

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED
November 13, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

LOUIS E. HEIDLE and wife
DELORIS J. HEIDLE, a/k/a
S S & Z PROPERTIES

Plaintiffs - Appellees

v.

RANDALL L. MCFARLAND

Defendant - Appellant

) MORGAN COUNTY
) 03A01-9702-CH-00058
)
)
)

) HON. FRANK V. WILLIAMS, III,
) CHANCELLOR
)
)

) AFFIRMED AND REMANDED

TOM MCFARLAND OF KINGSTON FOR APPELLANT

JAMES W BROOKS, JR., OF WARTBURG FOR APPELLEES

O P I N I O N

Goddard, P. J.

Randall L. McFarland appeals a judgment of the Chancery Court for Morgan County, which found--in a suit brought against him by Louis and Deloris Heidle--that a certain roadway which bisects M. McFarland's property was a public road and required him to remove gates which he had erected that impeded the free use of the roadway.

The Chancellor found that the road, which runs generally from Highway 62 in a northerly direction through Mr. McFarland's property to or near the top of a mountain located in Frozen Head State Park, was a public road. The proof and inferences to be drawn therefrom show that the road was constructed by the Civilian Conservation Corps in the late 1930s or early 1940s, and had been maintained as a gravel road for a number of years by Morgan County. Likewise, it had been used without let or hindrance by the landowners adjoining it, as well as the general public, until Mr. McFarland purchased his property a month or two prior to December 1995, the date the present suit was filed.

Our review of the record and the briefs of the parties persuade us that this is an appropriate case for affirmance under Rule 10(a) of this Court.

In reaching this conclusion we are aware that the County paved the road from Highway 62 to Mr. McFarland's driveway and apparently ceased to maintain the road beyond that point. However, we point out that even if the County abandoned the road, the adjacent landowners would nevertheless retain the private right to traverse it.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings as may be necessary and collection of costs below.

Costs of appeal are adjudged against Mr. McFarland and his sureties.

Houston M. Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

William H. Inman, Sr. J.