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COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
2011-SC-000612-D  
(2009-CA-002182 AND 2009-CA-002210)

MARYANNA ROBINSON APPELLANT  
VS  
HAROLD WHITNEY ET AL'S APPELLEES

APPELT ROBERTSON COUNTY'S BRIEF TO  
APPELLANT'S APPEAL

APPEAL FROM COURT OF APPEALS  
NOS. 2009-CA-002182 AND 2009-CA-002210  
ON APPEAL FROM THE ROBERTSON CIRCUIT COURT  
HONORABLE ROBERT W. MCGINNIS CIVIL ACTION 04-CI-00040

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered by the indicated means below on the 7th day of September, 2012 to the following:  
Mailed: Mr. James S. Whomers Esq. (counsel for Harold Whitney et al's) South Main Street, Cynthiana, Kentucky 41061; Mrs. Shannon Elton Johnson 340 Main Street, Paris, Kentucky 40361; Counsel for Defendant Maryanna Robinson.  
Hand delivered: Clerk of the Kentucky Supreme Court of Kentucky, Ms. Susan Stokley Clary, State Capitol Building, Room 209, 700 Capitol Avenue, Frankfort, Kentucky 40601; Clerk of the Court of Appeals, 300 Democrat Drive, Frankfort, Kentucky 40601; Circuit Judge's Office (former Judge McGinnis) centrally located in Defendant's Harrison County Insure Center, Cynthiana, Kentucky 41061.

JESSE P. MELCHER

## **STATEMENT CONCERNING ORAL ARGUMENT**

The Appellee, Robertson County, does not desire an oral argument in this appeal, as the facts of this case and the issues presented herein are all within the face of the documents themselves and articulated within the arguments, wherein, oral argument would only be repetitive.

**COUNTERSTATEMENT OF POINTS AND AUTHORITIES**

- I. THE COURT OF APPEALS JULY 22, 2011 OPINION IS PREDICATED ON A FATAL ERROR, BASING ITS OPINION ON THE MISCONCEPTION THAT THE CIVIL DECLARATORY ACTION FOLLOWED A REQUEST TO “ABANDON” THE ROAD. INSTEAD.....4
  
- II. THE COURT’S OPINION OVERLOOKS CONTROLLING STATUTORY AND CASE LAW WHICH SECURES THE RIGHT TO DECLARATORY RELIEF FOR APPELLEES.....5
  
- III. THE CIRCUIT COURT ALSO HAD JURISDICTION TO HEAR THE CASE PURSUANT TO KRS 424.380.....5
  
- IV. THERE IS NO STATUTORY PROCEDURE IN KRS CHAPTER 178 FOR DETERMINING A ROAD’S LEGAL STATUS.....5
  
- V. THE CIRCUIT COURT INCORRECTLY HELD THAT BATTE LANE/MILLIKEN LANE WAS NOT A COUNTY ROAD AND ITS JUDGMENT SHOULD BE REVERSED.....5
  - (I) ROBERTSON COUNTY FISCAL COURT SUBSTANTIALLY COMPLIED WITH KRS 178.010, AND/OR K.R.S 178.115.....5
    - A) KRS 178.010.....6
    - B) KRS 178.115.....6
      - i) Fiscal Court must establish road pursuant to KRS 178.115 by Formal Order. *Illinois Central R.R. v Hopkins County*, 369 S.W. 2d 116 (Ky. App.1963).....6

- a. **Fiscal Court must place owners on notice of adoption of road pursuant to KRS 178.115. *Prather v. Fulton*, 336 S.W. 2d 339 (Ky. App. 1960).**

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**ARGUMENT.....3**

**I. KRS. 178.010 AND KRS. 178.115 WERE SUBSTANTIALLY SATISFIED.....3**

**A. FISCAL COURT’S SUBSTANTIAL COMPLIANCE WITH KRS 178.010 AND KRS 178.115**

**COUNTERSTATEMENT OF CASE**

The case at hand was filed by the Appellants’, Harold Whitley, et. als., against Appellee, Robertson County, and Appellee, Maryanna Robinson, which was styled as an appeal of the Robertson County Fiscal Court decision not to close the County Road, pursuant to KRS 178.050 and as a declaratory judgment action that the section of road at issue was not a County Road. (R. 4, Complaint).

Robertson County by and through the Robertson County Fiscal Court approved Motions in December 2001 and November 1987 stating that the County adopted the County Roads as identified in the County Road Map as adopted by the Kentucky Department of Transportation.(R. at 480-24, Fiscal Court Minutes October and November 1987 and 435-36, County Road Map). The 1987 Robertson County Fiscal Court adopted the Kentucky Department of Transportation’s County Road Map, which included the section of road at issue herein. (R. at 480-24, Fiscal Court Minutes October and November 1987). The Road at issue herein has been subsequently maintained by the County since 1987. (R. 428-29, Affidavit of County Road Supervisor David Carmack).

Further, The Robertson County Fiscal Court adopted the Kentucky Transportation Cabinet's County Road Map, which included the section of road at issue herein in 2001 (R. 435-36, County Road Map).

Robertson County by and through the Robertson County Fiscal Court in February, 2004, voted to not approve the Appellants', Harold Whitley, et. als., petition to the Fiscal Court pursuant to K.R.S. 178.050 to abandon the section of road at issue herein as part of the county road system, after reports were filed by viewers and the county road supervisor and full due process hearing at Fiscal Court. (R. 504-07, Fiscal Court Minutes February 2004).

#### ARGUMENT

**I. THE COURT OF APPEALS JULY 22, 2011 OPINION IS PREDICATED ON A FATAL ERROR, BASING ITS OPINION ON THE MISCONCEPTION THAT THE CIVIL DECLARATORY ACTION FOLLOWED A REQUEST TO "ABANDON" THE ROAD. INSTEAD.....**

The Appellee, Robertson County takes no legal position on Appellants' Harold Whitley, et. als. assertion that the civil declaratory action followed a request in August 2004 to recognize the section of county road as not part of the county road system, however, the Appellee, Robertson County, does point out that the declaratory judgment was filed subsequent to the request by Appellants, Harold Whitley, et. als to the Robertson County Fiscal Court to have the section of road at issue herein, abandoned pursuant to KRS 178.050, wherein, the Robertson County Fiscal Court voted not to close the road, after full due process and compliance with KRS 178.050, due to the concern of the viewers reports filed pursuant to KRS 178.050. (R. 504-07, Fiscal Court Minutes February 2004).

**II. THE COURT'S OPINION OVERLOOKS CONTROLLING STATUTORY AND CASE LAW WHICH SECURES THE RIGHT TO DECLARATORY RELIEF FOR APPELLEES.....**

The Appellee, Robertson County, takes no legal position or argument concerning Appellants', Harold Whitley, et. als., assertion that the Court of Appeals Opinion overlooked controlling statutory law and case law which secures the right to declaratory relief for Appellants' Harold Whitley, et. als.

**III. THE CIRCUIT COURT ALSO HAD JURISDICTION TO HEAR THE CASE PURSUANT TO KRS 424.380.....**

The Appellee, Robertson County, takes no legal position or argument concerning Appellee's assertion that the Circuit Court had jurisdiction to hear the case pursuant to KRS 424.380.

**IV. THERE IS NO STATUTORY PROCEDURE IN KRS CHAPTER 178 FOR DETERMINING A ROAD'S LEGAL STATUS.....**

The Appellee, Robertson County, takes no legal position or argument concerning Appellant's, Harold Whitley, et. als., assertion that there is no statutory procedure in KRS 178 for determining a road's legal status.

**V. KRS. 178.010 AND KRS. 178.115 WERE SUBSTANTIALLY SATISFIED**

The Appellee, Robertson County Fiscal Court substantially complied with applicable Kentucky Revised Statutes under chapter KRS. 178, specifically, KRS.

178.010 and KRS. 178.115, by twice formally adopting the road section in question herein as part of the county road system pursuant to Fiscal Court Minutes. (R. at 480-24, Fiscal Court Minutes October and November 1987 and 435-36, County Road Map). The twice formal adoption by the Robertson County Fiscal Court is substantially sufficient to satisfy the published case law that before a road can be made a part of the county road system, the Fiscal Court must establish said road as part of the road system by Order of the Fiscal Court. *See. Illinois Central R.R. v Hopkins County*, 369 S.W. 2d 116 (Ky. App. 1963).

KRS 178.010(B) states "County Roads" are public roads which have been accepted by the fiscal court of the county as a part of the county road system after July 1, 1914....

KRS 178.115(1) states "Whenever the fiscal court of any county deems it to be in the best interest of such county to open, establish or alter the location of any public road, street, alley, ditch, culvert, bridge or similar public way or structure in such county, said fiscal court shall adopt a resolution setting forth the necessity for such public road or structure, and thereupon such public road or structure shall be deemed opened, established or altered, as the case may be, on behalf of the county. A certified copy of said resolution shall be posted by the county road engineer of the county along or at the proposed road or structure within five (5) days after its adoption."

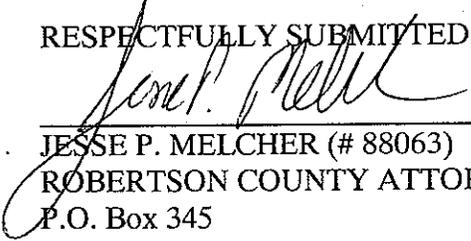
The Court of Appeals in analyzing KRS 178.115, also stated, "The posting of certified copies of the resolution is mandatory but the requirement that it be done by the county road engineer is directory and if the posting is duly accomplished it is not invalidated on the ground that the wrong person did it." *Prather v. Fulton*, 336 S.W. 2d

339 (Ky. App. 1960). However, The Same Court stated, "The real purpose of the resolution is to give the property owners advance notice in order that they may protest or take such other action as may be proper and the accomplishment of this purpose does not require an exact choice of words." *See. Prather v. Fulton*, 336 S.W. 2d 339 (Ky. App. 1960). Appellant, Harold Whitley, purchased his realty and traveled over the section of road at issue herein subsequent to years of continuous county maintenance.

Robertson County must acknowledge that it can not produce sufficient proof to demonstrate that a copy of the motion and order to adopt was placed at the road for five days following its adoption, pursuant to KRS 178.115. Robertson County would assert that all owners and subsequent owners have been put on sufficient notice to challenge the Fiscal Court's decisions and orders of 1987 and 2001 respectively. It is clearly evident in the record that the road at issue herein was a maintained road by the County since at least 1987. (R. 428-29, Affidavit of County Road Supervisor David Carmack). Thus, Robertson County believes that it has substantially complied with the spirit, intent and meaning of KRS. 178.010 and KRS. 178.115.

Therefore, This Court should rule that the road section at issue herein has been validly and formally adopted by the Robertson County Fiscal Court as part of the County Road System and is a valid county road of Robertson County, and thus, The Trial Court was erroneous in ruling that the section of road at issue herein is not a valid County Road and affirm the Kentucky Court of Appeals decision

RESPECTFULLY SUBMITTED,



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