

Williams, Julia

From: Baker, Jon <jbaker@wyattfirm.com>
Sent: Wednesday, April 20, 2022 11:48 AM
To: Williams, Julia
Subject: RE: Deed and judges ruling

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Julia,

Yes, we are aware of this. Ken keeps saying the opinion says one thing, when it doesn't.

I appreciate you sending this over.

Thanks,

Jon Baker

Wyatt, Tarrant & Combs, LLP
400 West Market Street
Suite 2000
Louisville KY 40202
Direct: (502) 562-7316
Email: jbaker@wyattfirm.com

WYATT

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From: Williams, Julia <Julia.Williams@louisvilleky.gov>
Sent: Wednesday, April 20, 2022 11:41 AM
To: Baker, Jon <jbaker@wyattfirm.com>
Subject: FW: Deed and judges ruling

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From: Ken Shields <shieldsken215@gmail.com>
Sent: Wednesday, April 20, 2022 11:38 AM
To: Williams, Julia <Julia.Williams@louisvilleky.gov>
Subject: Deed and judges ruling

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I could hire an attorney but if judges ruling does not stop this ,that would not. Matter, you have allowed me to be blocked in already and I had to drive around field because your people refused to back up and pull to side, and Mr. Bakers peoples have already tore up driveway and still have not made a grave egress off drive way, we also what protection from them using other drive off Robb's In which they believe they have rights too ,8ft.fences and gates which should far enough on their property for maintenance and close enough to protect

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NO. 14-CI-04517

JEFFERSON CIRCUIT COURT
DIVISION TWELVE (12)
JUDGE SUSAN SCHULTZ GIBSON

UNIVERSITY OF LOUISVILLE
FOUNDATION, INC.

PLAINTIFF

V.

MEMORANDUM AND ORDER

KENNETH SHIELDS

DEFENDANT

This matter is before the Court on the Motion of Defendant, Kenneth Shields ("Plaintiff"), for Summary Judgment, and the Cross-Motion of Plaintiff, University of Louisville Foundation, Inc. ("Defendant"), for Summary Judgment. The Court, after careful review of the record, memoranda and applicable law, and being otherwise sufficiently advised, does partially grant and partially deny both Defendant's motion and Plaintiff's counter-motion.

FACTS

This case involves a dispute over the language in two deeds regarding the ownership of an easement on land located in Jefferson County, Kentucky.

Chain of Joint Ownership of the Properties

George Steedly and E.R. Steedly each owned one-half of a 65 acre tract that was conveyed to them by deed in 1923.¹ In 1932, E.R. Steedly conveyed his one-half interest in the 65-acre tract to his wife, Anna B. Steedly.² In 1941, George Steedly (and Elizabeth Steedly, his wife) conveyed their one-half interest in a one-acre tract which was a portion of the larger 65-acre tract.³ In 1942, Anna and George Steedly conveyed

¹ Deed, recorded March 2, 1923 in Deed Book 1039, Page 38.

² Deed, recorded August 30, 1932 in Deed Book 1508, Page 523.

³ Deed, recorded May 12, 1941 in Deed Book 1783, Page 192.

act of the parties or by operation of law. Therefore, the Court holds that Defendant does not own the driveway in fee simple, but, rather, has an easement appurtenant for a roadway or driveway on the 22-acre tract of land owned by Plaintiff.

"Under Kentucky law, the rights created by an easement depend upon its classification." *Sawyers v. Butler*, 384 S.W.2d 107, 111 (Ky. 1962), citing *Leach v. Hall*, 844 S.W.2d 428, 430 (Ky. App. 1992). "It is a privilege or an interest in land and invests the owner with privileges that he cannot be deprived of as the mere will of the proprietor of the servient estate." *Id.*, citing *Louisville Chair & Furniture Co. v. Miller*, 219 Ky. 757, 254 S.W. 483, 485 (1927).

An easement confers a right upon the dominant tenement to enjoy a right to enter the servient tenement. See *Scott v. Long Valley Farm Kentucky, Inc.*, 804 S.W.2d 135, 136 (Ky. App. 1991). While an easement holder may not expand the use of the easement, it is equally true that the easement grantor may not interfere with the easement holder's use of the easement. *Commonwealth, Dept. of Fish and Wildlife v. Farmer*, 866 S.W.2d 10, 13-14 (Ky. 1993).

Ibid. "With respect to an easement for a road or passway our law holds that the servient owners must permit the free and unrestricted use of the passway by the owners of the dominant estate." *Id.* citing *Sandman v. Highland*, 312 Ky. 128, 226 S.W.2d 766, 768 (1950) (citing *Jenkins v. Depoyster*, 288 Ky. 500, 186 S.W.2d 74 (1945); *Wells v. N.E. Coal Co.*, 255 Ky. 83, 72 S.W.2d 745 (1934); *Kentucky & West Virginia Power Co. v. Ekstrom City Land Co.*, 212 Ky. 824, 273 S.W. 1082 (1925)).

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 955 (1969). The use of an easement must be reasonable and as little burdensome

Uof h or Nathan Steedly has
Maintain the Drive way

act of the parties or by operation of law. Therefore, the Court holds that Defendant does not own the driveway in fee simple, but, rather, has an easement appurtenant for a roadway or driveway on the 22 acre tract of land owned by Plaintiff.

"Under Kentucky law, the rights created by an easement depend upon its classification." *Sawyers v. Beller*, 384 S.W.3d 107, 111 (Ky. 2012), citing *Loid v. Kell*, 844 S.W.2d 428, 430 (Ky. App. 1992). "It is a privilege or an interest in land and invests the owner with 'privileges that he cannot be deprived of at the mere will or wish of the proprietor of the servient estate.'" *Id.*, citing *Louisville Chair & Furniture Co. v. Otter*, 218 Ky. 757, 294 S.W. 483, 485 (1927).

An easement confers a right upon the dominant tenement to enjoy a right to enter the servient tenement. See *Scott v. Long Valley Farm Kentucky, Inc.*, 804 S.W.2d 15, 16 (Ky. App. 1991). While an easement holder may not expand the use of the easement, it is equally true that the easement grantor may not interfere with the easement holder's use of the easement. *Commonwealth, Dept. of Fish and Wildlife Res. v. Garner*, 896 S.W.2d 10, 13-14 (Ky. 1995).

Id. "With respect to an express easement for a road or passway, our law holds that the servient owners must permit the free and unrestricted use of the passway by the owners of the dominant estate." *Id.* citing *Sandman v. Highland*, 312 Ky. 128, 226 S.W.2d 736, 738 (1950) (citing *Jenkins v. Depoyster*, 299 Ky. 500, 186 S.W.2d 14 (1945); *Wells v. N.E. Coal Co.*, 255 Ky. 63, 72 S.W.2d 745 (1934); *Kentucky & West Virginia Power Co. v. Elkhorn City Land Co.*, 212 Ky. 624, 279 S.W. 1082 (1926)).

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

Uofh or Nathan Steedly has
maintain the driveway

This deed of conveyance made and entered into this the 23rd day of December 1948 by and between William C. Steadly (Unmarried) of ^{Route 4 Box 997} Jefferson County, Kentucky party of the first part and George H. Steadly and Elizabeth G. Steadly, his wife ^{Route 4 Box 997} of Jefferson County, Kentucky, parties of the second part,

WITNESSETH, that for and in consideration of the sum of one (\$1.00) dollar cash in hand paid and other good and valuable consideration the receipt of all of which is hereby acknowledged by the first party, the party of the first part does hereby grant, sell and convey to the parties of the second part, for their joint lives, with remainder in fee simple title to the survivor, with covenant of General Warranty, the following described property with the improvements thereon located in Jefferson County, Kentucky and more particularly described as follows, to-wit:

Beginning at a point in the South line of Robb's Lane as widened according to deed recorded in Deed Book 656 at page 585 in the office of the clerk of the Jefferson County, Kentucky Court, at the Northwest corner of the 22.54 acre tract conveyed to Anna Steadly, by deed dated August 30, 1932, and recorded in Deed Book 1508, page 523, in the office aforesaid; thence with the South line of Robb's Lane North 89° West 12.5 ft. thence North 30° East 10 ft. to E.R. Steadly's original line; thence with the same North 89° West 1901.5 ft. to a stone in Steadly's Northwest corner; thence South 10° West 333 ft. to a stone; thence South 40° East 1276.5 ft. to a corner of tract conveyed to J.H. Graham in Deed Book 1284, page 445, in the office aforesaid; thence with line of same South 78° 00' East 712.80 ft. to a stone to another corner of said tract conveyed to said Graham, and also the Southwesterly corner of 22.54 acre tract conveyed to said Anna S. Steadly, as aforesaid; thence with said division line North 17° 05' East 1465.5 ft. to the point of beginning, containing 43.62 acres more or less.

As appurtenant to said tract there is likewise conveyed to said grantee herein a 15 ft. easement for a roadway, bounded and described as follows: Beginning at a point in the center line of Old Shepherdsville road, South 16° West 116 ft. from the Southeast corner of the one (1) acre tract heretofore conveyed to said Anna S. Steadly, by deed dated May 18, 1941, and recorded in Deed Book 1783, page 192 in the office aforesaid; thence with center line of said 15 ft. easement

Williams, Julia

From: Ken Shields <shieldsken215@gmail.com>
Sent: Wednesday, April 20, 2022 12:03 PM
To: Williams, Julia
Subject: Re: Deed and judges ruling,

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O and fence and gates should be 8 ft, and we noticed that buildings next to subdivision are two story but you put a three in front of me and my neighbor

On Wed, Apr 20, 2022, 11:53 AM Ken Shields <shieldsken215@gmail.com> wrote:

Access is different than unrestricted access and this apartment complex and tenants is a restriction , and Mr. Bakers peoples think they have a right on other driveway so a fence a gate which can be maintained from their property but close enough to protect us from construction workers and tenants, and rocked egress need to be put in to protect this drive if they continue to use

On Wed, Apr 20, 2022, 11:42 AM Ken Shields <shieldsken215@gmail.com> wrote:

If this is not enough to stop this blocking my driveway an attorney would not help and our legal system is useless,

Williams, Julia

From: Baker, Jon <jbaker@wyattfirm.com>
Sent: Wednesday, April 20, 2022 11:52 AM
To: Williams, Julia
Subject: RE: Deed and judges ruling,

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His access will not be taken away, it's being upgraded, and no one will be blocking his access.

From: Williams, Julia <Julia.Williams@louisvilleky.gov>
Sent: Wednesday, April 20, 2022 11:44 AM
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From: Ken Shields <shieldsken215@gmail.com>
Sent: Wednesday, April 20, 2022 11:43 AM
To: Williams, Julia <Julia.Williams@louisvilleky.gov>
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If this is not enough to stop this blocking my driveway an attorney would not help and our legal system is useless,

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