

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-001046-MR

ERIC DEAN SALYER AND  
RHONDA SALYER

APPELLANTS

v. APPEAL FROM MAGOFFIN CIRCUIT COURT  
HONORABLE KIMBERLEY CHILDERS, JUDGE  
ACTION NO. 02-CI-00112

JENNIFER TACKETT;  
MARGARET ISAAC; RUIE ISAAC;  
HEARL ISAAC; BONNIE DANIELS;  
KATHY VANHOOSE; LARRY ISAAC;  
WADE ISAAC; LEE ISAAC;  
JAMES O. ISAAC; LINDA HENSLEY;  
BETTY LOU WARD; JOSEPH ISAAC;  
HOWARD HENSLEY; AND  
JOHN RANDELL ISAAC

APPELLEES

OPINION  
AFFIRMING

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BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: This appeal deals with the heirs' right of access to a private cemetery where the farm was sold without any mention of the cemetery. We agree with the trial court that an easement of access exists to the family cemetery by operation of law, in the absence of a reservation in the deed of conveyance.

In 1909, Tilda Isaac died and was buried on the family farm on Flat Fork in Magoffin County. Over the years, members of the Isaac family joined Tilda in what became a private family cemetery, with some forty graves. Eventually, the family farm was sold with no mention of the cemetery or access thereto. Jack Conn purchased the property and objected to family visitation and any further interments without his permission. The property was later sold to Eric Dean Salyer and Rhonda Salyer without any reservations concerning the cemetery. The Salyers also object to further burials or visitation without permission. The appellees are relatives of the deceased and claim a right of access to the private cemetery.

The trial court had a survey "showing the rows of graves in the cemetery and the natural boundaries of the cemetery including the east boundary marked by defendant, Eric Salyer[.]" The trial court found an easement by prescription for the cemetery according to the boundaries set forth by Eric Salyer in his deposition, and granted the family members a permanent injunction allowing visitation and further burials within the cemetery boundaries as established.

On appeal, the Salyers contend the trial court erred because they have a deed to the property (part of the 67.5 acre farm) without any exceptions for the one acre cemetery which (the Salyers contend) gives them the right to control any and

all actions on the cemetery. This case is similar to Rose v. Rose, 314 Ky. 761, 237 S.W.2d 80 (1951). Family members were buried on the family farm which was later sold without any reservation or exception in the deed concerning the private cemetery, which covered about one acre of land. The purchaser knew of the private cemetery but prohibited family members from visiting or from having further burials. The trial court enjoined the purchaser from interfering with the family relative to further burials, conducting memorial services, visiting, and maintaining the graveyard on the purchaser's land. The Court of Appeals (now our Supreme Court) affirmed, reasoning the graveyard was dedicated for family use and the purchaser had full knowledge of the graveyard when he purchased the property.

Our case is directly on point. The appellees' argument that the land is not "dedicated" is a misunderstanding of the Court's meaning of "dedication." Clearly, neither the Court of Appeals nor the trial court was dedicating the land for cemetery use. The family members burying the dead were dictating the land's use as a final resting place. It was their land and that was their right, to bury their dead on their farm. When land is subsequently sold without reserving the family cemetery, by operation of law, the family of the deceased maintain an "easement," not a fee, in the land, for burial purposes. Haas v. Gahlinger, 248 S.W.2d 349 (Ky. 1952). The

easement for the private cemetery carries with it the right of an heir to visit the cemetery, whether called an easement, license, or privilege, which is not extinguished by a deed without a reservation. Commonwealth, Department of Fish & Wildlife Resources v. Garner, 896 S.W.2d 10, 13 (Ky. 1995).

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

ALL CONCUR.

BRIEF FOR APPELLANTS:

Lowell E. Spencer  
Paintsville, Kentucky

BRIEF FOR APPELLEES:

John C. Collins  
Salyersville, Kentucky