

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JOHN PHILLIPS, ET AL.

Plaintiffs-Appellants

-VS-

JAMES YOUNG, ET AL.

Defendants-Appellees

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JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2006AP120073

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2004CV090552

JUDGMENT:

Vacated

DATE OF JUDGMENT ENTRY:

January 22, 2008

APPEARANCES:

For Plaintiffs-Appellants

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For Defendants-Appellees

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400 South Main Street
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Farmer, P.J.

{¶1} On September 22, 2004, appellants, John and Joseph Phillips, filed a complaint against appellees, James and Cynthia Young, seeking an injunction/declaration over the use of a driveway.

{¶2} A bench trial commenced on April 4, 2006. By judgment entry filed April 27, 2006, the trial court issued a declaratory judgment in favor of appellants, finding they had legally established a prescriptive easement over appellees' land. No one appealed this decision.

{¶3} Several months later, the parties filed cross-motions for contempt. A hearing was held on November 20, 2006. By judgment entry filed December 1, 2006, the trial court denied the cross-motions, and clarified its April 27, 2006 judgment entry, stating the prescriptive easement granted to appellants was to be used by appellants only and not "customers, vendors, delivery companies, etc."

{¶4} Appellants filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT WAS NOT PERMITTED TO ISSUE ADDITIONAL ORDERS OVER SEVEN (7) MONTHS AFTER THE INITIAL JUDGMENT ENTRY WAS SIGNED."

I

{¶6} Appellants claim the trial court erred in modifying its April 27, 2006 judgment entry on declaratory judgment. We agree.

{¶7} On April 27, 2006, the trial court found the following regarding the parties' dispute over the use of the driveway:

{¶8} "**FINDS** that the **Prescriptive Easement** to which Plaintiffs are entitled in this case relative to the land of Defendants is the following: Ingress and egress from State Route 800 across Defendants' land to Plaintiffs' property including a residence structure **for private residential access and use only**. That means that Plaintiffs have not established, by the requisite standard, an entitlement to a **Prescriptive Easement** for **commercial traffic** from State Route 800 across Defendants' land to the commercial enterprise also located on Plaintiffs' property. Access by vehicles to Plaintiffs' commercial enterprise (boat and motor repair) is **not** allowed by this judicially declared **Prescriptive Easement**."

{¶9} The trial court then ordered the following prescriptive easement:

{¶10} "Ingress and egress from State Route 800 across Defendants' land to Plaintiffs' property including a residence structure for private, non-commercial use only. The location and dimensions of the roadway constituting the **Prescriptive Easement** shall be as they exist on the date of the journalization of this Judgment Entry. Costs of maintaining the roadway shall be borne equally by Plaintiffs and Defendants."

{¶11} Following the contempt hearing, the trial court denied the parties' respective contempt motions, but issued the following pertinent orders in its December 1, 2006 judgment entry:

{¶12} "1. The **Prescriptive Easement** issued in the 4/27/2006 **Judgment Entry** grants John and Joseph Phillips **only** the right to use the Defendants' roadway in question crossing over Defendants' land for **ingress** and **egress only** to and from the residential property owned by Plaintiffs adjacent to Defendants' property.

{¶13} "2. The **Prescriptive Easement** issued by the Court in the 4/27/2006 **Judgment Entry** does **not** give any other person or entity the right to use Defendants'

roadway in question **for any purpose**, business or personal, given the fact that alternative ingress and egress to and from the Plaintiffs' property exists for both personal and business purposes, and is available for use by these third parties.

{¶14} "3. John and Joseph Phillips shall send, or cause to be personally delivered, **written notification** to **all** customers, vendors, delivery companies, etc. that access to the Phillips Commercial Enterprise (Boat and Motor Repair Business) located on the Phillips property in question, shall not include utilization of Defendants' roadway by shall be by the alternate access roadway available. **This Notice shall be mailed/delivered no later than Friday, 1/15/2007.**

{¶15} "7. Plaintiffs shall endeavor to immediately inform and notify all relatives, friends or other persons/entities who access Plaintiffs' property in question for **personal** reasons/purposes, that the Defendants' roadway in question **shall not** be utilized to access the Phillips' property located adjacent to the property owned by the Defendants.

{¶16} "8. All persons utilizing Defendants' roadway in question subsequent to 1/8/2007 shall be subject to **private prosecution** by Defendants for private trespass."

{¶17} R.C. Chapter 2721 governs declaratory judgment actions. R.C. 2721.09 states the following in pertinent part:

{¶18} "****[W]henever necessary or proper, a court of record may grant further relief based on a declaratory judgment or decree previously granted under this chapter. The application for the further relief shall be by a complaint filed in a court of record with jurisdiction to grant the further relief. If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why the further relief should not be granted forthwith."

{¶19} We find none of the requirements of R.C. 2721.09 were followed in this case. The matter was before the court on cross-motions for contempt. The trial court limited the hearing to the scope of the contempt motions which argued the following:

{¶20} "Now come the defendants, James and Cynthia Young, by and through counsel, and move this Court for an order finding the plaintiffs in contempt of the judgment entry for the non-commercial use of the defendants' driveway. Defendants submit that plaintiffs have been allowing persons other than the plaintiffs to use the subject roadway which is in direct violation of this court order. Specifically, attached is chronological log ('Exhibit A') as well as photographs ('Exhibit B') of the violations.

{¶21} "An order finding plaintiffs in contempt of this court order restricting the use of the defendants' driveway for **private, non-commercial use only** (emphasis added)." Appellees' Motion for Contempt filed September 8, 2006.

{¶22} "Now comes Plaintiff, John Phillips and Joseph Phillips by and through their Attorney, Brad L. Hillyer and moves the Court for the following Orders:

{¶23} "An Order finding the Defendants, James and Cynthia Young in Contempt of Court for his repeated violations of the Court's Judgment Entry dated April 27, 2006 in accosting, harassing, stopping, interfering, threatening and physically assaulting the Plaintiff, John Phillips and further interfering with family members, friends and Plaintiffs themselves during their legal use of the driveway pursuant to the entry on the following occasions, May 13, 2006, May 26, 2006, June 8, 2006, June 30, 2006, July 18, 2006, August 13, 2006, August 24, 2006, September 7, 2006, and September 11, 2006." Appellants' Motion for Contempt filed November 7, 2006.

{¶24} The trial court did not find appellants were in contempt of court for any violation of the April 27, 2006 order. Because no one appealed the April 27, 2006 judgment entry, we find the law of the case doctrine applies:

{¶25} "Briefly, the doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.***Thus, where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the appellate court's determination of the applicable law.

{¶26} "The doctrine is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results.***However, the rule is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution.***

{¶27} "In pursuit of these goals, the doctrine functions to compel trial courts to follow the mandates of reviewing courts.***Thus, where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the appellate court's determination of the applicable law.***Moreover, the trial court is without authority to extend or vary the mandate given.***" *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3-4. (Citations omitted.)

{¶28} In the case sub judice, the attempt at modification, wherein the trial court restricted use of the prescriptive easement solely to the individual appellants, was beyond the scope and spirit of the original order. In the original order, the trial court granted a prescriptive easement for "private, non-commercial use." Modifying this order

to restrict relatives, friends, and non-commercial delivery trucks went beyond the clear and unambiguous meaning of the original order and was not within the scope of the hearing.

{¶29} Upon review, we find the trial court's December 1, 2006 judgment entry to be an abuse of discretion. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217.

{¶30} The sole assignment of error is granted.

{¶31} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio is hereby vacated.

By Farmer, P.J.

Wise, J. concurs.

Delaney, J. dissents

S/ Judge Sheila G. Farmer

S/ Judge John W. Wise

JUDGES

Delaney, J., dissenting

{¶32} I respectfully dissent from the majority opinion.

{¶33} The only issue before this Court is whether the trial court had the authority to clarify its earlier declaratory judgment.

{¶34} R.C. Chapter 2721 governs declaratory judgment actions. R.C. 2721.09 addresses a trial court's continuing jurisdiction to order further relief after the initial grant of declaratory relief. The statute provides, in pertinent part: " * * * [W]henever necessary or proper, a court of record may grant further relief based on a declaratory judgment or decree previously granted under this chapter. The application for the further relief shall be by a complaint filed in a court of record with jurisdiction to grant the further relief. If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why the further relief should not be granted forthwith."

{¶35} R.C. 2721.13 further provides that the provisions of R.C. Chapter 2721 are remedial in nature and shall be liberally construed and administered.

{¶36} Upon review, I would find the parties invoked the continuing jurisdiction of the trial court under R.C. 2721.09 by the filing of the cross motions for contempt. The trial court afforded the parties a full evidentiary hearing on the matter. The trial court subsequently issued orders to the parties, via clarification of its earlier declaratory judgment, thus providing additional relief as permitted by the statute.

{¶37} Accordingly, I would overrule the sole assignment of error and affirm the judgment of the Tuscarawas Common Pleas Court.

S / JUDGE PATRICIA A. DELANEY
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JUDGMENT ENTRY

CASE NO. 2006AP120073

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Tuscarawas County, Ohio is vacated.

S/Judge Sheila G. Farmer

S/John W. Wise

JUDGES