

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Michelle L. Ford, et al. v. Gary Dickerson, Sr., Gary Dickerson, Jr.,
and Terrie Dickerson, 222 W. Va. 61

662 S.E.2d 503 (2008) · No. No. 33449 · Decided February 27, 2008

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment against appellants seeking to enjoin alleged obstructions on Second Avenue and Fifth Street in Jeffrey, Boone County. The court held that the appellants presented no evidence establishing that the roads had been accepted as public roads by a proper public authority, and no genuine issue of material fact existed. The court also rejected arguments based on county commission proceedings, state correspondence, recorded maps and deeds, and statutory presumptions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	February 27, 2008
DOCKET	No. 33449
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the trial court's order granting defendants' motion for summary judgment and dismissing the action with prejudice.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper when there is no genuine issue of material fact, but must be denied when such an issue exists; the court must consider all papers of record and matters submitted by both parties.
PRECEDENTIAL VALUE	published opinion
PARTIES	Michelle L. Ford, Robert L. Elkins, Glendyne E. Elkins, Marsha Akers, Terry Ball, Brenda S. Ball, Tina Akers, Nina Meddings, Paul A. Akers, Lewis Akers v. Gary Dickerson, Sr., Gary Dickerson, Jr., Terrie Dickerson

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QUESTIONS PRESENTED

1. Whether the appellants presented sufficient evidence to create a genuine issue of material fact concerning whether Second Avenue and Fifth Street were public roads.
2. Whether recorded maps, deed references, the county commission's refusal to close Second Avenue, or related governmental correspondence established acceptance of a dedication by a proper public authority.
3. Whether the trial court properly granted summary judgment to the appellees.

HOLDINGS

1. To establish that privately owned land became a public road through dedication, the claimant must show both a dedication to public use and acceptance of that dedication by the proper public authority.
2. The appellants failed to create a genuine issue of material fact regarding acceptance of Second Avenue and Fifth Street by a proper public authority.
3. Summary judgment was proper because the record contained no genuine issue of material fact as to whether Second Avenue and Fifth Street had been accepted as public roads.

KEY QUOTATIONS

“Generally there are but three methods by which the public may acquire a valid right to use land owned by another as and for a public road or highway” (506)

“If an acceptance by implication is relied upon, the acts which it is contended work such implied acceptance must show a clear intent to treat and consider the streets and alleys thus offered as public streets and alleys.” (507)

“We therefore conclude that there is no legal support for the appellants' claims that Second Avenue or Fifth Street are public roads or public ways.” (508)

FACTUAL BACKGROUND

The appellants sought to establish that Second Avenue and Fifth Street in the unincorporated Town of Jeffrey, Boone County, were public roads and to enjoin the appellees from obstructing them. The appellants relied on recorded maps, deed references, a Boone County Commission order refusing to close Second Avenue, and correspondence involving the West Virginia Division of Highways. The record showed that the Division of Highways denied a request to include Second Avenue in the state highway system, and the appellants presented no evidence that the roads had been used by the public for at least ten years or maintained with public money or labor.

PROCEDURAL HISTORY

The appellants filed a pro se complaint seeking to have Second Avenue declared a legal and public street and to remove alleged obstructions. After amendment adding Fifth Street, the appellees answered, asserted a counterclaim, and converted their motion to dismiss into a motion for summary judgment. The trial court granted summary judgment, finding no clear, satisfactory, or unequivocal evidence that the roads had been accepted as public roads, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Ryan v. Monongalia County Court, 86 W. Va. 40, 102 S.E. 731 (1920)
- State ex rel. Riddle v. Department of Highways, 154 W. Va. 722, 179 S.E.2d 10 (1971)
- City of Point Pleasant v. Caldwell, 87 W. Va. 277, 104 S.E. 610 (1920)
- Rose v. Fisher, 130 W. Va. 53, 42 S.E.2d 249 (1947)

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