

**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE NO. 2024-CA-1051-MR**

APPELLANT	)	
WESLEY A COLLINS	)	Appeal Case No: <u>2024-CA-1051-MR</u>
	)	
vs.	)	(State Civil Action No: 21-CI-00142, 10 th
	)	Judicial District, Hart Circuit Court)
PLAINTIFFS / APPELLEE'S	)	
TERRY ELLIOTT	)	
ELAINE DIGGES	)	

APPELLANT BRIEF

CERTIFICATE OF SERVICE: I hereby certify that a true and correct copy of the foregoing was served on January 9, 2025, by first class mail, postage prepaid to the below named persons:

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I further certify that the official record on appeal was not withdrawn from the Clerk of the Hart County Circuit Court.



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ORAL ARGUMENT: No oral argument is requested.

INTRODUCTION

Collins challenges several rulings from the Hart Circuit Court related to land rights, particularly deed interpretation and abandonment of appurtenant easements to land, including summary judgments, deed interpretation from a bench trial, jury trial and jury instructions. There are multiple roadways involved, all with different circumstances, making this an ideal case to clarify the law in Kentucky. Collins wishes to convey that the current law herein related to “abandonment” of deeded appurtenant access Easements is vague, is being abused, and needs clarification in law to ensure land rights are decided by deeds and law, and not by popularity contests with no evidence.

STATEMENT OF POINTS AND AUTHORITIES

Deed Interpretation, Roadway Fee Ownership vs Easements

Kentucky Title Co. v. Hail, 219 Ky. 256, 292 S.W. 817, 822 (1927)8

Abandonment of Easements (Appurtenant to Land)

Dukes v. Link, 315 S.W.3d 712 (Ky. Ct. App. 2010)9

Colyer v. Coyote Ridge Farm, LLC, 565 S.W.3d 659 (Ky. Ct. App. 2018).....9

City Harrodsburg v. Cunningham, 299 Ky. 193, 198, 184 S.W.2d 357 (Ky.1945).....9

Deeded vs. Prescriptive Easement Abandonment

Jones v. Dunn, 205 S.W.2d 156, 157 (Ky. 1947).....11

Authority of Court for Judicial Interference to Alter Written Instruments

Scott v. Long Valley Farm Kentucky, Inc., 804 S.W.2d 15, 16 (Ky.App. 1991).....17

Depriving Owner of Rights based on the Mere Will and Wish of Proprietor

Louisville Chair & Furniture Co. v. Otter, 219 Ky. 757, 294 S.W. 483 (1927).....17

Effect of Easement Not Shown on Neighboring Deed

Dukes v. Link, 315 S.W.3d 712, 717 (Ky. Ct. App. 2010).....19

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WESLEY A. COLLINS

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VS.

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ELAINE DIGGES**

APPELLEES

STATEMENT OF THE CASE

MAY IT PLEASE THE COURT:

Comes now the Appellant, Wesley A Collins, (“Collins”), Pro Se, and submits his appellant brief seeking a judicial review of several rulings, orders, or judgments pursuant to the Rules of Appellate Procedure.

Collins owned two adjacent farms, purchased at different times, and several roadways therein on the deeds. (TR131-133, 399, 411, 414) They are generally herein referred to as the old Wilson Farm to the North (100 acres m/l), and the old Huber farm to the South (50 acres m/l). The roadways had been reserved and “not conveyed” by the parent farms, Collins' predecessors in title, when subdivisions were made over the years. Elliott and Digges (“Elliott”) agreed to the roadways and signed on their deed (TR401).

Collins first argued the roadways were reserved in fee on the deeds, and not as easements, as stated in the granting and habendum clauses. The original reservations were made at the time of divisions when they were already owned in fee, and the term “Reserved and Not Conveyed” was carried through the deed title chains through the decades, instead of converted to “Excepted and Not Conveyed” later. (TR399).

Elliott and Digges (“Elliott”) had begun parking a car in the driveway to a home

on one of the farms while Collins' property had sat vacant for a few years, upon the death of Mr. Michael Huber, before Collins purchased it. (TR38, VR 7/8/24 at 2:52:15) This was in proximity to the Elliott house, parked among their other vehicles. Collins' driveway crossed the Elliott property briefly before arriving at the home. (TR965-966) When Collins asked Elliott to move the vehicle because he needed to use his driveway, Elliott responded by placing obstructions in the driveway and refusing to move the vehicle, and then placed obstructions in another deeded roadway owned by Collins, known as the "Roadway to the 4.67 acre field". (VR 7/9/24 at 11:02:20-06:48)

Knowing that Collins would likely sue to have obstructions removed, Elliott retained counsel and filed a complaint against Collins in a race to the court house. The first complaint made no argument, Collins filed a motion for a more definite statement, and so an amended complaint was filed (TR47), claiming the roadways were abandoned, along with numerous other allegations. Collins responded with multiple counter-claims. (TR108) The Huber Estate, through Timothy Martin Huber who later testified, stated by affidavit that the claims of Elliott were "preposterous" and that no roadways had been abandoned. (TR744, VR 7/8/24 at 2:54)

Two years into litigation, Elliott acquired title to a smaller third farm, known as the Heiberger tract, and immediately blocked a third deeded roadway that was being used by Collins, known on maps and deeds as the "Gateway", which was part of the Wilson Roadway deed (Plaintiff Ex 5, TR135, VR 7/9/24 at 8:44), saying that it did not exist since it was not disclosed on "their" legal description, and amended their complaint (TR680. TR710) The Elliott description was made by others decades after the roadway had been reserved by deed (1988 vs 1921). The roadway was in use by Collins at Elliott's

time of acquisition, per affidavit and later testimony of Jason Nall (TR745, VR 7/9/24 at 8:42:40). Elliott further knew of the road through exhibit maps already in the record showing the “Gateway” before they acquired title to the property (TR130-33, 400).

The court bifurcated deed matters (matters of law) into a bench trial, and therein ruled that the roadways were “easements” and not owned in fee, and so could be subject to legal “abandonment” at the later jury trial. (TR598) This decision was based on the term “right-of-way” being used in the body of the instrument.

It should be noted that there were many amendments, responses and claims added or dropped throughout the case. Collins refers to the final jury instructions for claims that went to trial and were not decided by bench trial, directed verdict or otherwise

. The case was concluded after a jury trial on all remaining issues, with the Jury finding that the “roadway to the Huber residence” was legally abandoned, that the “roadway to the 4.67 acre field” was not abandoned, and that the Gateway access, as recorded in D.B.1 Page 66, did not exist. The Jury further found both parties guilty of trespassing. (TR1096)

ARGUMENT

“Right-of-Way” vs. “Fee Simple”

Collins first argued, both in a motion for summary judgment and at bench trial, that his roadways were not easements at all. (TR380) They were reserved in fee and retained by the parent farms, and no deed to any farm ever references the roadways as “easements”. (TR551-597) However, other things, such as access to a water well, are referred to specifically as an “easement” within the same legal description. (TR393-394)

The roadway deed (D.B.1, P66) is incorporated into Collins' deed by reference, and referred to as "certain real estate". The granting and habendum clauses, which are controlling, clearly indicate fee ownership with all appurtenances thereunto belonging .

The original "Wilson" farm contained 200 acres m/l and included all farms herein, and was first divided into approximate halves in the early 1900's, a North half and a South half. (TR399) The deeds to both the North half and the South half state that W.R. Wilson reserved roadways to the North farm when he made the division, and a description of the roadway was executed as recorded in Hart County Deed Book 1, Page 66 (note that the Hart Co courthouse and recordings had burned, and this was one of the first deeds re-recorded thereafter). (TR135) The later deed from Finley when he first sold the south half of the farm to Hodges further agreed that the roads were reserved by Wilson and not conveyed to him in his deed (TR399, 407).

Collins argued that the term "right-of-way" has no definition related to the type of ownership. The People's Law dictionary was referenced which states rights-of-way can be owned in fee. (TR384-385) It is also common knowledge to anyone in any industry related to roadways or utility right of ways, even today, that many are owned in fee. In the early 1900's, people had lived through the expansion of railroads expanding west in the late 1800's, wherein most right-of-ways were being granted to railroads in fee by the U.S. Government, so it was most likely thought of as fee ownership at the time.

The court generally ruled that because the term "right-of-way" was in the body of the deeds, which is ambiguous since it has no meaning, then the court could rule that the roads were "easements" despite the clear fee language in the remainder of the deed. (TR598) The granting and habendum clauses should rule the document. It is a long-

standing principle in Kentucky that: "...Before a court of equity will reform a written instrument it must appear that there was a valid agreement, that the written instrument failed to express such agreement, that this failure was due to mistake, and this must all appear by clear and convincing proof." *Kentucky Title Co. v. Hail*, 219 Ky. 256, 292 S.W. 817, 822 (1927). (TR959-963)

It should be noted that during the course of deed interpretation, it was shown that the Elliott farm was legally landlocked. They had no express right to traverse Collins' farms to get to their farm, while they were blocking express roadways owned and purchased by Collins. The court awarded them an "easement of necessity", even though the Wilson road was not entirely through the parent farm. The court also awarded Elliott an easement of necessity for walking dogs or other recreational use through the Lands of Collins at the last pretrial hearing. (TR160, RA3)

Collins argued that the roadways were retained in fee, as stated in the deeds, and that the term "right-of-way" is ambiguous and has no meaning other than possibly a "pathway" or similar, and the court should have ruled that Collins' roadways are owned in fee, and therefore not subject to abandonment. (TR380)

"Abandonment" in General

Relevant to roadways herein, law related to abandonment of deeded appurtenant land easements is vague, with two conflicting published opinions, allowing it to be used for purposes it was not intended.

Collins argued extensively in his motion for partial summary judgment, (Beginning at TR627), relevant law related to abandonment of easements. This included that "An easement appurtenant inheres in the land and cannot be 'terminated by an act of

the parties (for example, abandonment, merger, or conveyance) or by operation of law, as in the case of forfeiture or otherwise." *Dukes v. Link*, 315 S.W.3d 712 (Ky. Ct. App. 2010). (TR627-628) Elliott then argued verbally in court that a more recent case, *Colyer v. Coyote*, disagreed with *Dukes v. Link*. The court's order quotes *Colyer v. Coyote* in denying Collins' Motion for Partial Summary Judgment. (TR689) On Page 7 of the published opinion, the footnotes refer to it as a mistake, "Thus, we caution the bench and bar in Kentucky to not cite *Dukes* or *Baker* as authority for the erroneous proposition that easements appurtenant can never be extinguished by acts of the parties." *Colyer v. Coyote Ridge Farm, LLC*, 565 S.W.3d 659, 663, and endnote 4 (Ky. Ct. 2018) (TR689)

Collins argues that an easement appurtenant to land should not generally be abandoned, because the land can not be abandoned, and it is detrimental to the value of the land. One road in this case was the only legal access to the land. These appurtenant land easements are different than a railroad or power line easement, of which its purpose may cease to exist. Claiming "abandonment" of every road when a property changes hands, based only on the mere allegations and wishes of the servient tenement, is the result of this vagueness, and Collins prays this can be clarified to end this perversion of law. When an easement is created by deed, abandonment occurs "only where in connection with nonuser there is a denial of title, or act by an adverse party, or attendant facts and circumstances showing an intention on the part of the owner of the easement to abandon it." *City Harrodsburg v. Cunningham*, 299 Ky. 193, 198, 184 S.W.2d 357, 359 (Ky.1945) quoting *Johnson v. Clark*, 57 S.W.474, 475, 22 Ky. Law Rep. 418 (1900) (TR627). Non-use was the only allegation against one roadway, and was the main argument against the Huber roadway besides Elliott arguing there was more than one

road into the farm from different directions, which made a circular roadway system.

The first problem Collins states is that, if the roadway were abandoned, it would not be disputed in court. There are cases where an easement exists, titled to a business that disappeared decades ago, and no one is left to sign to release it. Said person or company would not make a response. It reasons that as soon as the owner of the appurtenant easement objects to any complaint, it should be dismissed immediately and the court should not stop the legal owner from using his property during years of litigation. Collins argues anyone making such a claim which they know is disputed should further have to pay the fees of the legal owner for filing the meritless complaint, as it is clearly not abandoned. The constitutional right to own property should be absolute. If law is not enforced by the courts, then there is no purpose to purchasing or reserving an easement, and everyone will simply state fee ownership on deeds.

In fact, any easements created by Collins or his surveyors since this case began, likely 5-10 of them on 30-40 legal descriptions in Kentucky, have included terminology that "Said roadways shall not be subject to termination by an act of any parties (for example, abandonment, merger, etc).", to hopefully avoid this gaping hole in KY law.

The title to a car seems hold legal weight, but not a deed to property rights in Kentucky. Law enforcement will not help enforce easement rights due to all the ambiguity in law, meaning if your driveway is blocked by some nefarious neighbor who simply just says "It's abandoned", good luck getting to your house during 4 years of litigation. Note that there was no dispute herein related to the "location" of the roads, making it an ideal case to focus on this topic.

Further, Elliott could have sued Huber while he was still alive, or asked for it to

be released, but they didn't even approach him with such a request. (Deposition of Elaine Digges, Page 6, line 25). Elliott further could have sued the Huber estate during the years the property sat vacant. Waiting until a new owner buys the property to begin blocking the roads and claiming abandonment should not be allowed. It makes an easement a worthless document with no legal enforcement, and no property can be valued properly if it has easements, since anyone can simply say they do not like the road so its abandoned. Then a court can make vague jury instructions, and let people "guess" what abandonment means. And to a common person, it simply means "non-use", even though non-use is specifically not allowed to be considered by existing law. This judge even considered "non-use" abandonment, as he stated during a site visit, simply because a roadway, which he had ordered not to be used for two years, had grass growing in the gravel and wasn't trimmed. The naming of it as "abandonment" is confusing to even skilled legal professionals, and Collins request more specific clarifications in law.

A deeded roadway is a superior title than a prescriptive easement, and not even a prescriptive easement can be challenged in less than 15 years of non-use. "[A]n easement acquired by **prescription** may be extinguished by a nonuser under circumstances indicating an intention of abandonment whenever such nonuser has extended over that period of time sufficient to have created the prescriptive right at its origin." *Jones v. Dunn*, 205 S.W.2d 156, 157 (Ky. 1947). (TR959)

It is finally noted that Elliott's Objection to the motion (TR640) still contained no evidence that could rise to legal abandonment, yet the claims were allowed to go to trial.

Abandonment of the "Huber" Roadway (Jury Trial)

The "Huber roadway", or the roadway "to the Huber residence" (as named in

deeds) is the road which briefly crosses Elliott before arriving at the old Huber home. Huber reserved it to himself and did not convey it when he made the division now owned by Elliott (TR401). It connects the old Huber house to the W.R. Wilson roadway. (Def. Exh. 9) This was the only driveway to the Huber home historically (VR 7/8/24 at 3:01:20). Tim Huber went on to testify that before Mr. Huber became ill, he had another roadway constructed on the other side of a stream around 2015-16 per historic aerial photographs, which came up to the back side of the house and connected to the original roadway, making a circle drive on both sides of the stream. The new roadway was also steep and hard to traverse for some vehicles and weather conditions. Elliott only argued that since there is another road now, then the other express roads were abandoned.

The original section of the circular roadway needed to cross Elliott due to the stream crossing location. Tim Huber testified people would often use the new roadway, which comes to the house in the back yard to avoid the Elliott's dogs chasing cars. Tim Huber further testified at trial that no roadways were abandoned by his father.

Further shown was that this was also the roadway to the Huber barn that's within sight of the house on the other side of the stream, and the access to the Wilson roadway on the North side of the stream that completed the circle. A person would have to drive one mile to get to the Huber barn that's only 150 yards away if the road didn't exist. (TR400) The Huber roadway is the only access to the barn at all, and nowhere does any order specify that only "a portion" of the Huber roadway was abandoned, so Collins lost his only access to his barn per the order wording. (TR1097) Further, the new roadway is steep, and some vehicles cannot traverse the road such as moving trucks. It further is an exit if one side of the roadway is blocked. While Huber likely intended to use the

roadway less, Collins argues it certainly was not “abandoned” by law from building a second roadway on a different section of the farm and on the other side of the stream. The entire argument of Elliott was that building a second road on a farm means you abandon the existing roadways. This is preposterous, not only because there's no law that a large farm can only have one access, but because it fully connected to the other roadways and made a circular road system on both sides of the stream, proving just the opposite. Huber did no acts of any kind to indicate he was “abandoning” his “roadway to the Huber residence”.

Collins argued that jury instructions should have stated:

“In order to succeed on their claim of abandonment, Elliott & Digges must prove with clear and convincing evidence that the Roadway to the Huber Residence was legally abandoned.

Legal abandonment of a deeded easement may occur when there is a denial of title by the easement owner, or attendant facts and circumstances showing a clear intention on the part of Collins, or predecessors in title, to permanently and forever abandon the roadway. Any actions or testimony by Elliott & Digges shall not be considered, as they are irrelevant to the actions of the easement owners.

In order to find abandonment of a deeded roadway, you must find that:

- Collins or his predecessor in title, Huber, performed actions clearly showing an intent to permanently and forever abandon the roadway.
- The mere “non-use” of a deeded roadway, for any amount of time, is not abandonment and shall not be considered.

Do you believe that clear and convincing evidence was presented by Elliott & Digges showing that Collins or Huber performed expressed and overt actions that prove his intent to forever abandon the “Roadway to the Huber Residence”, with clear and convincing evidence? If so, you shall find in favor of Elliott & Digges. Otherwise, you shall find in favor of Collins.” (TR972)

However, the courts jury instructions required “Elliott and Digges to prove by clear and convincing evidence that the easement claimed by Collins has been abandoned through expressed and overt actions of Michael Huber and/or subsequent landowners” (TR1072)

Collins moves that the jury instructions were far too vague for a jury to understand. Not only that, the jury submitted a question during deliberations asking when a building installed that they thought was “on” the driveway, clearly showing they considered the actions of Elliott and not only the actions of Huber. (VR 7/8/24 at 1:14:52) (Small Envelope 1, Q4) The building was only installed by Elliott during litigation around a year prior to jury trial, and should not have been considered. The gravel roadway had grown up in grass over the years of litigation, making it hard to discern from a photo where the roadway is at. The court instructed that they must only consider the evidence submitted, but it was never submitted that the building was in the roadway.

Further, average people do not know what legal “abandonment” means, and without proper instructions, they are free to just strip a person of deeded property rights with no knowledge of what to consider. In the case of a “prescriptive easement”, there is case law that it could be “abandoned” from non-use after 15 years. In this case, we are granting abandonment of an express easement after just a few years simply because a property sat vacant for a few years, with the only argument being that another roadway was constructed, so now the roadway is abandoned.

Collins moves that the roadway could not be considered abandoned by law, and that building another roadway or circular roadway on a farm is not proof of “abandonment” of other roads. If allowed at trial, there is either clear juror error, or a lack of clarity in the jury instructions. Law is currently vague with few references or examples. It further should have been ruled on much earlier in the case by summary judgment, and Collins should not have been denied the use of the roadway through 4 years of litigation and appeals. Collins moves that a court should return the property to

the legal titled owner without some sort of concrete evidence, such as a permanent fence or building being installed by the roadway owner showing a clear intention by Huber.

Collins further argues that there should never be any contested lawsuit regarding abandonment of deeded appurtenant land easements. If it was truly abandoned, there would be no reason for someone to place obstructions in the roadway, and the deeded owner would provide no response to the lawsuit. Mr. Huber's passing does not give Elliott the right to simply say they "think" he abandoned it for their own benefit. In reality, Elliott's claims were simply a defense for their outrageous actions, and only filed first for procedural advantage while Collins was trying not to waste the courts time.

If land rights are this fluid in Kentucky, and deeds mean nothing, then no person would ever buy anything because land rights are now simply determined by popularity contests at a jury trial, so why pay for them? It is further a violation of the constitutional property rights of citizens, which is the foundation of this country and economy.

The claim never should have made it to jury trial, and Collins' rights restored much sooner in the process. There is further a problem wherein the law is so vague, that law enforcement will not touch the matter as trespassing. So a person can block another person's driveway, and simply just state that it was "abandoned", with no proof of any kind and obstruct the road owner from accessing their home without fear of enforcement.

Collins proposes that if a claim is contested, courts should follow the legal titles, the same as car titles or any other title, and not let the trespasser keep possession for years in litigation. This argument applies to all roadway claims herein. Abandonment is needed under law in certain cases, although it is hard to think of one related to appurtenant land easements. There can be circumstances where a utility or company has

an easement from decades ago. Perhaps there is no company left to sign a release, and it is clouding title where a commercial building is being planned and should be removed. If given proper notice and no response, then it could be ruled that it is truly abandoned. Thus the courts do need the power of abandonment used properly, but when a roadway is contested, how could it be abandoned?

Collins moves that deeded appurtenant land easements should be considered as part of the land, as removing the easement is detrimental to the value of the land, as it is throughout this case. If land cannot be abandoned, then neither should its roadways.

Collins proposes that no access easement to land should be considered abandoned if it is contested, so any response to a claim of abandonment should stop the claim immediately. Filing claims against actions of deceased persons who can no longer testify should further be barred, since one side gets to share their “mere allegations”, while the other cannot testify. Any claims should have been brought against the owner while he was alive, or against their estate. The judge further did not allow the highest and best evidence (heresay exception) testimony of Tim Huber saying his father didn't abandon the roads. (VR 7/8/24 at 8:22:15) They could have sued the Huber estate for years also if there was any legitimate claim, but only sued once a new owner, Collins, purchased the property and roadways. An easement has no value if people have no confidence in a court enforcing its terms, and they are tossed aside based only on mere allegations. It is a land right the same as any other and should be treated with the same certainty.

Abandonment of the “Roadway to the Huber 4.67 acre field”

While the jury did not award Elliott this claim, Collins refers to the above stating that the rights to this roadway, which in this case is the only legal access to a 5 acre field,

should not have been taken from him during years of litigation. The rights should have been restored much sooner, or immediately by law enforcement in an ideal world.

Collins had to build a road through an adjacent farm he just happened to also own to access the field due to the obstructions and subsequent court order to “maintain the status quo”. The status quo was that Collins' rights were being trampled. Elliott's argument that it was not ever used, since Elliott requested Huber to use other parts of the field instead, should not be reason enough for a court to strip property rights from a citizen for years.

“We see nothing in the record to authorize the court in its equitable powers to alter these rights. We are of the view the circuit court should have enforced the terms of the easement. It is of no concern that the servient estate suffers an economic burden. Burdens are inherent features of servitudes. It is likewise not relevant that the dominant estate makes little or no use of the servitude, or, for that matter, that there exists an alternative means of enjoyment...”The relative rights and obligations of the parties herein, by virtue of their ownership of the lands involved, are fixed by existing covenants at the time of their respective acquisitions. We are shown no authority for judicial interference.”
Scott v. Long Valley Farm Kentucky, Inc., 804 S.W.2d 15, 16 (Ky.App. 1991)

Tim Huber testified that his father would drive through the middle of Elliott's half of the field, or at different locations, but had always crossed the field since there is no other access. (VR 7/8/24 at 3:06) Law was clear that non-use has nothing to do with legal abandonment of express roadways and can not be considered, therefore they had no claim and it should be been dismissed by motion. An easement 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.” *Louisville Chair & Furniture Co. v. Otter*, 219 Ky. 757, 294 S.W. 483, 485 (1927). If this were true that Collins

“cannot” be deprived of his rights, then how did it just happen in multiples for years, with assistance from the court? What proof should be required before a ruling of such magnitude, even temporarily? This cost Collins thousands. Collins moves that the courts should return the property to the legal owner by default until any claim is clearly proven.

Collins believes land law should be much more mathematical or precise, and seeks clarification related to the courts' authority to modify such important legal rights for years to the detriment of the legal owner, and appreciates any further clarification of law.

The “Gateway” Access

There is a connector from the W.R. Wilson roadway, called a “Gateway” in D.B.1, Page 66. It is a part of the W.R. Wilson roadway that accesses the northern farm. It is a very short access point, but is the only viable access to the East end of the old Wilson farm. As testified at trial by both Collins and surveyor Derek Bell, this roadway almost touched the Northern farm at the East end, before turning and continuing to the West end of the W.R. Wilson farm due to terrain. (Def. Exh. 6, Appendix RA7) (VR 7/9/24 at 9:24:25 and 10:21:10) If it weren't for this “gateway” access to the East end, which the main road almost touches, then a person would have to drive over a mile around and through woods and steep terrain with no roads, just to return back to this deeded access point a few steps away from the main road.

Surveyor Derek Bell testified at jury trial that he observed the land, the roadway, the original road bed, past aerial photographs and deeds, and that he found there exists an access at this “gateway” connection by deed. Bell prepared the exhibit as found in the record, and stated that he would have shown it on a survey. The exhibit of Derek Bell is further attached hereto as an exhibit to ensure clarity. (RA7)

Jason Nall, a contractor for Collins, testified that he had mowed and maintained the roadway before Elliott acquired title to the property, and that it was obvious where the short access road was at before it was ever touched. (VR 7/9/24 at 8:42:40) Nall further verified that Elliott had only placed obstructions into the mouth of the roadway, and nowhere else, indicating Elliott clearly knew of the roadway at the time of acquisition.

Elliott's surveyor testified that the roadway did not exist on "Elliott's" legal description, and so he could do a legal survey not showing any easement across the property known as the "gateway", although his notes say it is subject to any easements. He further testified that he thought that "gateway" meant "pathway". (VR 7/8/24 at 2:10)

"A person who purchases land with knowledge or with **actual, constructive, or implied notice** that it is burdened with an easement in favor of other property ordinarily takes the estate subject to the easement.This rule is broad enough to include all easements, whether created by implication, prescription, or express grant. However, **one who purchases land burdened with an open, visible easement is ordinarily charged with notice that he or she is purchasing a servient estate.** Under the general rule that a **purchaser of land subject to the burden of an easement takes the estate subject to the easement if he or she has notice of its existence at the time of purchase,** the proper recordation of the instrument containing the grant of the easement is sufficient notice." *Dukes v. Link*, 315 S.W.3d 712 (Ky. Ct. App. 2010). The Dukes Court went on to conclude "that the general rule applicable to easements in this Commonwealth is that the recording of the instrument that grants an easement by a common grantor binds a subsequent purchaser of the tract burdened by the easement **regardless of whether it is included in the purchaser's deed.**" Id. at 717 (emphasis added). (TR 961)

Spurrier, Elliott's surveyor and paid expert witness, went on to testify completely incorrectly as to legal matters, despite Collins' strong objections. This was completely inappropriate, irrelevant and should not have been allowed. Once it was allowed and answered incorrectly, then Collins had to counter it with another legal question, asking "when do property rights expire", which was again answered completely incorrectly and poisoned the jury. (VR 7/8/24 at 2:30:40 and 2:32:10). Spurrier generally stated that very old easements are usually not considered still active, and that easements can be challenged after 7 years, and this was allowed by the court over multiple objections.

The jury instructions provided offered no guidance related to Elliott knowing the roadway existed at their time of acquisition, despite Collins' proposed instructions providing clear law to be considered. The instructions further did not provide guidance that an easement not being mentioned on a neighbors newer legal description is not to be considered as proof related to the existence of the easement. Therefore, the jury could only consider that a survey was performed that did not show an easement, and found that no easement existed.

Collins' proposed Jury instructions were detailed and specific. as found in (TR974-975, RA4), along with case law references. The jury instructions presented to the jury (TR1075, RA5) included no law or guidance, and simply asked the jury if they believe an easement exists. After all facts were presented to at trial for Collins' detailed jury instructions, it was simply given to jurors with no guidance. Collins argued at a pretrial hearing that his motions were in the record, and this hearing was further discussed during motions in limine, wherein the court did not adopt any of Collins' detail. (VR 7/8/24 at 8:13)

Trespassing 13:30-13:50

The jury further went on to find Collins responsible for trespassing for using his deeded "Gateway" access, and awarded Elliott \$2,000 including punitive damages (TR1078 and 1091). Collins reiterates that Elliott's counsel was allowed to state the names of any person Collins has ever been in litigation with, with no relevance of any kind and despite strong objections, and the juror foreperson's last name of Goodman is very likely a relative of one of those persons, as we are in a small county and the Goodman's are known relatives, neighbors and friends of the Murray's. Further, Collins noticed the stare from Goodman seemed very odd and direct during closing statements.

This is clear juror error, as a person using their deeded property rights is not intentionally trespassing, and was likely caused by the vague, non-existent definition of trespassing on jury instructions. (TR1077) The instructions did not include Collins' claim for other alternate types of easements either, such as a quasi-easement, and Collins was wrongfully stripped of his only feasible access to the entire East end of his 100 acre northern Wilson farm, which is detrimental to the value of the property.

Denial of Summary Judgments

Collins argues that his motions for summary judgments should have been granted. Elliott never offered any evidence that could have risen to legal abandonment of roadways, and no evidence of any kind related to other claims beyond mere allegations. Collins has seen Elliott's counsel simply state "we have evidence", even though they could not provide any and never did because it did not exist, and the court used that alone as justification to keep dozens of meritless claims active for years because Elliott may, some year, find some sort of evidence. There is no known recourse for all of the damages

caused to Collins, the victim of the meritless claims, as long as a person can win on any one singular claim. Collins proposes that the courts should consider rules related to time frames allowed to produce evidence before meritless claims must be dismissed.

Perhaps this could be done by requiring some evidence other than mere allegations within a certain time frame. Collins argues that counsel should not be able to use meritless claims to harass their opponent for three years, and a more stringent guideline related to timing would be beneficial to the victims of meritless claims.

Perhaps logically, if an interpretation of the law stating that if any claim was made with no evidence, only allegations, or is not voluntarily dropped within one year of making the claim, then a penalty would be imposed on the counsel bringing each meritless claim.

The summary judgments should have been granted, with no evidence provided by Elliott of most claims, or no evidence that could possibly rise to abandonment.

CONCLUSION

It shakes the faith of every landowner in Kentucky to know that their property rights could be stripped away, without evidence, simply by the desires of neighbors who want those rights without negotiating them with the legal owner. Lower courts need more clear rules to assist them on a constitutional topic as important as land rights. The current vagueness of law are allowing it to be perverted for uses which it was not intended.

Collins challenges that his roadways are easements, when the deeds state fee simple ownership, as they were already owned in fee and “not conveyed” during subdivisions, or conveyed with all appurtenances thereunto belonging, and humbly asks the court to vacate or reverse this ruling;

Collins challenges that deeded appurtenant easements to land should be subject to abandonment, especially if the easement owner objects, and asks for clarification in law;

Collins challenges that the “Roadway to the Huber Residence” was abandoned, and humbly asks this court to vacate or reverse this ruling;

Collins challenges that the court properly took away his legal rights during years of litigation, and asks for clarification in law, including clarification of the right of law enforcement to help protect the easement rights of citizen from trespass;

Collins challenges that he has no roadway or access known as the “Gateway” on deeds, and asks this court to vacate or reverse this ruling and restore his deeded rights;

Collins challenges that he is guilty of trespassing for using his deeded “Gateway”, and asks this court to vacate or reverse this ruling, including damages of \$500 and punitive damages of \$1,500 awarded to Elliott;

Collins challenges that the court can award an easement of Necessity for walking dogs or other recreational use through the property of others, and asks this court to vacate or reverse the ruling;

Alternately, that any other claims this court deems appropriate be vacated or reversed, and any other relief deemed appropriate by this court. Collins further requests his costs expended herein, and for any other proper relief.

Respectfully Submitted,



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RECORD APPENDIX

COURT OF APPEALS CASE NO. 2024-CA-1051-MR

State Civil Action No: 21-CI-00142

Index of Documents

Order from Collins' First Motion for Partial Summary Judgment, (TR490).....	RA1
Bench Trial Order, (TR598).....	RA2
Order from Collins' Second Motion for Partial Summary Judgment, (TR1055).....	RA3
Collins' Proposed Jury Instructions, (TR970).....	RA4
Jury Verdict Forms/Jury Instructions, (TR1071).....	RA5
Jury Trial Judgment, (TR1096).....	RA6
Surveyor Exhibit by Derek Bell (Def. Trial Exhibit 6, Large Envelope 2).....	RA7