

RENDERED: JANUARY 27, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000900-MR  
&  
NO. 2010-CA-000901-MR

KEVIN BAILEY AND LAURA POPE

APPELLANTS

v. APPEALS FROM SPENCER CIRCUIT COURT  
HONORABLE CHARLES R. HICKMAN, JUDGE  
ACTION NOS. 09-CI-00365 & 09-CI-00366

ROY H. WYATT

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: COMBS AND LAMBERT, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

SHAKE, SENIOR JUDGE: Kevin Bailey and Laura Pope appeal from a Spencer Circuit Court Findings of Fact, Conclusions of Law, and Judgment that ordered

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<sup>1</sup> Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Pope and Wyatt to formalize an agreement allowing Wyatt to connect to a water line to Pope's property. On appeal, Bailey and Pope claim that the trial court's conclusion was based on an inaccurate interpretation of Pope's testimony. Upon a review of the record, we reverse the Spencer Circuit Court and remand for further findings.

Bailey and Pope owned 117 acres of land in Spencer County. In 1999, Pope's father provided funds to install a water line to a barn located on Bailey's and Pope's property. In 2000, Bailey and Pope built a modular home on their property and extended the water line from the barn to the home. In 2001, Bailey and Pope extended the waterline from the barn to a garden area.

The modular home and three-acre tract of land located within the 117 acres was subject to a mortgage held by Woodland Capital. In August 2002, Woodland Capital foreclosed upon the home and three-acre tract. The three-acre tract and home were subsequently sold to Wyatt. Before they vacated the three-acre tract, Bailey and Pope removed the water line that ran from the barn to the home. Bailey and Pope still own the remaining 114 acres, on which they placed a mobile home.

The relationship between Wyatt and Bailey and Pope has been tumultuous. Wyatt's deed does not provide for a water or utility easement. In 2005, Wyatt had the local water company change the name associated with the

closest water meter from Pope's name to his. Pope contacted the water company and had her name restored to the meter. Then, Wyatt had a water meter installed and tapped into the existing water line on the property.

Bailey and Pope filed two actions in small claims court against Wyatt. The cases were consolidated and transferred to the Spencer Circuit Court. Upon Bailey's and Pope's motion for a restraining order, the court held a hearing to determine whether the existing water line belonged to Bailey and Pope or to Wyatt. Rather than analyzing the ownership of the water line, the trial court concluded that the parties should formalize an agreement regarding the waterline. The court's order stated,

Pope stated on the record that she would grant Wyatt permission to run a water line from his water meter to his house and the three acre tract across the Defendants' property. The parties, with the aid of their attorneys, shall come to a reasonable accommodation regarding the location and installation of the Wyatt water line. The Court finds it advisable that the parties draft a formal agreement and/or record the water easement granted to the 3 acre tract. Formalizing the agreement will hopefully stabilize the parties' relationship, prevent future misunderstandings, and ensure that both parcels of property have continued water service.

Trial courts have much discretion when making findings of fact.

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01. Findings of fact are clearly erroneous when they are not supported by substantial evidence. *Stanford Health & Rehabilitation Center v.*

*Brock*, 334 S.W.3d 883, 884 (Ky. App. 2010). Substantial evidence is evidence which has sufficient probative value to induce conviction in the mind of a reasonable person. *Id.*

The court's conclusion was solely based upon its finding that Pope testified that she would allow Wyatt to tap into the existing water line. However, Pope's testimony did not contain such an offer; no water line easement was justified by her testimony. The trial court's findings of fact were clearly erroneous and its conclusion was unsupported.

Accordingly, the Spencer Circuit Court order is reversed and remanded for further findings.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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