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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002050-MR

CITY OF MONTICELLO

APPELLANT

V. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE VERNON MINIARD, JR., JUDGE
CIVIL ACTION NO. 03-CI-00400

NANCY LaHAYE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: MINTON AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

MINTON, JUDGE: Nancy LaHaye, who owns several lots in a subdivision in Monticello, filed a petition in circuit court for declaration of rights concerning the legality of a fence that blocked vehicular traffic on Hillcreek Drive, one of the public streets located in LaHaye's subdivision. The circuit court

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 KRS 21.580.

granted summary judgment for LaHaye declaring that the fence was unlawful and requiring the City to remove it. The City argues that LaHaye lacked standing to bring this action; and even if she did have standing, it has inherent authority to obstruct dedicated public streets without officially closing them. We affirm.

In 1993, the City accepted the subdivision, which included Hillcreek Drive, bringing this street into the City's street system even though a few hundred feet of Hillcreek Drive remained undeveloped. According to the original plat, some of LaHaye's lots front on Hillcreek Drive. In 1998, then-mayor Kenneth Catron directed the placement of a fence to block vehicular access through the unimproved section of Hillcreek Drive where it intersects with Castle Street. He acted without city council approval in response to neighbors' complaints of a nuisance created by four-wheelers using that portion of Hillcreek Drive. The unpaved portion of the street has been blocked by the fence since that time.

On three occasions after the fence went up, Monticello's City Council considered action to reopen and improve Hillcreek Drive or to close it officially. But even after going so far as to obtain written approvals from the owners abutting the fenced section of the street, the City

Council has never taken the appropriate steps to follow through with closing the street according to law.

Following the last city council meeting dealing with Hillcreek Drive, LaHaye filed a declaratory judgment action against the City of Monticello, acting through its mayor and council, demanding that the circuit court declare that the fence is an illegal obstruction of a public street and that the City must remove the fence. The City responded with a motion to dismiss arguing that LaHaye lacked standing to bring the action. Specifically, the City argued that since LaHaye's lots did not abut the blocked portion of Hillcreek Drive, she lacked standing to prosecute a declaratory judgment action based upon KRS² 82.405, the statutory procedure for closing a public way.

In its order denying the motion to dismiss, the circuit court noted that upon its review of the submitted plats, some of LaHaye's property did indeed front on Hillcreek Drive as the street was originally platted. It is not clear what legal conclusion the court reached as a result of that finding. But it is clear from the order that the court rejected the City's reliance on KRS 82.405 as a bar to the action, ruling instead that LaHaye may bring a declaratory judgment action based upon

² Kentucky Revised Statutes.

her right conferred by KRS 446.070³ to pursue a civil remedy for violation of KRS 525.140(1),⁴ the statute that punishes the obstruction of highways and other public passages. The court ultimately granted summary judgment to LaHaye declaring that "the fence that obstructs traffic from entering Hillcreek Drive at its intersection with Castle Street is being unlawfully maintained by the City of Monticello and should be removed." The court ordered the City to remove the fence immediately. The City appealed to this Court.

On appeal, the City first argues that the circuit court erred when it allowed LaHaye to proceed with this declaration of rights action. The City insists, as it did below, that LaHaye lacks standing to seek a declaration of rights because she is not an abutting property owner whose consent to closure is required by KRS 82.405. As to the merits of LaHaye's claim, the City argues that the circuit court erred in declaring the street to be "unlawfully maintained" because of its inherent authority to control and operate its streets, including the specific authority to fence off a part of Hillcreek Drive.

³ A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.

⁴ A person is guilty of obstructing a highway or other public passage when having no legal privilege to do so, he alone, or with other persons, intentionally or wantonly renders any highway or public passage impassable without unreasonable inconvenience or hazard.

There is no dispute of the facts on appeal; therefore, we review the circuit court's judgment for a determination of whether its declaratory judgment was correct for any reason.

We turn first to the City's argument that the circuit court erred by denying its motion to dismiss LaHaye's complaint for lack of standing. According to the City, because LaHaye's property does not abut the blocked portion of Hillcreek Drive, she has no standing to seek a declaration of rights. We disagree.

LaHaye filed a declaratory judgment action under KRS 418.040, *et seq.*⁵ KRS 418.040 allows a plaintiff to seek a declaration of rights when an actual controversy exists, whether or not consequential relief is or could be sought.

The purpose of the act is to make courts more serviceable in the settlement of controversies and afford relief from uncertainty and insecurity with respect to rights. It is to be liberally interpreted and administered, and should not be used as a technical bar to the administration of justice.⁶

⁵ In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

⁶ Continental Ins. Co. v. Riggs, 277 Ky. 361, 126 S.W.2d 853, 855 (Ky. 1939).

In order to support an action, a party need only have a present and substantial interest in the matter in litigation.⁷ To have standing, a party must have a real, direct, present, and substantial right or interest in the subject matter of the controversy.⁸ We hold that LaHaye met this requirement, and the circuit court reached the right result on this issue when it rejected the City's argument that focused narrowly on KRS 82.405. In so holding, we do not endorse the circuit court's conclusion that LaHaye's complaint was authorized by KRS 446.070 to allow her to pursue a civil remedy for the City's purported violation of KRS 525.140(1). Since neither side discussed the circuit court's reasoning, we will decline to do so as well and consider the potential arguments waived.⁹

We turn next to the City's inherent authority argument. The General Assembly has created an orderly process for a city's legislative body to follow to dedicate public ways within the city limits¹⁰ and to close public ways within the city limits.¹¹ In the case at hand, all agree that the Monticello City Council followed the law in 1993 when it made all of the

⁷ Winn v. First Bank of Irvington, 581 S.W.2d 21, 23 (Ky.App. 1978) (citing 59 Am.Jur.2d *Parties* § 28).

⁸ *Id.* (citing 67 C.J.S. *Parties* § 6 (1950)).

⁹ See 5 Am.Jur.2d *Appellate Review* § 557 (2005)

¹⁰ KRS 82.400.

¹¹ KRS 82.405.

partially undeveloped Hillcreek Drive, as platted, a part of the City's street system. If the undeveloped part of Hillcreek Drive is to be discontinued as a public way, the Monticello City Council must make that decision. But thus far, the City Council has not followed KRS 82.405 to effect a legal closure.

We are baffled by the City's argument that this fence that has stood for some seven years does not actually close Hillcreek Drive. The circuit court correctly saw this as a *de facto* closing. Since the legislature has so carefully provided a process for closing a city street, we must reject the City's argument that it has inherent local authority to handle street closings its own way.

For the reasons stated above, the judgment of the Wayne Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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