IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

RONALD D. COBB and
DEBORAH HERRALD COBB,
Plaintiffs,

v. Civil Action No. 05-C-1963

THOMAS S. DAUGHERTY and
CHRISTINE A. DAUGHERTY
(f/k/a Christine Klapproth),
husband and wife
Defendants.

ORDER DENYING DEFENDANTS' MOTIONS TO SET ASIDE VERDICT AND MOTION FOR NEW TRIAL

On the 1st day of December, 2008, came the Plaintiffs, Ronald D. Cobb and Deborah Herrald Cobb, by counsel, O. Gay Elmore, Jr., and came the Defendants, Thomas S. Daugherty and Christine A. Daugherty, by counsel, George A. Daugherty, for hearing before this Honorable Court upon Defendants' "Motion to Set Aside Verdict" and "Motion for New Trial."

The Defendants, by counsel also filed "Accompanying Affidavits" which were sworn to and verified by counsel in support of his Motions, all of which were made part of the record.

The Defendants assigned as Error the giving of conflicting Instructions, including the fact that the conflicting Instruction was mislabeled as if offered by the Defendant, which was untrue. The Defendants also moved in support of this Ground of Error that counsel had been denied opportunity to prepare counter Instructions. The Court overruled this Motion to which the Defendants Objected and Excepted.

The Defendants also assigned as Error the denial as a matter of law without hearing any evidence that the Defendants could proceed to defend and present their Counterclaim based upon Illegal Abuse of Civil Process. The Defendants offered in their Affidavit case law supporting the fact that Illegal Abuse of Civil Process is an accepted cause of action under West Virginia law citing in their argument the case of Wayne County Bank v. Hodges, 338 S.E. 2d 202 (1985),

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opinion by Justice McHugh. The Court overruled this assignment of Error as it had consistently done during the many months prior to the Trial. The Court also excluded evidence of other abuses of civil process including making allegations against Federal Judge John Copenhaver in part similar to the accusations made against the male Defendant alleging harassing of the female Plaintiff and numerous citations against the Defendants after Defendants refused to sell an easement to the Charleston City Planning Commission, the Fire Department, unfounded allegations to the Ethics Committee of the West Virginia State Bar against former Defense Counsel in the same case as the Judge [illegible] situation. The Court overruled this Motion to which the Defendants Objected and Excepted.

The Defendants also assigned as Error the denial of Defendants' Motion to view a complaint made to Child Protective Services of West Virginia under Court supervision, the Court having previously privately reviewed such complaint and advising Defense Counsel the name of the complainant who happened to be the first cousin of the female Plaintiff. On deposition the female Plaintiff and her first cousin both denied the first cousin had any knowledge of the conflict between the parties herein and since they denied it the Court ruled that Defendants were not entitled to know the facts and circumstances alleged in the CPS Complaint by the first cousin, under Court supervision, in order to confront and discredit the female Plaintiff and her cousin based upon the actual facts of the Complaint, thus denying the right of the Defendants to confront and test credibility, as a matter of law. The Court overruled this Motion to which the Defendants Objected and Excepted.

In addition, the Defense assigned as Error the denial by the Court on numerous occasions of a Motion for a More Particular Statement. The Plaintiffs alleged every conceivable possible type of Easement set forth in Michies Jurisprudence requiring the Defendants to defend them all before the jury. On the last day of trial the Court narrowed the issues to two Easements, to wit,

Easement by Implication and Easement by Equitable Estoppel. The jury, after many hours of deliberation. found against the Defendants on the theory of Easement by Implication and the Defendant renewed their objection repeatedly that the confusion would have been obviated and the Trial shortened materially had the Court granted a Motion for a More Particular Statement. The Court once again overruled this Assignment of Error to which the Defendants Objected and Excepted. the Court having never granted a Motion for a More Particular Statement, as a matter of law.

The Judgment Order of the Court entered November 13, 2008 is attached hereto and incorporated herein by reference as Exhibit A.

At the end of arguments of counsel the Court overruled all of the Motions and Assignments of Error, to which the Defendants Objected and Excepted.

In addition, Counsel for Defense renewed all Motions made during the Trial and the preliminary motions made prior to the trial which the Court overruled and to which the Defendants Objected and Excepted.

Dated: 12-22-08

Judge James C. Stucky

Submitted by:

George A. Daugherty, WV Bar #948
DAUGHERTY LAW OFFICE
P.O. Box 490
Dunbar, WV 25064

RECORDED

Approved by:

O. Gay Elmore, Jr., WV Bar #5487
ELMORE & ELMORE
121 Summers Street
Charleston, WV 25301

12/26/08
Date:
Certified copies sent for
counsel of record
parties
other
(please indicate)
by
certified/1st class mail
fax
hand delivery
interdepartmental
Other directions accomplished:
Deputy Circuit Clerk

6E, 6D
(2)

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KANAWHA CO. CIRCUIT COURT

JUDGMENT ORDER

This action came on for trial before the Court and a jury, The Honorable Judge James C. Stucky, presiding on September 8, 9, 10, 11 and 12, 2008. The issues having been duly tried, the jury on September 12, 2008, by Verdict Form properly returned, with the jury polled and found as follows:

1. We, the jury, find by clear and convincing evidence, the Plaintiffs, Ronald D. Cobb and Deborah Herrald Cobb, have established a right to an easement by implication?

   YES X NO _____

2. We, the jury, find by clear and convincing evidence, that Plaintiffs, Ronald D. Cobb and Deborah Herrald Cobb, have established a right to an easement created by equitable estoppel?

YES _____ NO __X_____

3. We, the jury, find by a preponderance of the evidence, that the Daugherty's fence crosses onto the Cobb property?

YES __X_____ NO_____

IF YOU ANSWERED YES TO NUMBER THREE, THEN COMPLETE THE FOLLOWING:

We, the jury, find for the plaintiff and assess them damages in the amount of

$ 0.00

In accordance with the verdict of the jury, it is therefore ORDERED and ADJUDGED that Plaintiff is entitled to an easement by implication over Defendants' property, that Defendants' fence crosses onto Plaintiffs' property and that Defendants shall pays the costs of this civil action as taxed by the Clerk of this Court.

The Clerk shall enter this Judgment Order as of this date and shall issue attested copies of the Judgment Order to all Counsel of record.

ENTER: 11-13-08

JUDGE JAMES C. STUCKY

11-19-08

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