

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001176-MR

DANNY CRAFT AND HIS WIFE, CHRISTINE
CRAFT, AND WAYNE GLOVER AND HIS
WIFE, RENEE GLOVER

APPELLANTS

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 00-CI-00108

MARK CRAFT AND GALE COPELAND D/B/A
C & C LAND DEVELOPMENT

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; MOORE, JUDGE; GUIDUGLI,¹ SENIOR
JUDGE.

MOORE, JUDGE: Danny Craft, Christine² Craft, Renee Glover and Wayne Glover,

appeal from a jury verdict entered by the Clinton Circuit Court in which the jury found in

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

² In the record, Mrs. Craft is consistently referred to as Christell; however, in the Crafts' Notice of Appeal, she is referred to as Christine. Therefore, she is referred to as Christine throughout this opinion.

favor of Appellees, Mark Craft, Gale Copeland and their corporation, C & C Land Development, Incorporated. On appeal, Appellants argue that, based on the evidence they presented at trial, the trial court should have directed a verdict in their favor. In the alternative, they argue the evidence was not sufficient to support the jury's verdict. Finding that the evidence did not compel a verdict in Appellants' favor, we affirm the judgment of the Clinton Circuit Court.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case is a tale of two parallel access roads that are situated on the slopes of Huddleston Mountain in Clinton County, Kentucky. Danny Craft, one of the Appellants, granted an easement across his property to Clinton County. The county used this easement to construct an access road from U.S. Highway 127 to a cable television tower that was situated above Danny Craft's property. The access road leading to this tower will hereinafter be referred to as the “cable television road.”

The City of Albany, Kentucky, built the other access road. The City constructed the road from U.S. Highway 127 to a large water tank situated above Danny Craft's property on Huddleston Mountain. This other road ran parallel to, but to the right of, the cable television road and gave the city access to its water tank. This second road will hereinafter be referred to as the “water tank road.”

In the spring of 1999, Gale Copeland and his business partner, Mark Craft, bought a large amount of property at public auction. This property was situated on the slopes of Huddleston Mountain both above and adjacent to Danny Craft's property. The

property was deeded to C & C Land Development, Incorporated, a corporation solely owned by Gale Copeland and Mark Craft. This property will be hereinafter referred to as the “C & C property.”

In late 1999, Appellees began to make improvements to the water tank road. Initially, they graded and added gravel to the road, but, at the end of 1999, they extended the road up and around Huddleston Mountain. In early 2000, they paved the water tank road.

After beginning work on the water tank road, Appellees received a letter from Danny Craft's first attorney.³ In this first letter, Danny Craft's attorney complained that Appellees had intentionally diverted rain water onto Danny Craft's property causing damage to the property. After receiving this first letter, Gale Copeland contacted the attorney regarding these alleged problems. Thereafter, Danny Craft's counsel sent a second letter to Appellees that contained an estimate of the alleged damage to Danny Craft's property and an estimate regarding the cost of repair.

After Appellees' received these letters, Danny Craft, along with his wife, Christine, filed suit against Gale Copeland, Mark Craft and C & C Land Development, Incorporated, the Appellees' corporation.⁴ Appellants' case proceeded to trial in January 2006.

³ Danny Craft's first attorney died shortly after contacting the Appellees.

⁴ Sometime after Danny Craft filed suit, his daughter, Renee Glover, along with her husband, Wayne, were added as plaintiffs.

From the evidence and testimony adduced at trial, we determine that Danny Craft's property lies at the foot of Huddleston Mountain. The front of the property apparently borders U.S. Highway 127, and the back of the property is situated on the slopes of Huddleston Mountain and borders the C & C property. Near the back part of the property, a small pond lies behind and above Danny Craft's house, and, although the pond is on the slope of the mountain, it is surrounded by pasture land.

At trial, Danny Craft testified that he and his wife had resided on their property since 1973 and that he used the back part of his property, where the pond is situated, for running cattle and cutting hay. According to Danny Craft, from 1985 to 1998, his property did not suffer any water erosion damage from rainwater runoff. While on the stand, Danny Craft introduced numerous photographs that allegedly showed water damage to his property, the Glovers' property and the cable television road. After introducing the photographs, Danny Craft played a video to the jury, which purported to show water damage to his property. After presenting this demonstrative evidence, Danny Craft testified that, prior to “that road,” he had never experienced “water like that.” According to Danny Craft, Appellees' initial work on the water tank road did not affect his property. However, after Appellees extended the water tank road and paved it, Craft complained the flow of rainwater off the mountain increased causing water erosion damage to his property.

After Danny Craft testified, Appellants presented numerous lay witnesses. These lay witnesses testified in general that, prior to 1998, they had not noticed any water

erosion damage to Danny's property, but, after 2000, they had noticed an increase in the flow of rain water across the property and noticed water erosion damage.

In addition to these lay witnesses, Appellants presented the testimony of Jimmy R. Patton. Patton testified that he did excavation and concrete work. According to Patton, Danny Craft contacted him to prepare an estimate regarding the cost to repair Danny's pond and the cost to repair the water erosion damage to his property. Patton testified that it would cost \$34,450.00 to complete the repairs. Additionally, Patton explained that he prepared an estimate to repair the Glovers' property and that those repairs would cost \$2,300.00.

After Patton's testimony, Appellants called Johnny Lyons, a certified real property appraiser. Lyons testified that he appraised Danny Craft's entire property before and after the water incursion. In Lyons' opinion, nine acres of Danny Craft's property had been damaged by water incursion. According to Lyons, the highest and best use of these nine acres before the water incursion was as residential property. Lyons opined that, after the water incursion, the highest and best use for the nine acres was as pasture land. According to Lyons, prior to the water incursion, which Lyons referred to as a "taking," the market value of Danny Craft's entire property was \$500,000.00. However, after the incursion, the market value of Danny Craft's property was \$450,000.00 because the water incursion took Danny Craft's ability to use the property for residential purposes.

After Appellants presented their case, they moved the trial court for a directed verdict in their favor; however, the trial court denied the motion. Appellees then

presented witnesses in their defense. Both Mark Craft and Gale Copeland testified, and they recounted that they hired Morris Talbott to inspect their property as well as Danny Craft's property in order to make recommendations about any drainage problems. They also testified that they followed Talbott's recommendations.

In addition to their own testimony, Appellees called several witnesses including Morris Talbott. Talbott testified that he had been a registered licensed engineer since 1982 and a registered land surveyor since 1981. According to Talbott, after graduating and being certified by the state, he worked for the Commonwealth's Department of Highways designing highways. Talbott was later responsible for overseeing the maintenance of highways in and around Jefferson County. In all, Talbott worked for the Department of Highways for twenty-eight years.

After presenting his credentials, Talbott testified that he was contacted by Appellees to inspect the C & C property and Danny Craft's property in order to advise Appellees regarding erosion control. Specifically, Talbott was hired to determine whether the extension of the water tank road had any impact on Danny Craft's property and any impact on Huddleston Mountain's watershed. Talbott visited the site twice. After his visits, Talbott generated a report containing the results of his inspections and his recommendations regarding erosion control. Talbott testified that a watershed existed on and above Danny Craft's property and rainwater naturally flowed down into Danny Craft's pond. Because of this natural flow, Talbott opined that, contrary to Appellants' assertion that Appellees intentionally diverted the flow of rainwater onto Danny Craft's

property, Appellees did not redirect the flow of water at all. According to Talbott, after Appellees extended and paved the water tank road, a small amount of silt had washed down in and around Danny Craft's pond. Talbott estimated that this amount was equal to twenty-five cubic yards or approximately two dump-truck loads of material.

At trial, Talbott testified that he had limited his report to the effects of water erosion on the back part of Danny Craft's property around his pond. Talbott explained that he did not address the water erosion on that part of Danny Craft's property situated below the pond because any erosion damage below the pond had not been caused by water runoff from the C & C property. Talbott opined that over ninety percent of the rainwater that fell upon the C & C property flowed naturally into Danny Craft's pond.

Regarding the issue of erosion control, Talbott testified that he recommended in his report that Appellees install large gravel in the ditches along the water tank road. Talbott's report also recommended that Appellees install silt-detering straw bales to slow the velocity of water runoff; install drainage pipes; install a temporary silt basin; and plant vegetation. Talbott testified that Appellees followed his recommendations⁵ and opined that the effects of erosion had been significantly reduced.

After all the evidence had been presented, the trial court instructed the jury. The jury returned a verdict in Appellees' favor finding them not liable for any damage to Appellants' property.

⁵ Appellees had actually implemented several of these measures prior to Talbott's initial inspection.

II. ANALYSIS

A. APPELLANTS' FIRST ASSIGNMENT OF ERROR

1. STANDARD OF REVIEW

When we review a trial court's decision regarding a directed verdict, we follow the Supreme Court's holding in *NCAA v. Hornung*, 754 S.W.2d 855, 860 (Ky. 1988). The trial court must consider all the evidence that is favorable to the non-moving party as true. *Id.* Furthermore, the trial court must not consider either the credibility or the weight of the evidence because those functions are reserved for the jury, as the trier of fact. *Id.* In addition, the trial court must consider all inferences that may be reasonably drawn from the evidence in the favor of the non-moving party. *Id.* If a directed verdict would be palpably or flagrantly against the evidence that is favorable to the non-moving party, then the trial court is prohibited from granting a directed verdict. *Id.*

2. THE TRIAL COURT PROPERLY DENIED A DIRECTED VERDICT FOR THE APPELLANTS.

In their brief, Appellants argue that they presented the testimony of numerous witnesses establishing that before Appellees extended and paved the water tank road, the lower part of Danny Craft's property at the foot of Huddleston Mountain did not experience problems with rainwater incursion and erosion. Appellants claim that the testimony of their lay witnesses established that after Appellees worked on the water tank road, Danny Craft experienced rainwater incursion that caused erosion damage to his property. According to Appellants, their evidence supported their cause of action and

disproved any defense offered by Appellees; thus, they insist that the trial court erred when it did not direct a verdict in their favor.

Turning to the evidence presented by Appellants, we find that they presented numerous lay witnesses, and these lay witnesses testified, in general, that, after 2000, which was after Appellees completed work on the water tank road, they noticed water incursion and erosion damage on Danny Craft's property. We note, however, that none of Appellants' lay witnesses testified that Appellees' activities directly caused the alleged water incursion and resulting erosion damage. So, drawing all reasonable inferences from this evidence in favor of Appellees, as required by *NCAA*, 754 S.W.2d at 860, we find that this evidence established nothing more than a temporal connection between Appellees' activities on the water tank road and the alleged damage to Danny Craft's property.⁶ In other words, while the testimony of Appellants' witnesses may have constituted evidence that supported their claims, when viewed in a light most favorable to Appellees, this evidence did not compel a directed verdict in Appellants' favor. The trial court did not err when it denied Appellants' motion for directed verdict.

B. APPELLANTS' SECOND ASSIGNMENT OF ERROR

1. STANDARD OF REVIEW

When we review the evidence supporting a judgment entered upon a jury verdict, our role is strictly limited to determining if the trial court erred when it failed to

⁶ The same evidence also revealed that during the same time period in which Appellees worked on the water tank road, Wayne Glover built a house on Danny Craft's property. Therefore, the evidence established a similar temporal connection between Glover's construction activities and the alleged water incursion on Danny Craft's property as it did regarding Appellees' construction activities.

grant a directed verdict in favor of the losing party. *Bierman v. Klapheke*, 967 S.W.2d 16, 18 (Ky. 1998). Moreover, we must treat all the evidence favoring the prevailing party as true because we are prohibited from determining the weight and the credibility of the evidence. *Id.* Only the jury has the responsibility and duty to weigh the probative value of the evidence and to choose which testimony it finds most convincing.

Commonwealth, Dep't of Highways v. Dehart, 465 S.W.2d 720, 722 (Ky. 1971). The jury is not bound to accept the testimony of any witness as true. *Dunn v. Commonwealth*, 151 S.W.2d 763, 764-765 (Ky. 1941). Thus, the jury may believe all of a witness's testimony, part of a witness's testimony or none of it. *Gillispie v. Commonwealth*, 279 S.W. 671, 672 (Ky. 1926). We will reverse only if the jury verdict was so flagrantly against the evidence that it indicates that the jury reached the verdict as a result of passion or prejudice. *Bierman*, 967 S.W.2d at 19. Otherwise, we must affirm. *Id.*

2. THE JURY'S VERDICT WAS SUPPORTED BY THE EVIDENCE.

In addition to arguing that the trial court should have directed a verdict in their favor, Appellants argue that the “evidence before the jury when taken as a whole and with all emphasis drawn from the evidence, it was unreasonable for the jury to find for Appellees.” Appellants' Brief at page 5. Thus, according to the Appellants, the jury's verdict was not supported by the evidence.

At trial, Appellants' theory of the case was that, when Appellees extended and paved the water tank road, they “turned the water” onto Danny Craft's property.⁷ To support this theory, as previously mentioned, Appellants presented the testimony of

⁷ The testimony of Morris Talbott directly contradicts this assertion.

several lay witnesses that, after Appellees extended and paved the water tank road, Danny Craft's property suffered water erosion damage. It appears that Appellees are laboring under the misconception that because they produced testimony of witnesses that supported their claims that the jury was required to believe and be persuaded by those witnesses. However, as the above-cited cases clearly demonstrate, the jury was not under any such obligations and, therefore, was not required to find in Appellants' favor. Because the jury was not required either to believe or to be persuaded by Appellants' evidence, we conclude that it did not act unreasonably when it found in Appellees' favor. This is especially true given the testimony of Appellees' witness, Morris Talbott. In sum, we conclude that the evidence adduced at trial was sufficient to support the jury's verdict.

III. CONCLUSION

Because the trial court did not err when it denied Appellants' motion for directed verdict and because the evidence supported the jury's verdict, the judgment of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gordon T. Germain
Monticello, Kentucky

BRIEF FOR APPELLEE:

David M. Cross
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