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Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-000501-MR

CLYDE F. McCOY, JR.;
AND RONALD G. McCOY, JR.

APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 02-CI-00437

JOHN F. VANCE;
AND BARBARA VANCE

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

KNOPF, JUDGE: John and Barbara Vance own real property along Kentucky State Route 319 in Hardy, Pike County, Kentucky. Their property includes an old cemetery containing the remains of six members of the McCoy family who died during the infamous Hatfield-McCoy feud during the 1880's. The dispute in this case

involves the status of an unpaved road leading up the hill from Ky. 319 to the cemetery. Clyde F. "Bo" McCoy, Jr. and Ronald McCoy, Jr. are related by collateral descent to the McCoy's who were buried in the cemetery. They claim that the road is public and that the Vances have no right to impede public access to the cemetery.

By an ironic coincidence, John Vance is the great-great grandson of "Bad" Jim Vance, who was related to the Hatfield family and was involved in several of those murders. The Vances argue that the road is merely an easement, and that the use proposed by the McCoy's would unreasonably burden their estate. The trial court agreed with their position, and the McCoy's appeal from this judgment. For the most part, we affirm the trial court, but on different grounds. We further find that the trial court improperly limited the scope of the easement, affecting property rights which are not ripe for adjudication. Hence, we reverse that portion of the trial court's judgment.

Although the feud did not spark the current dispute involving the road and the cemetery, the existence of the road and the cemetery are directly related to that conflict. Consequently, a brief history of the feud is in order as a preface to this opinion. For the most part, the Hatfields lived on the West Virginia side of Tug Fork of the Big Sandy River, and the McCoy's lived on the Kentucky side. The Hatfields were

led by William Anderson "Devil Anse" Hatfield (1839-1921). The McCoy's were led by Randolph McCoy (1825-1914). While the origins of the feud are obscure, local historian Betty Howard testified that the bad blood between the families began during the Civil War. Asa Harmon McCoy, Randolph's brother, served as a soldier in the Union Army. Devil Anse had served in the Confederate Army, but he was discharged for his inability to follow orders. Thereafter, he formed a group of guerillas in Logan County (West Virginia) called the Logan Wildcatters. "Bad" Jim Vance, who was Devil Anse's uncle, was a member of the Logan Wildcatters.

When Asa Harmon McCoy returned on leave to Pike County in 1863, his Union allegiance led him into conflicts with Devil Anse Hatfield and Bad Jim Vance. Eventually, Asa Harmon went into hiding in a cave. But in 1865, the Logan Wildcatters (probably led by Bad Jim Vance) located and killed Asa Harmon McCoy.

The killing did not spark an immediate conflict, but it heightened tensions between the families. The dispute escalated into violence in 1878, after a dispute about the ownership and slaughter of some hogs. The matter was taken to court, and after a trial (before a justice of the peace related to the Hatfields), the McCoy's lost. Soon after, an altercation erupted, and within days, Staton Hatfield shot at two McCoy

brothers, Sam and Paris. They fired back and killed Staton. An unrequited love affair between Johnse Hatfield and Roseanne McCoy, Randolph's daughter, further antagonized the relationship between the families.

On August 6, 1882, a fight broke out between members of the Hatfield and McCoy clans on the election grounds in Pike County. Members of both clans returned to the election grounds the following day, August 7, an election day. Tolbert McCoy began an argument with Ellison Hatfield, brother of Devil Anse, which escalated when Tolbert attacked Ellison with a knife. Soon, Tolbert's brothers, Pharmer and William joined in. Although Ellison was cut numerous times, he continued to fight. Finally, one of the McCoy's shot Ellison in the back. Ellison survived the fight, but died two days later from his injuries.

Election officials on the grounds arrested Tolbert and Pharmer, and they mistakenly arrested Randolph McCoy, Jr. instead of William. The brothers were to be taken to jail, but a posse led by Devil Anse intercepted them on their way to Pikeville. Devil Anse took the three brothers back to West Virginia and held them there. After Ellison Hatfield died, Devil Anse took the three McCoy brothers back across the Tug, tied them to pawpaw trees along the Kentucky bank, and executed them.

Randolph buried his three sons on his property in the cemetery which is now at issue. A fourth son, William, fell into a depression because Randolph, Jr. had been killed in his place. William withdrew from the world and died some time later. He is also buried in the cemetery next to his brothers.

The cemetery has a connection to yet another bloody incident in the feud. During the early morning hours of January 1, 1888, Devil Anse, Bad Jim Vance, and a group of Hatfields attacked Randolph McCoy's house in Pike County. They shot at the house and set it on fire. Randolph escaped to the woods. But two of his children, Calvin (age 18) and Alafair (age 14), were shot and killed and several others were severely injured. Thereafter, Calvin and Alafair were buried in the McCoy cemetery with the brothers who were killed in 1882.

The families eventually reached a truce in 1891 and the hostilities ended. The feud came to be regarded as a family tragedy, and few of the McCoy descendants talked about it. In time, the animosity between the Hatfield and McCoy families disappeared as the feud faded into memory.

The property on which the cemetery is located was later conveyed to John B. Farley. After Farley's death, his heirs filed a plat subdividing the property. That plat, which was filed of record with the Pike County Clerk on October 24, 1957, locates the McCoy graves and cemetery as they then

existed. The plat also marks a thirty-foot road leading from Ky. 319 to the cemetery with the language "30' road reserved." However, Pike County specifically declined to accept the reserved road as a county road. The lots adjoining the reserved road were later conveyed to other parties, and those deeds expressly referred to the plat.

During the 1970's, local interest in the history of the feud began to revive. In 1975, members of the McCoy family placed a large monument to memorialize those buried in the cemetery. At the time the monument was placed, there was an old road in existence leading from Ky. 319 to the cemetery, but the cemetery and the upper portion of the road were overgrown with brush and trees. The members of the McCoy family cleared the road and placed the monument adjacent to the cemetery and the road.

In 1984, John and Barbara Vance purchased the lot adjoining the road and cemetery. As the 1980's and 1990's progressed, there was increased interest in the feud and in feud-related historic sites. There has been a steadily increasing stream of visitors to the cemetery since the Vances bought the property. The Vances did not object to visitors coming to the cemetery until 1998. Furthermore, they maintained the road leading to the cemetery as well as the cemetery itself.

In the mid-1990's, two McCoy cousins, Bo and Ronald McCoy, learned of their common interest in the history of the feud. Bo and Ronald are each descendants of different children of Randolph McCoy. Both men reside outside of Pike County. They began exploring the idea of holding a McCoy family reunion in Pike County. Beginning in 1998, Bo and Ronald began working with Pike County tourism officials to promote the reunion and tourism to feud-related sites. Bo and Ronald formed a corporation, McCoys: 2000, Inc., to further their efforts.¹

Upon learning of these plans, the Vances became concerned about the potential number of visitors to the cemetery. In early 1999, the Vances closed the road to the cemetery and posted the property with "No Trespassing" signs. After negotiations between the parties broke down, Bo and Ronald McCoy brought this declaratory judgment action against the Vances. They sought a declaration that the road dedicated on the 1957 plat was a public road which the Vances had no right to block. The McCoys further sought to enjoin the Vances from interfering with the rights of McCoy descendants to visit the cemetery.

Following a bench trial, the trial court issued findings of fact, conclusions of law and a judgment on April 9,

¹ In 2002, the Secretary of State administratively dissolved McCoys: 2000, Inc. due to its failure to file annual reports.

2003. The trial court found that, while the road had been dedicated on the 1957 plat, it had never been used by the public and thus could not be considered a public road. The court further found that Bo and Ronald McCoy have an easement of access to visit the cemetery. While the court found that Bo and Ronald had proven a right to use the easement, the court also held that any other members of the McCoy family would have to intervene in the action to assert their rights to visit the cemetery. On February 1, 2005, the trial court denied the McCoy's motion to alter, amend or vacate the judgment,² and this appeal followed.³

In any case that is tried without the intervention of a jury, the findings of fact of the trial court should not be reversed unless they are determined to be clearly erroneous, and due regard shall be given to the opportunity of the trial judge to assess the credibility of the witnesses.⁴ Findings of fact

² CR 59.05.

³ The April 9, 2003, judgment was entered by Hon. Charles E. Lowe, Jr., who presided over the bench trial. However, the McCoy's subsequent CR 59.05 motion was considered by a successor judge, the Hon. Steven D. Combs. In the February 1, 2005, judgment, the trial court denied the McCoy's motion to alter, amend or vacate, but substituted a new judgment to correct certain typographical errors contained in the prior judgment.

⁴ CR 52.01; Bealart v. Mitchell, 585 S.W.2d 417, 418 (Ky. App. 1979).

are not clearly erroneous if supported by substantial evidence.⁵ Substantial evidence is evidence which, when taken alone or in the light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable persons.⁶ On the other hand, conclusions of law are subject to independent appellate determination.⁷

The only factual dispute in this case concerns the location of the existing road in relation to the road shown on the 1957 plat. The existing road meets up with Ky. 319 below the cemetery. The road follows a lateral course up the side of the hill. Going up the road, there is a drop-off to the left of the road and an embankment to the right. The Vances' residence is also on the right and below the gravesites. The road then switches-back up the hill to the right, with a driveway extending off to the left at that point. The road continues up the hill behind the Vances' residence and the cemetery. The granite monument placed in 1975 is located next to the road and adjacent to the cemetery.

⁵ Black Motor Company v. Greene, 385 S.W.2d 954, 956 (Ky. 1965).

⁶ Kentucky State Racing Commission v. Fuller, 481 S.W.2d 298, 308 (Ky. 1972).

⁷ A&A Mechanical, Inc. v. Thermal Equipment Sales, Inc., 998 S.W.2d 505, 509 (Ky. App. 1999).

John Vance testified that the existing road is in a different location from the road shown on the plat. He agreed that the lower portion of the road begins at Ky. 319 as shown on the plat. But he stated that the existing road cuts across the hillside at a sharper angle, deviating on the uphill side from the platted road toward the switch-back by several feet. John Vance also testified that he re-built the upper portion of the road and that it is several feet lower on the hillside and is closer to the McCoy cemetery than the road shown on the plat. Joe Sloan, owner of an adjoining property, testified that the Vances' predecessor modified the lower portion of the road. Sloan also agreed with John Vance's description of the existing road.

Based mainly on this testimony, the trial court found that the road shown on the plat is in a different location than shown on the plat. The McCoy's contend that this finding was clearly erroneous. Nevertheless, the evidence clearly established that the existing road follows the same course and directions as shown on the plat. The road begins at Ky. 319, switches-back half-way up the hill, and ends above the cemetery as shown on the plat. Although the existing road may deviate slightly in places from the platted road, there is no evidence that the road is in a substantially different location than was designated on the plat.

Moreover, the exact location of the road as platted does not affect the outcome of this case. The Vances' deed expressly reserves the McCoy cemetery and the 1957 plat reserving the road is incorporated in their chain of title. If the road is only an easement, then a slight deviation in the location of the road would not affect the rights of any party.⁸ Furthermore, the deviation is not significant because the evidence clearly established that the property-owners who were subject to the reservation caused the road to encroach on their properties. Finally, as found later in this opinion, the location of the road dedicated to public use is not ripe for adjudication.

The status of the road as a public road or as an access easement determines the rights of the McCoy descendants and the general public to use the road. The parties agree that a public road may be dedicated by a recorded plat.⁹ The Vances argue that there must be some acceptance of the dedication, either by governmental action or by actual public use, to complete the dedication. The trial court agreed with this argument and, finding no evidence of significant public use of

⁸ See Gabbard v. Campbell, 296 Ky. 216, 176 S.W.2d 411, 413 (1943).

⁹ Shurtleff v. City of Pikeville, 309 Ky. 420, 217 S.W.2d 976, 977 (Ky. 1949).

the road, concluded that the platted road had never been accepted as a public road.

In Cassell v. Reeves,¹⁰ the former Court of Appeals held:

It is a settled principle that when a map or plat of a subdivided tract of land is exhibited or recorded and conveyances are made of the lots by reference thereto, the plat becomes a part of the deeds, and the plan shown thereon is regarded as a unity. And, nothing else appearing, it is held that all the streets, alleys, parks or other open spaces delineated on such map or plat have been dedicated to the use of the purchasers of the lots and those claiming under them as well as of the public. They become appurtenances to the lots. It is presumed that all such places add value to all the lots embraced in the general plan and that the purchasers invest their money upon the faith of this assurance that such open spaces, particularly access ways, are not to be the private property of the seller.¹¹

The Court went on to state that "[i]t is not necessary that dedication to public use should be in writing or in any particular form. It is enough that the intention at the time to dedicate appears and *the subsequent public use completes the act of dedication.*"¹² The Vances and the trial court attach a great

¹⁰ 265 S.W.2d 801 (Ky. 1954).

¹¹ Id. at 802.

¹² Id. at 802-03 (*Emphasis added*). Citing Central Land Co. v. Central City, 222 Ky. 103, 300 S.W. 362 (1927).

deal of significance to the latter portion of this statement, but they overlook its context.

In Cassell v. Reeves, the original owner subdivided the property and sold off the lots with reference to the filed plat. The plat showed several streets running through the area. However, the plat also showed two unnumbered lots along the lakefront. Subsequently, these two lots were sold, and the purchaser of one of the lots sought to build a house on the property. The adjoining property-owners asserted that the original developer had represented that the lot was to be reserved for public access to the lake.

After setting forth the above-cited principles, the Court in Cassell noted that dedication by plat is a common method of proving an intent for the reserved property to be dedicated for public use. However, the Court also held that merely leaving a blank on the plat without designation of its purpose does not of itself sufficiently indicate an intention to dedicate the space to public use. Nevertheless, the Cassell court stated that other circumstances and conditions may show such intention. The court concluded that leaving an unmarked space or strip between a street shown on the plat and a navigable river, coupled with proof of actual public use of that

space, is sufficient evidence to prove the intent of the owner to dedicate the property for public use.¹³

Dedication must be proven by evidence of the intent of the dedicator.¹⁴ In cases such as Cassell v. Reeves, where the dedicator's intent was not clearly stated on the plat, the intent must be inferred from the context of the plat and evidence of actual public use for the intended purpose.¹⁵ But also as noted in Cassell, an intent to dedicate a public way may be inferred where the lots are sold with reference to a platted street, and no other evidence is necessary to prove the intent to dedicate. As explained in Shurtleff v. City of Pikeville:¹⁶

Where a street is dedicated by plat, acceptance in some form or other is essential in order to place upon the city the duty to maintain and repair it, but so far as the dedicator is concerned the recording of the plat and the sale of lots

¹³ Id. at 803.

¹⁴ Hofgesang v. Woodbine Ave. Realty Co., 414 S.W.2d 580, 584-85 (Ky. 1967).

¹⁵ See also City of Hazard v. Eversole, 313 Ky. 254, 230 S.W.2d 921 (1950), in which the original owner sold lots in an undeveloped area but did not convey a strip of land on which a street would be located. The former Court of Appeals found that the exclusion of the strip of land from the division and the continuous uninterrupted use by the public without objection manifested an intention to dedicate it to public use. Id. at 923. Similarly, in Central Land Co. v. Central City, *supra*, the former Court of Appeals held that an oral dedication of land could be proven by subsequent public use and maintenance of the property by the city. Id. at 364.

¹⁶ *Supra*.

in the subdivision with reference to the street amount to an immediate dedication of the street to the use of the purchasers of the lots and of the public, although the street is not actually opened and there has been no acceptance by the city. Morrow v. Richardson, 278 Ky. 233, 128 S.W.2d 560 [(1939)]. It is sometimes said that an offer of dedication must be accepted within a reasonable time, but in this jurisdiction the rule is that the dedicator by filing the plat and selling lots with reference thereto makes an express, irrevocable appropriation of the strip of land for public use, Fayette County v. Morton, 282 Ky. 481, 138 S.W.2d 953[(1940)], and the municipal authorities may assume control at any time. It is not necessary that they should open the street immediately, but they may postpone this until the advancing population and private improvements and developments make it necessary.¹⁷

In other words, where the intention to dedicate a public way appears on the face of the plat, no additional evidence is necessary to prove acceptance of the dedication. Thus, the fact that the street was never built or used by the public does not preclude a finding that a public road was established.¹⁸

¹⁷ Id. at 977.

¹⁸ Id. See also Louisville & Nashville Railroad Co. v. City of Owensboro, 238 S.W.2d 148, 152-53 (Ky. 1951); Morrow v. Richardson, *supra* at 562; Fayette County v. Morton, *supra* at 956; Chesapeake & Ohio Railway Co. v. City of Bellevue, 239 Ky. 61, 38 S.W.2d 943, 945 (1931); City of Middlesboro v. Kentucky Utilities Co., 237 Ky. 523, 35 S.W.2d 877, 881, (1931); and Volpenheim v. Westerfield, 216 Ky. 157, 287 S.W. 545, 546 (1926).

This is not to say, however, that the act of dedication alone entitles any member of the public to bring an action to enjoin the obstruction of a dedicated but un-opened road. A property owner within the block where a street has been obstructed suffers an injury distinct from that suffered by the general public and is therefore entitled to injunctive relief in his own right.¹⁹ But where rights sought to the road are exclusively public, the cause of action for invasion of those rights lies exclusively with the particular governmental agency embracing the locality of the public way involved.²⁰

In the present case, the 1957 plat expressly reserves the road from the conveyance.²¹ However, the road serves the subdivided lots, particularly the upper lot which the Vances now own. In addition, the road provides access to the McCoy cemetery, which was also reserved from the conveyance. As the trial court correctly noted, Bo and Ronald McCoy, as collateral descendants of the McCoys buried in the cemetery, have standing

¹⁹ Hofgesang v. Woodbine Ave. Realty Co., *supra* at 586.

²⁰ City of Middlesboro v. Kentucky Utilities Co., 237 Ky. 523, 35 S.W.2d 877, 880 (1931).

²¹ In a footnote, the Vances suggest that the 1957 plat does not meet the statutory prerequisites for dedication of a public way. Since the trial court did not address the validity of the dedication in the 1957 plat and the Vances do not otherwise brief the issue, we conclude that the issue is not properly raised on appeal.

to assert their private right to use the road for access to the cemetery. But this private right, like the rights of the adjoining landowners, is distinct from the right of the public in general to use the road. Furthermore, there was no evidence of a public use of the road sufficient to ripen into a prescriptive right. Consequently, we conclude that Bo and Ronald McCoy lacked standing to bring an action to declare that the road is open to the public.

Moreover, the deed did not reserve to the McCoy's a fee interest in the road. In addition, the law does not recognize the dedication of land to an individual for private use.²² Therefore, at this point in time, the McCoy's' right to use the existing road can only be by easement. Furthermore, neither the existing road nor the platted road provides direct access to the McCoy cemetery. The gravesites sit some distance back from the road and the only available access to the cemetery requires crossing through the Vances' property.²³ Thus, beyond the bounds

²² Grinestaff v. Grinestaff, 318 S.W.2d 881, 883 (Ky. 1958).

²³ The trial court noted that the monument is not located within the grounds of the cemetery, but next to the existing road above the cemetery. But while it would appear that the monument is located on the Vances' property, the monument's presence in that location without objection since 1975 has ripened into a prescriptive right. See Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Inc., 824 S.W.2d 878 (Ky. 1992). But by the same token, there is no claim that the McCoy's adversely possessed the area between the monument and the cemetery.

of the road, the McCoy access to the cemetery itself is also by easement.

Kentucky law classifies the right of a relative to visit the graves of deceased relatives as an easement.²⁴ This right cannot be extinguished by the owner of the servient estate.²⁵ However, the right to visit a family burial plot must be exercised reasonably.²⁶ As further explained in Commonwealth, Dept. of Fish & Wildlife Resources v. Garner:²⁷

The owners of the easement and the servient estate have correlative rights and duties which neither may unreasonably exercise to the injury of the other. Higdon v. Kentucky Gas Transmission Corp., Ky., 448 S.W.2d 655 (1969). The use of an easement must be reasonable and as little burdensome to the landowner as the nature and purpose of the easement will permit. Horky v. Kentucky Utilities Co., Ky., 336 S.W.2d 588 (1960). Cf. Farmer v. Kentucky Utilities Co., Ky., 642 S.W.2d 579 (1982). The nature and extent of an easement must be determined in light of its purposes. Thomas v. Holmes, 306 Ky. 632, 208 S.W.2d 969 (1948).

The parties to this dispute must be reasonable in their actions and cannot unreasonably intrude on the rights of the

²⁴ Haas v. Gahlinger, 248 S.W.2d 349, 351 (Ky. 1952).

²⁵ Johnson v. Kentucky-Virginia Stone Co., 286 Ky. 1, 149 S.W.2d 496 (1941).

²⁶ Commonwealth, Dept. of Fish & Wildlife Resources v. Garner, 896 S.W.2d 10, (Ky. 1995). Citing Ground v. Harmon, 291 S.W.2d 529 (Ky. 1956) and Rose v. Rose, 314 Ky. 761, 237 S.W.2d 80 (1951).

²⁷ *Supra.*

other. The servient landowner and its licensee have rights and the easement to visit the cemetery does not entitle the user thereof to exclusive control of the land, but only to the extent necessary to enable it to exercise its rights. Kentucky Central Natural Gas Co. v. Huls, Ky., 241 S.W.2d 986 (1951). Easements may not be enlarged on or extended so as to increase the burden on or interfere with the servient estate. City of Williamstown v. Ruby, Ky., 336 S.W.2d 544 (1960). The existing precedent in Kentucky indicates that the mere construction of gates by the servient estate does not violate the dominant estate owner's easement rights. Herndon v. McKinley, Ky.App., 586 S.W.2d 294 (1979). The manner of the creation of passways is one factor bearing upon the right to erection of one or more gates. For other cases involving non-cemetery case matters which hold that the erection or construction of gates may be necessary to protect the appropriate use and enjoyment of the subservient owner, see Mann v. Phelps, 269 Ky. 493, 107 S.W.2d 288 (1937) and Jenkins v. Depoyster, 299 Ky. 500, 186 S.W.2d 14 (1945). There is no reason to believe that the servient owner forfeits his right to protect the land he owns simply because it is crossed by a passway. However, the owner cannot unreasonably interfere with the rights of the holder of the easement. See also Ball v. Moore, 301 Ky. 779, 193 S.W.2d 425 (1946); Smith v. Price, 312 Ky. 474, 227 S.W.2d 981 (1950).²⁸

In the present case, the trial court found the McCoys' rights to visit the cemetery cannot be reasonably construed to allow use of the easement for commercial purposes. In addition, the trial court found that Bo and Ronald's proposal to allow the

²⁸ Id. at 13-14.

general public to visit the cemetery would unreasonably burden the easement. These conclusions were supported by substantial evidence and will not be disturbed on appeal. Thus, the trial court properly held that only relatives of the McCoys who are buried in the cemetery are entitled to use the easement to gain access to the cemetery.

However, the trial court further stated that because the claims do not satisfy the prerequisites for a class action,²⁹ the court's judgment had no application beyond Bo and Ronald McCoy. Consequently, the court held that any other person claiming a right to visit the cemetery must intervene in the action and demonstrate a right to use the easement. Bo and Ronald McCoy contend that the trial court exceeded its authority by imposing such a requirement. We agree.

Bo and Ronald McCoy brought this action as a declaratory judgment under KRS 418.040 to determine the parties' respective rights to the road and the McCoys' right to cross the Vances' property to visit the cemetery. The trial court found that the McCoys are entitled to an easement for this purpose. As a matter of law, that easement is a property right which extends to the next of kin in the order of their relation to the

²⁹ CR 23.

decedents.³⁰ As part of its equity powers, the trial court has the authority to limit a use or proposed use of the easement to the extent that such use would unreasonably burden the owners of the servient estate.

But on the other hand, the owners of the servient estate also may not unreasonably restrict the rights of persons using the easement for proper purposes. Moreover, the extent of the right to use the easement must be decided on a case-by-case basis.³¹ Consequently, it is incumbent on the Vances, as owners of the servient estate, to establish that a use or proposed use of the easement is unreasonable. At this time, the extent of the McCoy family's right to use the easement is not ripe for adjudication.

In conclusion, we agree with the McCoys that the 1957 plat evidences an intent to dedicate the road for the use of the adjoining property-owners and of the public. However, the McCoys lack standing to assert a right to a public use of the road. The McCoys right to use the road and to cross the Vances' property must be by easement. The trial court had the authority to limit a proposed use of the easement that would unreasonably interfere with the Vances' estate. Thus, while we

³⁰ See Johnson v. Kentucky-Virginia Stone Co., *supra* at 498.

³¹ Commonwealth, Dept. of Fish & Wildlife Resources v. Garner, *supra* at 13-14.

disagree with the trial court's reasoning, we conclude that the trial court properly set out the reasonable scope for the McCoys' use of the easement. However, the trial court did not have the authority to limit rights to the dominant estate only to the named parties in this action. To the extent that the trial court's judgment purports to do so, that portion of the judgment must be reversed.

Accordingly, the February 1, 2005, judgment of the Pike Circuit Court is affirmed in part, reversed in part, and remanded for entry of a new judgment consistent with this opinion.

COMBS, CHIEF JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS WITH RESULT.

BRIEF FOR APPELLANTS:

Joseph W. Justice
Della M. Justice
Pikeville, Kentucky

BRIEF FOR APPELLEES:

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