

RENDERED: MAY 12, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001879-MR

RILEY PARTIN

APPELLANT

APPEAL FROM WHITLEY CIRCUIT COURT
v. HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 02-CI-00161

BYRD PARTIN; WHITLEY COUNTY,
KENTUCKY; AND LUCILLE PARTIN

APPELLEES

OPINION
REVERSING AND REMANDING

** ** *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Riley Partin brings this appeal from a July 26, 2004, "agreed judgment" entered in accordance with the parties' settlement of a dispute concerning a right-of-way to a cemetery. We reverse and remand.

The genesis of this appeal has its origins in a dispute concerning a right-of-way to a cemetery. Appellant is the owner of property upon which a road and cemetery are

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

located. Appellant maintained the road leading to the cemetery was a private road upon which a right-of-way easement provided ingress and egress to the cemetery. Conversely, appellees claim the road was a public and/or county road and not a private road.

A civil action ensued concerning the nature of the roadway. Eventually, the parties entered into a settlement agreement. The settlement agreement was recited for the court, and this recitation appears in the transcript of record. On July 26, 2004, the circuit court entered a judgment purporting to reflect the parties' settlement agreement. Believing that the judgment did not reflect the agreement, appellant filed a motion to alter, amend, or vacate the judgment. This motion was denied by a subsequent order of the circuit court, thus precipitating this appeal.

It is well-established that a settlement agreement is a contract and contract law governs its interpretation. Frear v. P.T.A. Industries, Inc., 103 S.W.3d 99 (Ky. 2003). The interpretation and construction of a contract is a matter of law for the court, and our review proceeds *de novo*. City of Worthington Hills v. Worthington Fire Protection District, 140 S.W.3d 584 (Ky.App. 2004).

Appellant contends that two provisions of the circuit court's judgment do not reflect the parties' actual settlement agreement. The two provisions are as follows:

IT IS AGREED, ORDERED AND ADJUDGED the Plaintiff, Riley Partin, shall cause to be conveyed by Quitclaim Deed to the Fuston Cemetery Association, Inc., the Fuston Cemetery and the adjoining parking area as set forth on his plat map made a part hereof and attached as Exhibit "A".

. . . .

IT IS AGREED, ORDERED AND ADJUDGED that in the event the Plaintiff, Riley Partin, desires to relocate said roadway to said cemetery from the Laurel Fork Road he may do so by constructing a shorter road that is suitable, comparable, and acceptable to the Whitley County Fiscal Court and said Whitley County Fiscal Court shall adopt said new road as a county road and shall abandon the current county road to said cemetery which shall revert to the Plaintiff Riley Partin in fee.

In the judgment, the circuit court ordered appellant to quitclaim the cemetery and an adjoining parking area to the Fuston Cemetery Association. Appellant claims that he did agree to quitclaim the cemetery but did not agree to quitclaim the adjoining parking area. In their brief, appellees concede:

With regard to the "parking area" Appellees agree that the parking area was not discussed nor was there any agreement that the parking area would be deeded by Riley to the County. In fact, the parking area in reality is nothing more that[sic] the end of the old county road, in front of the cemetery.

Appellees' Brief at 15.

Having reviewed the transcript of the proceedings, we agree that the parties never mentioned the parking area and that

appellant did not agree to deed a parking area to the Fuston Cemetery Association. As such, we must conclude the circuit court committed error by requiring appellant to deed the parking area to the Fuston Cemetery Association. The parties simply never agreed to such a condition, and it was error for the circuit court to impose such a condition upon appellant.

As to the remaining disputed provision of the judgment, appellant asserts the circuit court erred by requiring him to construct a new roadway that was "suitable, comparable, and acceptable to the Whitley County Fiscal Court" Appellant maintains that he simply agreed to construct a new roadway but never agreed to construct a roadway that would be "suitable, comparable, and acceptable" to the fiscal court.

While the parties never explicitly agreed to such terms, appellees argue that such terms were implicit to the parties' agreement. In order for the new roadway to be adopted by the county, appellees argue that the road must impliedly be of a character acceptable to the fiscal court.

The record reveals the following exchange took place between the parties concerning the new road:

Now, if Mr. Partin desires to relocate the road where it's a shorter route to the cemetery he will do that at his expense and at that point the county agrees in this to close the existing road, county road, and adopt this new Fuston Cemetery Road.

. . . .

MR. SMITH: That road will be constructed at his expense and the county will adopt it as a county road. The gate will be open, and the association can change this, but we're proposing the gate be opened from seven in the morning until dark, eight in the morning till dark. It's, you know, just so it's daylight hours.

Considering the entire transcript of the proceedings and the more relevant portions delineated above, we believe it was the parties intent that the new roadway be similar to and comparable with the condition of the old roadway which it was replacing. We do not believe the new roadway must be "suitable, comparable, and acceptable" to the Whitley County Fiscal Court; such terms are simply outside the parties' expressed or reasonably implied intent. Rather, we simply interpret the parties' agreement to mean that the new roadway must be similar to and comparable with the old roadway. This interpretation is consistent with the parties' express intent that the new roadway would serve as a replacement for the old roadway. See Cantrell Supply, Inc. v. Liberty Mut. Ins. Co., 94 S.W.3d 381 (Ky.App. 2002).

For the foregoing reasons, the judgment of the Whitley Circuit Court is reversed and this cause remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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