

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002566-MR

WILLIAM A. RINEY AND
DOROTHY MAE RINEY

APPELLANTS

v. APPEAL FROM WASHINGTON CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NO. 03-CI-00012

THOMAS NEWTON AND
CHARLOTTE NEWTON

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, MINTON, AND TACKETT,¹ JUDGES.

TACKETT, JUDGE: William and Dorothy Riney (Riney) appeal from a jury verdict in an action to quiet title filed by neighboring landowners, Thomas and Charlotte Newton (Newton). The jury determined, first, that Riney built a road on property owned by the Newtons and, second, that the location of the road did not correspond with the location of a former county road which had

¹ This opinion was completed and concurred in prior to Judge Julia K. Tackett's retirement effective June 1, 2006. Release of the opinion was delayed by administrative handling.

not been maintained for twenty-five years. Riney argues that the trial court should have granted a directed verdict or judgment notwithstanding the verdict finding that the road he built was outside the boundaries of the Newtons' property. He further contends that the statutory procedure for closing county roads was never followed in this case; thus, he had a right to use the formerly-maintained road. We affirm the judgment of the Washington Circuit Court accepting the jury's verdict.

The Rineys acquired a half interest in seventy-two acres in Washington County in 1959. They co-owned the property with his father in-law, Lawrence Graves. In 2002, after Graves and his wife passed away, the Rineys acquired their interest in the property. This property is bordered by Manton-Loretto Road, 605 and Station Run, a small stream running east to west and emptying into Hardin Creek on the Washington-Marion County border. Riney actively farmed his land. The Newtons' adjoining property is largely in woods and not actively farmed. On the north side of the creek is a paved, one-lane county road, Sid Johnson Road, which was built in the late 1970s. Formerly, there was a county-maintained road running parallel to the new Johnson Road, but this road was not paved and had not been maintained in twenty-five years. This road was closed by a landslide in 1993. After acquiring the Graves' interest in the property, Riney hired a contractor to bulldoze a stretch that

was twelve feet wide and 3/10 mile long and lay down gravel where Riney believed the old county road had been.

Prior to this, Newton had built a barbed wire fence on the south side of what Riney contends was the old county road. After Riney reopened the road, Newton placed a cable across the Manton-Loretto end and locked it. In January 2003, he filed an action to quiet title, claiming that Riney had built a road on his property without permission, and asked for damages for the loss of tress and land caused by Riney's trespass. The claim for damages was eventually dropped, but the case proceeded to trial on the issue of whether Newton owned the land in question.

Newton testified that there had never been a country road on the north side of his property, and that he owned all the land south of Johnson Road. He further told the jury that Riney had never used that stretch of his property prior to building a road from scratch. The construction of the road had damaged his property by destroying trees and causing washouts. Newton also presented expert testimony from a surveyor who determined that the gravel road, constructed by Riney, was within the boundaries of the Newtons' property. In addition, Newton called two witnesses who were familiar with the area to testify about the location of the old county road. The trial court denied Newton's motion for a directed verdict, and Riney presented his evidence.

Riney testified on his own behalf, admitting that he never saw the county maintain this road, he did not own the property where his contractor bulldozed, and did not seek permission from Newton before constructing the road. He stated that he only exercised control over the land in question because he believed it to be the location of a road formerly maintained by the county. Riney also presented testimony from former tenants as to the location of the former county road, from Earl Mann, the contractor hired to bulldoze the gravel road, and from Milton Keane, who had worked for the county highway department from 1972-1985. Mann testified that there appeared to have been a road on the location which he bulldozed, but that it had been blocked by a landslide. Keane testified that the old county road ran in and out of the creek bed several times, and that he had maintained that road as a county highway employee. However, he also stated that he had not been on the property in twenty-five or thirty years.

At the close of Riney's evidence, both sides moved for a directed verdict. Newton made his motion on the ground that the road had been abandoned by the county for twenty-five years. Riney argued that closing a county road is controlled by statute and the dictates of Kentucky Revised Statute 178.050 had not been followed; thus the road was merely inactive, but not closed. The trial court denied the motions, and instructed the

jury to answer two questions: whether the gravel road was within the boundaries of the Newtons' property and whether or not the gravel road was at the same location as the old road formerly maintained by the county. The jury found that Riney had constructed the road on the Newtons' property and that it was not at the same location as the former county road. Riney filed a motion for judgment notwithstanding the verdict, and that motion was also denied. This appeal followed.

Riney argues that he was entitled to a directed verdict at the close of the evidence, as well as judgment notwithstanding the verdict. He contends that the testimony of Newtons' surveyor was unsupported by the evidence and that his own witnesses conclusively established that the road he bulldozed was at the same location as the old county road. The standard for reviewing denial of a motion for directed verdict is as follows:

The prevailing party is entitled to all reasonable inferences which may be drawn from the evidence. Upon completion of such an evidentiary review, the appellate court must determine whether the verdict rendered is "'palpably or flagrantly' against the evidence so as 'to indicate that it was reached as a result of passion or prejudice.'"

(Citations omitted.) Lewis v. Bledsoe Surface Mining Co., 798 S.W.2d 459, 461-2 (Ky. 1990). Riney focuses on the testimony of Steven Hibbs, the surveyor hired by Newton, who gave expert

testimony as to the boundaries of the Newtons' property. The description in the Newtons' deed is by neighbors and landmarks, not a survey, and dates back to at least 1931. The description reads as follows:

A certain tract of land in Washington County, Kentucky, near Manton and fronting on the St. Rose-Manton Road and described as follows:

Beginning at a fencepost at corner to said road and Wallace Medley thence along said road with a fence in a Northerly direction to a corner to post at the edge of Station Run Road, thence in an Easterly direction and Southerly direction along Station Run Road to the property of Bud Kelty at a fencepost; thence in a Westerly direction along the fenceline of said Kelty and said Medley to the point of beginning containing twenty acres more or less.

At one point, Hibbs testified that he thought the Sid Johnson Road was the one of the roads mentioned in the deed which established the property's boundaries. However, the description in the deed pre-dates the construction of that road and, thus, it could not be the road indicated. However, the location of the new county road was not the only thing Hibbs relied on when fixing the boundaries of the Newtons' properties. He testified that, according to his survey, the Newtons owned 18.1 acres, including the land where Riney had bulldozed a road. Hibbs reached this conclusion by looking at the Newton deed, as well as the deeds of adjoining landholders. In addition, he visited

the property two or three times, and checked records at both the Washington County Clerk's office and the county PVA office.

Hibbs stated that neither his personal observation, nor any of his research indicated that a county road had ever existed at the location Riney bulldozed.

Carl Wimsatt, another witness for Newton testified that he had lived in the area for years and that the old county road was not located where Riney bulldozed. Riney admitted that he had never seen the county maintain a road where he bulldozed. Even Keane, the former county highway employee, testified that the old road went to the edge of the creek and, further, that he had not been on the property in twenty-five or thirty years. The jury's verdict was not flagrantly against the weight of the evidence. Consequently, Riney was not entitled to a directed verdict or judgment notwithstanding the verdict.

Riney also argues that he had a right to use the formerly maintained county road because the statutory procedures to close a county road were never followed. However, the jury found that the road that Riney bulldozed on the Newtons' property had never been a county road. Therefore, the issue of whether the former county road was properly closed is moot.

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

ALL CONCUR.

BRIEF FOR APPELLANTS:

Daniel Carroll Kelly, III
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BRIEF FOR APPELLEES:

Samuel Todd Spalding
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