recognized that where the licensees construct improvements on the licensors' land, the estoppel doctrine may apply. Akers v. Moore, 309 S.W.2d 758 (Ky. 1958), recognized establishing licenses by estoppel because of the money spent on the licensors' land by the licensees. In our case, the Bowlings spent great sums of money, not on Simpsons' road – but on the Bowlings' property, and there was no problem with access until later when the Bowlings tried to landlock themselves.

With our decision above, the Bowlings' argument concerning access to the cemetery becomes moot.

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

ALL CONCUR.

BRIEF FOR APPELLANTS:	BRIEF FOR APPELLEES:
John T. Aubrey Manchester, Kentucky	Warren N. Scoville London, Kentucky