

COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
NO. 2011-SC-000612

HAROLD WHITLEY, BONNIE WHITLEY, ET AL. APPELLANTS

V. BRIEF OF APPELLEE MARYANNA ROBINSON

MARYANNA ROBINSON

AND

ROBERTSON COUNTY and APPELLEES  
ROBERTSON COUNTY FISCAL COURT

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ON APPEAL FROM COMMONWEALTH OF KENTUCKY  
COURT OF APPEALS NOS. 2009-CA-002182 AND 2009-CA-002210  
ROBERTSON CIRCUIT COURT,  
HONORABLE ROBERT W. MCGINNIS, CIVIL ACTION NO. 04-CI-00040

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**CERTIFICATE OF SERVICE**

I do hereby certify that on this, the 11th day of September, 2012, true copies of Appellee Maryanna Robinson's Brief were served by U.S. first class mail, postage prepaid, on James S. Thomas, 103 South Main Street, Cynthiana, KY 41031, Jesse P. Melcher, Esq., 204 South Main Street, Mount Olivet, Kentucky 41064; Hon. Jay Delany, Robertson Circuit Court Judge, Harrison County Justice Center, 115 Court Street, Suite 5, Cynthiana, KY 41031 and Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601.

  
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## INTRODUCTION

This is a case about whether a circuit court can declare that a road is private and allow it to be gated after the fiscal court had formally adopted the road as a county road, the fiscal court had issued two additional decisions finding that the road was a county road, the road had been depicted on county road maps for more than 17 years, the county had maintained the road for more than 17 years, and the public had used the road for over 40 years. In lieu of treating the underlying action as an appeal of the Robertson County Fiscal Court's decisions, the Robertson County Circuit Court's ruling was clearly erroneous because it considered the issues *de novo* and, without an evidentiary hearing, determined that Appellants could obstruct the sole access to Ms. Robinson's home. The Court of Appeals properly reversed and remanded to the Robertson County Circuit Court because the Circuit Court failed to limit its review to the record before the Fiscal Court and a determination of whether the decisions of the Fiscal Court were arbitrary.

**STATEMENT CONCERNING ORAL ARGUMENT**

Ms. Robinson respectfully requests an oral argument on this matter and believes that such an argument will assist this Court by providing an opportunity for counsel to answer any questions posed by the Court.

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## COUNTERSTATEMENT OF THE CASE

Appellants (the "Whitley Movants") filed this action in 2004 after they requested, and the Robertson County Fiscal Court declined, to close a county road known as Batte Lane. For ease of reference, a map of Batte Lane is contained in the Appendix at Tab A (R. 419, Plat of Batte Lane, Apx. Tab A)<sup>1</sup>.

### A. BATTE LANE

Batte Lane is a single lane road which departs from U.S. Hwy 62 in Harrison County, then passes into Robertson County, crosses land owned by the Battes, runs past a boat dock on the Licking River known as the Claysville Boat Dock, through the first part of the Whitley property and across a waterway known as Greasy Creek. Beyond Greasy Creek, Batte Lane continues nearly a mile through additional properties owned by the Battes, Whitleys Bertrams and twenty others, terminating at the entrance to Ms. Robinson's farm. Beginning in 1953 the Batte and Bertram predecessors began subdividing property along Batte Lane. As a result, from Greasy Creek to Ms. Robinson's farm, there are 25 intervening properties with 24 owners of record, several of whom are not parties to this litigation. Batte Lane goes to and through each property and is the sole access to each, including Ms. Robinson's farm. (R. 419, Plat of Batte Lane, Apx. Tab A). The whole of Batte Lane from where it departs U.S. Hwy 62 to Ms. Robinson's farm is referred to generally in this brief as "Batte Lane" or the "Road."

A portion of Batte Lane was accepted into the Robertson County Road system in 1987, and the Fiscal Court minutes reflect that the adjoining landowners (predecessors-in-title of the Whitley and Batte Movants) were present at the meetings discussing and adopting the Road. (R. 420-24, Fiscal Court Minutes October and November 1987, Apx.

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<sup>1</sup> Batte Lane has previously been known as Miliken's Lane and as River Road.

Tab B). Contrary to the assertions of the Whitley Movants that the Fiscal Court Minutes fail to reference its length or location (Whitley Movants' Brief at 43), the 1987 resolution of the Robertson County Fiscal Court adopting the Road identified the location of the county portion as beginning where it departs U.S. Hwy 62 and ending just beyond Greasy Creek and included the length of this county portion as .30 miles. (R. 345, 1987 County Road Map, Apx. Tab C; R. 77, Ms. Robinson's Motion for More Definite Statement). This portion of Batte Lane which was adopted by the County is hereafter referred to as the "County Portion." The Whitley Movants never appealed the adoption of the County Portion and the County Portion was thereafter continuously maintained by the County. (R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D).

In 1995, the Batte family (represented by David Powers, son-in-law of Billy and Helen Batte), petitioned the Robertson County Fiscal Court to change the name of the Road. The name of the Road was thereafter changed by the authority of the Robertson County Fiscal Court from Miliken's Lane to Batte Lane. (R. 425-27, Fiscal Court Minutes December 1995). In 2001, the County Portion was accepted into the Robertson County Road system again, by virtue of being on the new map accepted by the Fiscal Court as part of the county road system. (R. 346-47, 2001 County Road Map, Apx. Tab C; R. 349, Fiscal Court Minutes October 2001).

By designation of the Whitley Movants' and by Order of the Robertson County Circuit Court in the case at bar, only a subpart of the County Portion of Batte Lane is at issue here. The only part of the County Portion involved in this litigation is from the Claysville Boat Dock to Greasy Creek which is the part of Batte Lane that passes through property owned by the Whitleys. Neither the County Portion before the Claysville Boat

Dock nor the County Portion after Greasy Creek is at issue herein. (R. 175, Order entered June 6, 2006, Apx. Tab E).

The subpart of the County Portion at issue in this litigation, is hereafter referred to as the “Disputed Section.” The Circuit Court’s holding that the Disputed Section is a private road arbitrarily closes part of a county road although the Disputed Section and the rest of the County Portion were adopted at the same time in the same way. Beyond the County Portion, Batte Lane has not been adopted as a county road, but continues through (and is the only access to) the remaining properties. (R. 528, 2 Volumes, Report in Opposition to Request to Close River Road, Robertson County, KY February 24, 2004,<sup>2</sup> hereinafter referred to as “2 Volumes, Opposition,” a portion of which is attached as Apx. Tab F; R. 419, Plat of Batte Lane, Apx. Tab A).

**B. EASEMENTS**

The Batte family granted deeded easements across their property when they began subdividing in 1953. (R. 324, Whitley Discovery Disc, pp. 92-117, Landowner Deeds). As a result, Ms. Robinson has a deeded easement through the Batte property which is the first property through which Batte Lane travels when it leaves U.S. Hwy 62 and across the other twenty properties beyond the Whitleys’ property to the end of Batte Lane. (R. 419, Plat of Batte Lane, Apx. Tab A; R. 324, Whitley Discovery Disc, pp. 132-152, Robinson Deeds). Ms. Robinson holds, however, no deeded easement through the Whitley property where the Disputed Section is located. As a result, the fact that the

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<sup>2</sup> Two blue bound volumes identified as “Opposition to Request to Close River Road, Robertson County, KY, February 24, 2004” were submitted to the Fiscal Court at the February 2004 Fiscal court meeting. They were not included by the Circuit Court Clerk in the numbered record but rather retained with original demonstrative exhibits to be forwarded to the Court of Appeals upon conclusion of the briefing process. The County Clerk’s certification of these volumes is included in the Record at 528. Other demonstrative exhibits certified as part of the Fiscal Court record are referenced in the Record at p. 462.

Disputed Portion was part of the County Portion adopted into the county road system is the only legal means by which Ms. Robinson and others may traverse Whitley's property to access the other properties lying beyond the Whitley property as well as her own farm.

**C. GATES**

Notwithstanding the allegations of the Whitley Movants that there have been locked gates on Batte Lane since 1964 (Whitley Movants' Brief at 5), there has never, during that time, been a gate on the Disputed Section. (R. 748, Maryanna Robinson Affidavit).<sup>3</sup> Although certain unlocked cattle gates existed on Batte Lane before Ms. Robinson purchased her property, one was removed when the Battes removed their cattle from the area and the other was removed by Ms. Robinson after she talked to adjacent property owners and they indicated that they had no interest in the gate. (R. 265, Ms. Robinson's Discovery Responses, p. 9, No. 18). There is an unlocked gate at the entrance of Ms. Robinson's farm; however, Ms. Robinson is the only individual that lives beyond it. (R. 236, Memorandum in Support of Motion for Relief from Agreed Order). All three of these gates were located outside of the Disputed Section as well as outside the remaining County Portion of Batte Lane and therefore are irrelevant to this litigation.

**D. PUBLIC USE OF BATTE LANE**

Batte Lane has been open to and freely used by the public since 1964. (R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G). During the underlying litigation, Ms. Robinson lived on her farm at the end of Batte Lane, where she practiced law and operated a working farm. Prior to Ms. Robinson's purchase of her

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<sup>3</sup> The Whitley Movants attach to their Brief several pictures which presume to be of the Road and of gates on the Road; however, none of the pictures are accompanied by any affidavit of record or other authentication explaining what they depict. Ms. Robinson disputes that any of these pictures are of the Disputed Section of the Road.

farm in 2001, the farm had been operated by previous owners for decades, and numerous members of the general public traveled to and from the property on a regular basis in connection with those farm operations. (R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G). Customers, clients, service persons, as well as representatives of conservation groups and agencies (all members of the public) regularly travel Batte Lane to Ms. Robinson's and other owners' properties. (R. 747-749, Affidavit of Maryanna Robinson; R. 528, 2 Volumes, Opposition, Apx. Tab F).

**E. THE WHITLEY MOVANTS' ATTEMPTS TO DISPUTE THAT BATTE LANE IS A COUNTY ROAD**

The Whitley Movants tried unsuccessfully on two occasions to have the Fiscal Court declare that the Disputed Section was not a county road.

**1. Whitley Movants' First Fiscal Court Appearance (February 2004)**

In January 2004, seventeen years after Robertson County had first adopted the County Portion, the Whitley Movants petitioned the Robertson County Fiscal Court to abandon it. (R. 514-17, Petition). The Fiscal Court thereafter posted legal notice of a public hearing concerning the request to discontinue the County Portion, and appointed two "viewers" in accordance with KRS 178.070. (R. 508-510, Fiscal Court Minutes January 2004, Apx. Tab H). Both viewers reported that closing the County Portion would result in inconvenience to the public and recommended that the County not abandon it. (R. 519-524, Report of Viewers, Apx. Tab I).

On February 20, 2004, the Fiscal Court held a public hearing on the request to abandon the County Portion. Ms. Robinson, together with more than 200 other members of the public, opposed abandonment of the Road. (R. 504-528, Fiscal Court Record of

2004 Proceeding; R. 528, 2 Volumes, Opposition, Apx. Tab F). Recognizing that closing the County Portion of Batte Lane would result in public inconvenience, that it was the sole access to numerous properties, and that the County Portion had for more than seventeen (17) years been depicted as a county road on county road maps, the Fiscal Court properly denied the Whitley Movants' request to abandon. (R. 504-07, Fiscal Court Minutes February 2004, Apx. Tab J). The Fiscal Court's decision was based on substantial, undisputed evidence, was not arbitrary, and was consistent with controlling Kentucky law.

## **2. Whitley Movants' Second Fiscal Court Appearance (August 2004)**

The Whitley Movants never appealed the February 2004 Fiscal Court Decision. Six (6) months later, however, Harold Whitley, Kenny Batte, and their attorney James Thomas returned to the Fiscal Court. In August 2004, they requested that the County Portion of the Road be closed, this time on the theory that it had not been properly adopted nearly 20 years previously (in 1987), a position directly contrary to their earlier request that the Road be discontinued. (Fiscal Court Minutes August 2004, which were attached as Exhibit 2 to Whitley Movants' Court of Appeals Petition for Rehearing and are also attached hereto as Apx. Tab J). Attorney James Thomas threatened the Fiscal Court with legal action if it did not close the Road as requested. (R. 447-48, Newspaper Article from the Ledger Independent). The request to reverse the 1987 Fiscal Court decision was properly denied by the Fiscal Court which affirmed that Batte Lane was a county road. (Fiscal Court Minutes August 2004, Apx. Tab J).

## **F. HARRASSMENT OF MS. ROBINSON**

Maintaining an open, county-maintained road is crucial to the individuals living on Batte Lane. This litigation came during a campaign of relentless harassment of Ms. Robinson. Specifically, after the Fiscal Court denied the February 2004 and the August 2004 petitions, and after Ms. Robinson openly opposed gating and closing the County Portion of Batte Lane<sup>4</sup>, the following occurred:

- signs about Ms. Robinson were erected in the yards of Rick Wilson (a Movant) and Mark Wilson (R. 262, Photographs of signs);
- the gate at the main entrance to Ms. Robinson's farm was welded shut with steel bands, preventing her from leaving her farm or emergency personnel from entering, requiring the Sheriff to work more than an hour to remove it (R. 263, Photograph of gate,); and,
- an effigy of Ms. Robinson was hung and burned in Harold Whitley's front yard just above Batte Lane (R. 264, Photograph of effigy burning, Apx. Tab K).

This harassment continued through December 2007 when Ms. Robinson was forced to ask the Kentucky State Police and Attorney General to intervene. (R. 265-68, Letter to State Officials).

## **G. THE LITIGATION**

On September 20, 2004, the Whitley Movants filed this action purporting to be an appeal of the August 2004 Fiscal Court meeting, injunctive relief and a declaratory judgment action rolled into one. (R. 4, Complaint). The lawsuit was filed only after the

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<sup>4</sup> Before the February 2004 Fiscal Court hearing, Ms. Robinson had agreed to the installation of one gate on the Disputed Section, if she had sole control of when it was closed, and if the County agreed to continue to maintain Batte Lane. These conditions were never agreed to and later the County confirmed to her that it would not allow a gate on a county road. (R. 146, Plaintiffs' Answers to Counterclaims, p. 3, ¶ 6).

Whitleys bought their property in 2003, and after the Whitleys and their predecessors had permitted public use of the Disputed Section for some 40 years beginning in 1964. (R. 431, Whitley Deed; R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G).

#### **H. THE ROBERTSON COUNTY CIRCUIT COURT'S ORDERS**

On August 13, 2009, the Robertson County Circuit Court erroneously sustained the Whitley Movants' Motion for Summary Judgment and declared that the Disputed Section was neither a county nor a public road, but rather a private passway that could be gated. (R. 644, Order entered August 13, 2009, Apx. Tab L). The Robertson County Circuit Court also exceeded its jurisdiction by reviewing the issues *de novo*, failing to limit its review to the Fiscal Court record, and ignoring the substantial evidence before the Fiscal Court regarding adoption by the County and public use of the Road.

On October 22, 2009, the Circuit Court entered a final and appealable order summarily dismissing Ms. Robinson's counterclaims, and ruling that a gate could be placed on the Disputed Section and that said gate could be secured closed but not locked. (R. 737, Order entered October 22, 2009, Apx. Tab L). On November 30, 2009, the Circuit Court held that Whitley Movants' action was "an original action for Declaratory Judgment." (R. 788, Order entered November 30, 2009, Apx. Tab L).

#### **I. THE OPINION OF THE COURT OF APPEALS**

The Kentucky Court of Appeals issued its Opinion Affirming in Part, Reversing in Part, and Remanding on July 22, 2011. The Opinion of the Court of Appeals vacated that portion of the Robertson County Circuit Court Order holding Batte Lane to be a private road because the Circuit Court did not undertake the proper standard of review

but was limited to a review of the record before the Fiscal Court and a determination of whether the actions taken by the Fiscal Court were arbitrary. Opinion of the Court of Appeals at 8. A petition for rehearing filed by the Whitley Movants was thereafter summarily denied. Order of the Court of Appeals entered September 8, 2011. The Whitley Movants then filed a Motion for Discretionary Review which was granted by this Court on May 16, 2012.

### SUMMARY OF ARGUMENT

Though purporting to be a declaratory judgment action involving the August 2004 decision of the Fiscal Court, a party cannot maintain a declaratory judgment action in lieu of or concurrent with review of an administrative decision. Judicial review of fiscal court actions is limited to a review of the fiscal court record and a determination of whether the fiscal court decision was based on substantial evidence and was not arbitrary. As properly found by the Court of Appeals, *de novo* review was improper by the Robertson County Circuit Court and the Court exceeded its authority.

Alternatively, even if the Circuit Court's *de novo* review was appropriate, the Circuit Court erred when it declared that the Disputed Section was neither a county nor a public road, but rather a private passway that could be gated. Batte Lane was dedicated to public use by the adjoining landowners and properly accepted into the county road system. The County Portion was maintained as a county road beginning in 1987, is the only access to numerous properties, and cannot be closed under controlling Kentucky law. The Circuit Court disregarded the substantial evidence showing the County Portion was properly adopted by the County, is a public road that has been used by the public since 1964, and cannot be gated given its historical use.

## ARGUMENT

The Court of Appeals properly reversed the Robertson County Circuit Court because the Circuit Court erred in its *de novo* review of the Fiscal Court's decisions and erred in its determination to allow a gate on the Disputed Section of Batte Lane. A circuit court's review of a fiscal court action concerning a road is strictly governed by KRS 178.100. A declaratory judgment is not permissible.

### I. THE COURT OF APPEALS PROPERLY DETERMINED THAT DECLARATORY RELIEF WAS NOT APPROPRIATE IN THIS CASE.

By Order entered November 30, 2009, the Robertson County Circuit Court held that the Whitley Movants' action was an original declaratory judgment action. (R. 788, Order entered November 30, 2009, Apx. Tab L). As properly noted by the Court of Appeals, however, a circuit court has no jurisdiction to make such a "declaration." Judicial review of a fiscal court decision is limited to a review of the fiscal court record. Court of Appeals Opinion p. 8; *Black v. Utter*, 190 S.W.2d 541, 542 (Ky. 1945).

Kentucky courts have uniformly refused jurisdiction of declaratory judgment actions when a specific statutory procedure exists. See *Back's Guardian v. Bardo*, 27 S.W.2d 960, 963 (Ky. 1930); *Cox v. Howard*, 261 S.W.2d 673, 675-76 (Ky. 1953); *American Beauty Homes Corp. v. Louisville and Jefferson Co. Planning and Zoning Comm.*, 379 S.W.2d 450, 454-55 (Ky. 1964). Similarly, circuit courts may not entertain an action under the Declaratory Judgment Act (KRS 418.040) simultaneously with a proceeding arising under a statutory scheme that provides an administrative remedy. *Triad Development/Alta Glyne, Inc. v. Gellhaus*, 150 S.W.3d 43, 47 (Ky. 2004).

The specific statutory procedure concerning a fiscal court's refusal to alter or discontinue a public or county road is set forth in KRS 178.100. The statute states:

From a decision of the fiscal court ordering a new road to be opened, or ordering an alteration or discontinuance of an existing road, or allowing gates to be erected across a road or abolishing existing gates, or a decision refusing any such order, the party aggrieved may bring an action in the Circuit Court of the county where the road is located to contest the decision of the fiscal court.

KRS 178.100. A review by a Circuit Court must be limited to the record and a determination of arbitrariness. *See Trimble Fiscal Court v. Snyder*, 866 S.W.2d 124 (Ky. App. 1993). As such, the Circuit Court's *de novo* review and disregard of the Fiscal Court record was impermissible.<sup>5</sup>

The record of the administrative body is the reviewing court's only basis for determining whether the complained-of action was arbitrary. *City of Louisville v. McDonald*, 470 S.W.2d 173, 178-79 (Ky. 1971). Because a circuit court cannot legislate, but only adjudicate, even when a circuit court finds that a fiscal court or administrative body has acted arbitrarily, the circuit court cannot change the decision of that body. Rather, the circuit court's jurisdiction is limited to either affirming or remanding the action to the fiscal court. *See City of Louisville*, 470 S.W.2d at 179. Contrary to their assertions that their action primarily sought declaratory relief, what the Whitley Movants sought in their Amended Complaint was a finding that the Robertson County Fiscal Court did something wrong and that its decision(s) should be overturned. Whitley Movants' Brief at 20-21 (R. 71, Amended Complaint). The Whitley Movants' action therefore was

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<sup>5</sup> KRS 178.115 concerns the power of a fiscal court to open, establish or alter public road. It provides in part: "[i]n all cases where public roads or structures have been established, any person or persons aggrieved thereby may prosecute an appeal from a resolution of the fiscal court by filing a petition in equity in the Circuit Court. ... The petition shall be filed within thirty-five (35) days from the date the resolution was entered." Even if the Whitley Movants are seeking to prove that the Disputed Section was never lawfully established, (Whitley Movants' Brief at 18), this would be an appeal of the Fiscal Court's decision in 1987. If the Whitley Movants were contesting the Fiscal Court's reaffirmation of the status of Batte Lane as a county road in 2004 (Whitley Movants' Brief at 19), the specific statutory remedy was still be an appeal within 35 days of that adoption.

an appeal, and the Robertson County Circuit Court's jurisdiction was limited to a determination of whether the Fiscal Court acted properly. *Trimble*, 866 S.W.2d at 126-27.

The Court of Appeals properly analogized the instant case to *Trimble Fiscal Court v. Snyder*, 866 S.W.2d 124 (Ky. App. 1993). Court of Appeals Opinion at 6. In *Trimble*, the Court of Appeals properly determined that the Circuit Court was limited to a review of the record before the *Trimble* Fiscal Court and whether there was substantial evidence to support its decision. *Trimble*, 866 S.W.2d at 126. The *Trimble* Court based its decision on the rationale set forth by this court in *City of Louisville v. McDonald*, 470 S.W.2d 173, 178 (Ky. 1973), which looked at the fact that there, the local legislative body (the fiscal court) was not acting in a policymaking or lawmaking role, "it rather [was] acting in an adjudicatory fashion to determine whether a particular individual by reason of particular facts peculiar to his property is entitled to some form of relief." *Trimble*, 866 S.W.2d at 125-26 (citing *City of Louisville*, 470 S.W.2d at 178). The same was true of the Robertson County Fiscal Court here.

The Whitley Movants argue that the ruling in *Trimble* cannot apply because its holding is premised on there being a lawfully-established county road. Whitley Movants' Brief at 22-24. The ruling in *Trimble* applies, however, regardless of whether there is a question about a road being lawfully adopted. The ruling in *Trimble* addressed how a fiscal court acted at the time that it made its decision and, based on that, what review a circuit court could conduct. In January of 2004, the Whitley Movants petitioned the Fiscal Court to discontinue the County Portion. In August of 2004, through Movant Whitley or his attorney, the Whitley Movants attended a Robertson County Fiscal Court

meeting and again asked the Fiscal Court to discontinue the County Portion. Whether the Fiscal Court “declined to abandon” Batte Lane or “reaffirmed” its status as a county road, the Fiscal Court acted in an adjudicatory manner on both occasions and issued decisions. *See* Whitley Movants’ Brief at 19; Fiscal Court Minutes August 2004, Apx. Tab J). As a result, the Robertson County Circuit Court was limited to a review of the Fiscal Court’s record. Instead it vastly exceeded its jurisdiction. (R. 788, Order entered November 30, 2009, Apx. Tab L).<sup>6</sup>

The Whitley Movants also argue that there was no adequate statutory scheme for them to follow. Whitley Movants’ Brief at 25, 28. In other words, they claim that the Circuit Court could not review the actions of the Fiscal Court refusing to abandon a lawfully-established county road for arbitrariness because there was never a lawfully established county road. Whitley Movants’ Brief at 27. Even if a fiscal court acts wrongfully in adopting a road, however, the remedy still is to appeal that decision under KRS 178.115, bring an action under KRS 178.100, or petition for discontinuance under KRS 178.116.

The Whitley Movants also claim they could not appeal the August 2004 Fiscal Court decision because there was no appealable action by the Fiscal Court. Whitley Movants’ Brief at 36. In the Robertson County Circuit Court proceedings, however, they insisted they were appealing the August 2004 Fiscal Court decision (R. 529, Plaintiffs’ Response to Defendant Robinson’s Motion to Amend Order), and described their action as based on “the issue before the Robertson County Fiscal Court at the second hearing –

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<sup>6</sup> The Whitley Movants argue that this action cannot be an appeal of the August 2004 action because only Mr. Whitley and Mr. Batte were present at that Fiscal Court meeting. *See* Whitley Movants’ Brief at 20-21. Mr. Whitley and Mr. Batte cannot now file a declaratory judgment action just because they failed to give due notice of their August 2004 appearance so no one else was present.

the August 20, 2004 hearing – a request to acknowledge that the private drive had never been a county road.” (R. 44, 49, Response to Defendant’s Motion to Dismiss). What Whitley Movants refer to as the Fiscal Court’s inaction was actually a refusal to second-guess a 20-year-old Fiscal Court decision and arbitrarily close part of a county road. Regardless, the Fiscal Court had in its record the same substantial evidence it had reviewed barely six months previously and, even if the Whitley Movants’ theory had changed, the question before the Fiscal Court remained the same, i.e. whether to close part of the Road.

The fact that the August discussion of the issue was “informal” does not change the analysis either. Although the request was “informal,” the decision was not. The minutes of the August 2004 meeting (the manner by which the Fiscal Court formally acts and issues resolutions) reveal that Attorney James Thomas raised the issue of Batte Lane and that “discussion was held on the status of said road as a county road.” (Fiscal Court Minutes August 2004, Apx. Tab J). The Fiscal Court decided unanimously to reaffirm that the County Portion of Batte Lane was a “part of the county road system.” (Fiscal Court Minutes August 2004, Apx. Tab J). This is a reviewable decision by the Fiscal Court. It is not a failure to act. *Miller v. Bell*, 453 S.W.2d 746, 748 (Ky. 1970).<sup>7</sup>

The Whitley Movants also argue that the Court of Appeals erred because its Opinion was predicated on the allegedly erroneous fact that the declaratory judgment

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<sup>7</sup> The Whitley Movants cite *Metcalf v. Howard*, 201 S.W.2d 197 (Ky. 1947), in support of their position that an original action is appropriate as opposed to an appeal. Whitley Movants’ Brief at 31. *Metcalf*, however, addresses a fiscal court’s failure to fix the salary of county police officers which was a statutory duty imposed upon the Fiscal Court. *Metcalf*, 201 S.W.2d at 199. In the case at bar there was no refusal to act in the face of a statute compelling action; just a denial of a request. *Metcalf* specifically states that when the fiscal court has acted and exercised its discretion, the plaintiff’s remedy is an appeal.” 201 S.W.2d at 200. The Whitley Movants’ reliance on *Miller v. Bell*, 453 S.W.2d 746 (Ky. 1970) is likewise unpersuasive. The *Miller* court makes it clear that the Fiscal Court’s refusal to grant a petition is indeed an appealable action. *Miller*, 453 S.W.2d at 748.

action filed by the Whitley Movants followed a request to “abandon” Batte Lane as opposed to a request “to recognize” that Batte Lane was never properly adopted as a county road. Whitley Movants’ Brief at 18. Although the Court of Appeals does specifically use the word “abandon,” it properly noted that the request from Mr. Whitley to the Fiscal Court was a request to acknowledge that the County Portion “was never properly adopted by the county in 1987.” Court of Appeals Opinion at 3.

The Court of Appeals, in issuing its Opinion, also properly recognized that the propriety of the original adoption of Batte Lane was in fact the point of concern of the Whitley Movants when the Court of Appeals noted that the Whitley Movants “filed the underlying action seeking a declaration that Batte Lane was not a lawfully adopted county road.” Court of Appeals Opinion at 3. The mere fact that the Court of Appeals also used the word “abandon” does not alter the substance or validity of its Opinion. The Fiscal Court and the Court of Appeals understood the scope of what the Whitley Movants were requesting. They simply disagreed with them. Whether the request of Whitley Movants was a request to “cease,” “abandon,” “close,” “terminate,” or “discontinue” the road, the theories and the questions before the Court were the same: a request that the Fiscal Court decide that an existing county road (whether correctly or incorrectly adopted) is no longer a county road. Either way, the Whitley Movants sought redress from the Robertson County Fiscal Court. In doing so, they were requesting relief from a particular set of facts peculiar to their property which resulted in the Fiscal Court acting in an adjudicatory fashion. *See Trimble*, 866 S.W.2d at 125-26.

The Whitley Movants argue that circuit courts have uniformly exercised authority to pass upon the legal status of a road by original civil action. Whitley Movants’ Brief at

30. Ms. Robinson is not arguing that a circuit court has no jurisdiction to determine the legal status of a road. Circuit courts simply have no jurisdiction to consider *de novo* an appeal from a fiscal court decision. Furthermore, the authority cited by the Whitley Movants does not support their argument and is not applicable to the present case, as they do not involve the question of whether specific adjudicative actions of a fiscal court were proper.

As with the other cases cited by the Whitley Movants, the circuit court in *Jessamine County Fiscal Court v. Henry*, Nos. 2005-CA-000469-MR & 2005-CA-000523-MR, 2006 WL 1793236 (Ky. App. June 30, 2006) (Apx. Tab M) did not address a prior petition to the Fiscal Court or an issue regarding a road in which the landowners had actual knowledge was accepted into the county road system. In *Henry* the action was brought to the circuit court because the status of the road was unknown and confused by its history. *Henry*, 2006 WL 1793236, \*at 1 (Apx. Tab M). Furthermore, the County's contention in *Henry* that the road was a county road was solely based on maintenance. The *Henry* circuit court disagreed that there was a county road for a number of reasons including but not exclusively because there had not been a formal resolution. *Henry*, 2006 WL 1793236, at \*2-3 (Apx. Tab M).

In the case at bar, the Robertson County Fiscal Court formally acted in 1987 to accept the Road and then issued further resolutions in 2004 refusing to abandon the Road. Furthermore, in accordance with affidavits of record, Batte Lane was open to the public since 1964, the landowners knowingly accepted the benefits of regular county maintenance for more than 17 years, and property owners including Ms. Robinson purchased their property in reliance on county road maps which included the Road. In

fact, in *Henry*, the court also specifically recognized the validity of “dedication by prescription to be a public road,” noting that neither dedication nor acceptance need be formal, but rather could be presumed from the continual use of the road by the public for 15 years or more, as long as such public use was accompanied by acts of control on the part of the county court, such as maintenance. *Henry*, 2006 WL 1793236, at \*3 (Apx. Tab M).<sup>8</sup>

In *Enterprise Publishing Co. v. Harlan County*, 310 S.W.2d 551, 553 (Ky. 1958), a case that predated *Trimble*, this Court recognized that an independent declaratory judgment action may be proper to review *general* legislative or policy-making decisions by a fiscal court, such as an order setting rates for advertising, but specific claims against a fiscal court must be brought via an appeal. *Enterprise Publishing* involved a specific claim by Enterprise Publishing against the fiscal court by virtue of an advertising bill that was not completely paid. It was this claim that the court found had to be adjudicated via an appeal, not a declaratory judgment action, because the fiscal court had issued a specific resolution regarding payment of the invoice. *Enterprise Publishing*, 310 S.W.2d at 553. Enterprise Publishing, however, also sought a general interpretation from the Circuit Court of KRS 424.030 (a statute that generally fixed advertising rates). This issue regarding a general legislative policy could be brought via a declaratory judgment action.

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<sup>8</sup> Similarly, in *Hudson v. Ayars*, (Whitley Movants’ Brief at 30), the county was not a party, and there had been, “no legislative action by the fiscal court accepting the road as part of the county road system.” No. 2001-CA-002331-MR, 2003 WL 1225900, at \*2 (Ky. App. Jan. 10, 2003), Apx. Tab M. (R. 486). The *Hudson* court confirmed that “long continued uninterrupted adverse use of a passway by the public will create an implied acceptance of a dedication of the passway as a public road.” *Hudson*, 2003 WL 1225900, at \*3 (Apx. Tab M). *McCoy v. Vance*, No. 2005-CA-000501-MR, 2006 WL 507549 (Ky. App. Mar. 3, 2006) (Apx. Tab M), is also not relevant here. See Whitley Movant’s Brief at 30-31. *McCoy* addresses a declaratory judgment action brought before the circuit court where there was no prior involvement by the fiscal court. *McCoy*, 2006 WL 507599, at \*7 (Apx. Tab M).

*Enterprise Publishing*, 310 S.W.2d at 554.<sup>9</sup> See also *Proctor v. Mitchell*, 194 S.W.2d 177, 177-78 (Ky. 1946) (declaratory judgment proper only where no statutorily-mandated process exists).

In the present case, however, as in *Trimble*, the Whitley Movants asked the Robertson County Circuit Court to review the Fiscal Court's *adjudicatory* determination of whether *particular* individuals, as a result of a *peculiar* factual situation, were or were not entitled to the *specific* relief requested. (R. 504-528, Fiscal Court Record of 2004 Proceeding; R. 447-48, Newspaper Article from the Ledger Independent). See *Trimble*, 866 S.W.2d at 125-26. *Enterprise Publishing* simply has no applicability in the present case.

Regardless of the theory under which the Whitley Movants claim that they were proceeding (abandonment or the acknowledgement that the County Portion was never properly adopted), the facts remain the same: (1) Robertson County Fiscal Court adopted Batte Lane as part of the County Road System, as evidenced by the map in November 1987 depicting Batte Lane; (2) Mr. Whitley petitioned the Fiscal Court in January 2004 requesting abandonment, which was declined by the Fiscal Court after extensive proceedings after both notice and opportunity for the public to be heard; (3) Mr. Whitley by counsel again attended a Fiscal Court meeting in August 2004, this time arguing that the County Portion should be closed because it was never properly adopted, which was again declined; (4) Whitley Movants filed this action. The *Trimble* court quite simply

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<sup>9</sup>The Whitley Movants cite *Padgett v. Sensing*, 438 S.W.2d 501 (Ky. 1969) to establish that a declaratory action can be sought "where the parties were seeking a determination of their rights." Whitley Movants' Brief at 32. *Padgett* was a case in which "the resolution of the fiscal court was not unfavorable to the appellants. Hence no appeal was necessary." *Padgett*, 438 S.W.2d at 503. Here the fiscal court's decisions were unfavorable to the Whitley Movants. In *Padgett*, the declaratory judgment action that was filed merely sought an interpretation of the respective rights of the parties under the fiscal court's resolution. *Padgett*, 438 S.W. 2d at 503.

states that in such a case, when a party questions the action of a Fiscal court, the remedy is an appeal. See *Trimble*, 866 S.W.2d at 126-27. The purpose of a declaratory judgment is to allow for the adjudication of new rights not previously adjudicated. See *Back's Guardian v. Bardo*, 27 S.W.2d 960, 963 (Ky. 1930). Here the status of the Road had previously been adjudicated by the Fiscal Court and a declaratory judgment was not appropriate.

Under Whitley Movants' theory (Whitley Movants' Brief at 33), anyone who unsuccessfully sought to have a county road abandoned by a Fiscal Court would always be free to initiate an original action in the circuit court to have the road declared private on a *de novo* basis, which is not permissible. *Trimble*, 866 S.W.2d at 126-27. Even the Robertson County Fiscal Court noted that granting the Whitley Movants' Petition would open a Pandora's box. (R. 447-48, Newspaper Article from the Ledger Independent). In *Whilden v. Compton*, 555 S.W.2d 272, 276 (Ky. App. 1977), the trial court found that the plaintiffs were claiming the right to certain land simply "because it [was] there" and had "convinced themselves in their own minds that [the land and an adjacent public road were] theirs," just as the Whitley Movants in the present case have apparently done. The Robertson Circuit Court exceeded the scope of its jurisdiction by deciding the matter *de novo* and therefore its ruling that the Disputed Section was a private road that could be gated was properly vacated by the Court of Appeals.

**II. EVEN IF THE COURT OF APPEALS ERRED AND THE CIRCUIT COURT'S DE NOVO REVIEW WAS PROPER, BATTE LANE IS NOT A PRIVATE ROAD THAT CAN BE GATED.**

Even if the underlying action was a permissible declaratory judgment action and the Circuit Court properly conducted a *de novo* review, then the Circuit Court erred in

disregarding the substantial and uncontroverted evidence before it that the County Portion of Batte Lane was not a private road that could be gated.

**A. THE CIRCUIT COURT ERRED IN FINDING THAT BATTE LANE WAS A PRIVATE ROAD AND NOT A COUNTY ROAD.**

The Court of Appeals properly vacated the Circuit Court Order that Batte Lane was a private road because the County Portion was properly accepted into the county road system in 1987. (R.423-24, Fiscal Court Minutes November 1987, Apx. Tab B). The substantial evidence reviewed by the Fiscal Court was also before the Robertson Circuit Court and should not have been disregarded by it even in a *de novo* review by the Circuit Court. Said evidence establishes that Batte Lane was in fact a county road.

**1. The Fiscal Court's February 2004 Decision was Supported by Substantial Evidence.**

The Robertson County Fiscal Court's refusal to abandon the County Portion of Batte Lane in February 2004 was based on substantial evidence and, in reliance on said evidence, the Robertson Circuit Court should have found that Batte Lane was a county road. In Kentucky, substantial evidence is defined as "evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people." *Cole v. Gilvin*, 59 S.W.3d 468, 473 (Ky. App. 2001). When the Whitley Movants first sought abandonment of Batte Lane in 2004, they presented a Petition to the Fiscal Court which subsequently considered their request at a properly-noticed public hearing, under the requisite statutory procedures, and in compliance with KRS 178.050 and KRS 178.070. (R. 514-17, Petition; R. 508-10, Fiscal Court Minutes January 2004, Apx. Tab H). Viewers were appointed and made their reports at the public hearing as required. Both viewers appointed by the Robertson County Fiscal Court (in compliance with statutory

requirements) found that closing the County Portion would inconvenience the public. (R. 519-524, Report of Viewers, Apx. Tab I).

In addition, an Opposition containing signatures of more than 200 members of the public who opposed abandonment of Batte Lane cited numerous reasons the public would be inconvenienced by closing the County Portion. (R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 504-528, Fiscal Court Record of February 2004 Proceeding). There was substantial, undisputed evidence that the County Portion of Batte Lane was accepted into the county road system in 1987, had been depicted as a county road on county maps for almost 20 years, had been maintained by the county for at least seventeen years prior to the Whitley Movants' effort to close it, and is the sole means of access to multiple owners' properties. (R. 504-528, Fiscal Court Record of February 2004 Proceeding). The Fiscal Court complied with all statutory requirements, relied on substantial evidence in refusing to abandon the Road, and its decision was not arbitrary. The Whitley Movants never appealed that decision.

**2. The Fiscal Court's August 2004 Decision was Based on Substantial Evidence.**

The Fiscal Court's decision in August 2004 again refusing to discontinue Batte Lane as a county road was also based on substantial evidence and should have been affirmed by the Circuit Court. The Whitley Movants' attorney appeared before the Fiscal Court on August 20, 2004 and demanded that the County Portion be closed because it was never properly adopted. (Fiscal Court Minutes August 2004, Apx. Tab J; R. 447-48, Newspaper Article from Ledger Independent). In August, the Fiscal Court had in its record the same uncontroverted, substantial evidence it had reviewed previously and

based on said evidence issued yet another formal resolution via its minutes confirming the Road's county status.

**3. The Circuit Court Disregarded Admissible, Credible Evidence That The Fiscal Court Complied With Applicable Statutes.**

The County Portion of Batte Lane was properly adopted as a county road notwithstanding the County's faulty admissions regarding strict compliance. The Circuit Court erroneously held that Batte Lane could not be a county road because the County "did not comply with applicable statutes in adopting that section of Batte Lane as a county road." (R. 644, Order entered August 13, 2009, Apx. Tab L). Although the August 2009 Circuit Court Order does not specify the nature of the Fiscal Court's alleged non-compliance, the Whitley Movants argue that they are entitled to a declaratory judgment because the Robertson County Fiscal Court did not advertise in accordance with KRS Chapter 424. Whitley Movants' Brief at 34.

Whitley Movants claim that *Vandertoll v. Commonwealth*, 110 S.W.3d 789 (Ky. 2003), and *Sarver v. County of Allen*, 582 S.W.2d 40 (Ky. 1979), require strict compliance (Whitley Movants' Brief at 34-35, 38) and base their argument regarding the failure of strict compliance on an "admission" by the Robertson County Attorney that the County failed to comply with applicable law and failed to provide notice to landowners when Batte Lane was adopted. Whitley Movants' Brief at 39-40; (R. 339-340, Robertson County Admissions ##1-4).<sup>10</sup> First, and notwithstanding their citation, nowhere does *Sarver* state that strict compliance is required. *See generally Sarver*, 582 S.W.2d 40. Second, the official record of the 1987 Fiscal Court proceedings shows the landowners were not only notified but were in fact physically present for the proceedings and

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<sup>10</sup> The Circuit Court erred in considering this extrinsic evidence, outside the 1987 Fiscal Court record. *See generally Trimble Fiscal Court v. Snyder*, 866 S.W.2d 124 (1993).

therefore had actual knowledge and the opportunity to be heard. (R. 420-24, Fiscal Court Minutes October and November 1987, Apx. Tab B). The Whitley Movants' reliance on *Vandertoll*, 110 S.W.3d 789 (Ky. 2003), is therefore misplaced.

In *Vandertoll*, 110 S.W.3d at 795, the notice issue related to the Transportation Cabinet's failure to give statutorily-required notice of right of redemption to parties whose land had been condemned. The Court found that this failure to give notice effectively tolled the statute of limitations, allowing the Vandertolls to bring a cause of action that would otherwise have expired. The Court called the notice requirement "a condition precedent to the *accrual* of the . . . cause of action" and said that strict compliance was required. *Vandertoll*, 110 S.W.3d at 796.

The notice requirement in *Vandertoll* merely required that the Cabinet "notify" the landowners, which it did not do in that case. Here, however, the Whitley Movants had actual notice. The landowners were physically present at the meetings in 1987. The requirement of strict compliance to a notice statute is irrelevant when the parties have actual notice—the end purpose having been achieved. The Whitley Movants argue that their notice cannot be inferred from the Record. Whitley Movants' Brief at 42-45. Contrary to this argument, however, where landowners are parties to fiscal court proceedings, the notice requirement of the statute is met:

It appears from the pleadings that the owners of the property...were parties to the proceeding in the county court....The owners of the property...being parties to the proceeding in the county court meets the requirements of the statute relating to notice....

*Jones v. Avondale Heights Co.*, 47 S.W.2d 949, 951 (Ky. 1932). Furthermore, after the passage of time, and without uncontroverted proof that the steps were not taken, compliance with statutory requirements may be presumed. *Peers v. Cox*, 356 S.W.2d

768, 770 (Ky. 1962).

Whitley Movants erroneously claim that the adoption of a county road “requires a petition, notice and a commissioner’s report.” (Whitley Movants’ Brief at 38, citing *Bevins v. Pauley*, 77 S.W.2d 408 (Ky. 1934); *Waller v. Syck*, 142 S.W. 229 (Ky. 1912); and *Potter v. Matney*, 176 S.W. 987 (Ky. 1915)). All three cases are inapplicable because they are based on a statute that was repealed and replaced with KRS 178.050 in 1942. *Id.* The current statute, however, states that: “[n]o county road shall be established . . . unless due notice thereof has been given.” KRS 178.050. This notice is governed by Chapter 178 which never mentions a petition or commissioner’s report.

Official public records and other admissions by the County clearly demonstrate the “admission” regarding strict compliance is inaccurate, irrelevant and does not prove that the County failed to properly adopt the Road. *See* Whitley Movants’ Brief at 39. As set forth above, the Fiscal Court’s decisions were supported by substantial evidence and even if the County was not required to comply with posted notice requirements because the landowners were physically present, its admission is meaningless. Furthermore, in its answers to interrogatories, the County admitted that it was actually unsure of who had been notified given the passage of time since the adoption of the Road. (R. 332, Robertson County’s Answers to Interrogatories, No. 4).

Robertson County also states that it believes that Batte Lane was adopted at the request of the landowners who depended on Batte Lane for access and that it had been maintained by the County even in the 1960’s and the 1970’s. (R. 331, Robertson County’s Answers to Interrogatories, No. 2, No. 15). If the County Portion was adopted at the request of the landowners, they obviously had “notice.” The County further states,

“all plaintiffs were made aware, and the Defendant, Maryanna Robinson, was made aware that it was a County maintained road, due to the fact that the County has continuously maintained the road as previously specified in the answers to the interrogatories herein, since their arrival to present.” (R. 334, Robertson County’s Answers to Interrogatories, No. 11). If the County was not required to post notice (because both adjoining landowners were present at proceedings adopting the road) and they were not required to post a resolution (because the Road had already been dedicated by estoppel), then they were not in violation of the statutory requirements.

The County’s “admission” regarding strict compliance is not probative, and the Circuit Court’s apparent reliance on an “admission” more than 20 years after the fact, while ignoring other contemporaneous, official records, was in error. This is particularly true given that the record indicates all landowners were present at the hearing in 1987. No one appealed or contested the 1987 Fiscal Court decision until this action was filed almost 20 years later. Due notice having been given and acknowledged by the landowners’ presence, the Fiscal Court properly accepted the County Portion into the county road system pursuant to KRS 178.010.

**4. The Whitley Movants Are Estopped From Denying Their Dedication of Batte Lane To Public Use.**

A road becomes public by the public’s unopposed use of it or by the owner’s “dedication to public use.” *See* KRS 178.405. Batte Lane was dedicated to public use by the adjacent property owners and thereafter properly accepted into the county road system in the owners’ presence. When it was accepted into the county road system in 1987, Batte Lane was not a new road being “opened” or “established,” and statutory dedication was not required. Rather, Batte Lane, then known as Milliken’s Lane, had

been dedicated to public use by the adjoining landowners allowing the public to openly and freely use the Road beginning in 1964. The Whitley Movants are now estopped from contesting the county road status of Batte Lane by their and their predecessors' dedication of the Road to public use, and the County's uncontested acceptance into the county road system in their presence.

The requirements for adoption of a road differ depending on whether the road is a new road or already a public road. A new road that is being established by a county must be formally adopted by resolution.

Whenever the fiscal court...deems it to be in the best interest of the county to open, establish or alter the location of any public road..., the fiscal court shall adopt a resolution setting forth the necessity...and thereupon the public road shall be deemed opened, established or altered...on behalf of the county.

KRS 178.115(1) (emphasis added). Conversely, a public road (i.e. one that has already been dedicated to public use) can be "accepted" into the official county road system by Fiscal Court order without further formality:

"County roads" are public roads which have been formally accepted by the fiscal court of the county as a part of the county road system.

KRS 178.010(1)(b) (emphasis added).

"Dedication" is "a devoting or setting aside for a particular purpose." See <http://merriam-webster.com/dictionary/dedication> (last visited August 20, 2012).

Furthermore, dedication to public use can be statutory or by common law.

A statutory dedication is a dedication made pursuant to the terms of a statute, and is almost universally created by the filing and recording of a plat. A common-law dedication requires an intention to dedicate expressed in some form, and an acceptance of the dedication by the proper public authorities, or by general public user. It is distinguishable from a statutory dedication, which is in the nature of a grant... Generally, a common-law dedication rests upon the doctrine of estoppel.

*Bluegrass Manor v. Mall St. Matthews Ltd Partnership*, 964 S.W.2d 431, 433 (Ky. App. 1998) (emphasis added); *see also Muhlenberg County v. Masuren Farms, LLC*, No. 2003-CA-000591-MR, 2004 WL 2315115, at \*5 (Ky. App. Oct. 15, 2004) (Apx. Tab M). In *Bluegrass Manor*, 964 S.W.2d at 433, the Kentucky Court of Appeals found that when the owners of the road “acquiesced in the public’s use of the road . . . , there was a dedication by estoppel.” *See also Henry*, 2005-CA-000469-MR (Ky. App. 2006) (Apx. Tab M). This is precisely what occurred here.

The Fiscal Court Minutes of October 1987 and November 1987 clearly show both Billy Batte and Dennis Pfetzer (the only owners of property at that time over which the Disputed Section of Road runs) were physically present at the meetings discussing and adopting the subject Road, thereby clearly confirming dedication of the Road to public use. (R. 420-24, Fiscal Court Minutes October and November 1987, Apx. Tab B; R. 419, Plat of Batte Lane, Apx. Tab A). Neither the Whitley Movants nor their predecessors made any objection to the acceptance of Batte Lane as a county road.<sup>11</sup>

Every road used as a public road is presumed to be a public road. KRS 178.020. A road dedicated and laid off as a public way and used without restrictions on a continuous basis by the general public for fifteen (15) years, is also conclusively be presumed to be a public road. KRS 178.025. Kentucky courts have noted:

[A] public road can also be established by general and long continued use of a passway by the public. Sometimes the public road is established under the theory of dedication by estoppel. The public’s right to use a

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<sup>11</sup> The Whitley Movants claim that their presence cannot be deemed notice because there is no proof as to why they were there. *See Whitley Movants’ Brief* at 43-44. The purpose for their presence and even whether or not they agreed with the Fiscal Court’s decision, is irrelevant to whether they had notice. The fact that Lynn and Jan Bertram were not present in 1987 also is irrelevant. *See Whitley Movants’ Brief* at 45. At no time did the Bertrams own the property that adjoins the Road at issue in this litigation. (R. 419, Plat of Batte Lane, Apx. Tab A).

passway may also be established by prescription by adverse user for a period of 15 years.

*Whilden v. Compton*, 555 S.W.2d 272, 274 (Ky. App. 1977) (citation omitted); *Freeman v. Dugger*, 286 S.W.2d 894, 896 (Ky. 1956) (the public is entitled to rely on appearances created by the landowner and continual use for such a length of time as to create an estoppel and an acceptance completes the dedication).

In *Muhlenberg County*, 2004 WL 2315115, at \*4 (Apx. Tab M), the Court noted that dedication by prescription can be presumed from the continual use of the road by the public for 15 or more years and a “like number of years in control or maintenance by the county.” Again, the record of the Robertson County Fiscal Court clearly reflects use of Batte Lane by the public for more than 20 years. Furthermore, the uncontroverted testimony of the Robertson County Road Supervisor reflects maintenance of Batte Lane for more than 15 years. (R. 395, 409, Ms. Robinson’s Cross-Motion for Summary Judgment; R. 428-29, Affidavit of County Road Supervisor, David Carmack, Apx. Tab D).

Dedication by estoppel requires even less—“the public use does not need to be of the duration required to establish . . . prescription. Long-continued use of the road by the public constitutes an implied acceptance of the dedication.” *Muhlenberg County*, 2004 WL 2315115 at \*5 (Apx. Tab M). Here, as in *Muhlenberg*, “the adjacent property owners to the roadway have acquiesced to its public use.” *Muhlenberg County*, 2004 WL 2315115, at \*5 (Apx. Tab M). Similarly, both cases show county maintenance and public use of the road for a long period of time before the erection of the fence at issue. These factors are enough to create dedication by estoppel as established in *Muhlenberg*, 2004 WL 2315115, at \*5 (Apx. Tab M).

Whitley Movants cite KRS 178.410 (Whitley Movants' Brief at 41) regarding the Fiscal Court's alleged failure to make a determination as to whether KRS 178.405 requirements have been made and to notify all appropriate agencies of the dedication. This statute, however, is not applicable when the road had been dedicated by common law as approved in *Bluegrass Manor*. See *Bluegrass Manor*, 964 S.W.2d at 433; *Muhlenberg County*, 2004 WL 2315115, at \*3 (Apx. Tab M). Additionally, given that the Robertson County Road Engineer confirmed the maintenance of the Road, it is clear that the appropriate agencies had been notified of the dedication.

The Whitley Movants are estopped from denying their predecessors' dedication to public use. See *Bluegrass Manor*, 964 S.W.2d at 433. The court in *Bluegrass Manor* also noted that a public acceptance of even a failed statutory adoption will also operate as a common law dedication. *Bluegrass Manor*, 964 S.W.2d at 433. Kentucky Courts have also noted:

The question is not one of necessity, but one of reliance by the public on appearances created by the landowner. If it can be shown that there has been a continual use for such a length of time as to create an estoppel and an acceptance, then the dedication is complete.

*Freeman v. Dugger*, 286 S. W.2d 894, 896 (Ky. 1956) (emphasis added).

Estoppel is premised on the idea of detrimental reliance of the injured party. Where one party makes a representation to another party, and that party justifiably relies on that representation in such a way to detrimentally change its position, the representing party will be estopped from denying their original position. In *Hofgesang v. Woodbine Ave. Realty Co.*, this Court stated that:

the basis of a common-law dedication often rests on mere conduct of the owner of land relied on by others to their injury so as to constitute an estoppel against the owner, and effectuate a dedication notwithstanding

that there was never in the mind of an owner any actual intent to dedicate, the theory being that the owner must be held to intend the reasonable and necessary consequences of his acts.

414 S.W.2d 580, 585 (Ky. 1967). Similarly laches, “is laxness; an unreasonable delay in asserting a right. . . that results in injury or works a disadvantage to the adverse party. See *City of Paducah v. Gillispie*, 115 S.W.2d 574, 575 (Ky. 1938). Having waited almost twenty years, the Whitley Movants’ were barred by estoppel and laches from denying their predecessors’ dedication to avoid injury to Ms. Robinson and the public who had relied on public land records regarding the status of the road that provided the sole access to their property.

The application of the doctrines of estoppel and laches is especially important here where both of the owners of land adjoining Batte Lane when it was adopted (Billy Batte and Harold Whitley’s predecessor Dennis Pfetzer) are now deceased as are all of Ms. Robinson’s predecessors (Billy Batte, Chester Wilson, Lynn Bertram and Darrell French). If the County Portion of Batte Lane is not a county road then every road that was accepted into the county road system in the same way, no matter how long ago, would likewise be subject to an action for rescission of county road status.

Whitley Movants cite *Watson v. Crittenden County Fiscal Ct.*, 771 S.W.2d 47 (Ky. App. 1989) for the proposition that a road is not converted to public use by county maintenance or improvements (Whitley Movants’ Brief at 38) and that “sporadically graveling a road” does not meet the requirement set out in KRS 178.420 Whitley Movants’ Brief at 41. *Watson*, citing *Sarver*, 582 S.W.2d at 43, does state that: “the acts of county officials in improving or maintaining a road, standing alone, do not constitute a public user capable of ripening into a prescriptive title.” 771 S.W.2d at 48. *Watson*,

ultimately however, simply determined that summary judgment had been improper because although whether a public road may be acquired by prescription under certain circumstances is a question of law, county control (i.e., maintenance) which may impact that acquisition by prescription is a question of fact that must be decided by the fact finder. *Watson*, 771 S.W.2d at 49.

Furthermore, Robertson County, in the case at bar, did more than sporadically gravel the road. The Robertson County Road Engineer and Robertson County confirmed regular maintenance of the Road. (R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D). In fact, in their Answers to Interrogatories, the County described its maintenance of the Road as follows:

Routinely on a yearly basis have done graveling to the road, leveling of road, grading of road and snow removal of road if necessary. All tree and debree [sic] removal from road as necessary, if possible.

(R. 332, Robertson County's Responses to Discovery, Interrogatory # 5). Furthermore, the County Portion of Batte Lane was not dedicated to public use by maintenance alone. The Road was dedicated to public use by adjoining landowners and formally adopted into the county road system by formal resolution of the Fiscal Court. Contrary to the Whitley Movants' contention that Batte Lane was a private drive up to 1987 (Whitley Movants' Brief at 40), landowners adjoining the disputed section of Road, namely the Whitleys and their predecessors, demonstrated their individual intent to dedicate the Road to public use beginning in 1964 (R. 667-77, Lonnie Cain, Wendell Pratt and Darren French Affidavits, Apx. Tab G).

Thereafter, the adjoining landowners (Batte and Whitley predecessors) acquiesced when Batte Lane was adopted into the county Road system in 1987 (Mr. Pfetzer's

presence noted in Fiscal Court minutes) (R. 420-24, Fiscal Court Minutes October and November 1987, Apx. Tab B); the Battes and Whitleys accepted the benefits of county maintenance of the Road for more than 17 years (R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D); and they did not object when the Batte family requested—and the Fiscal Court agreed—to change the name of the Road from Milliken’s Lane to Batte Lane. (R. 424-27, Fiscal Court December 1995 Minutes). Under these circumstances, Batte Lane is a county road. *See e.g. Porter v. Johnson Co. Judge/Executive*, 357 S.W.3d 500 (Ky. App. 2010).

Having been used and occupied as a public road, Batte Lane was presumed to be public. KRS 178.020. Because Batte Lane/Milliken Lane was already a public road, only the county’s acceptance was necessary for it to become part of the county road system. KRS 178.010; KRS 178.020; KRS 178.025. The Fiscal Court “accepted” the owners’ dedication of the Road for public use by including it on the official map of the county road system in 1987 and providing maintenance, with the knowledge and in the presence of the then current landowners, and its “adoption” was complete. (R. 420-24, Fiscal Court Minutes October and November 1987, Apx. Tab B; R. 345, 1987 County Road Map, Apx. Tab C; R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D). The Fiscal Court’s acceptance of the dedication to public use was sufficient for adoption of the Road into the county road system, and the Whitley Movants were estopped from going back and attempting to undo what their predecessors did almost 20 years ago.

**5. KRS 178.116 Prohibits The Discontinuance of Batte Lane.**

Even allowing a *de novo* standard of review by the Circuit Court, the Circuit Court's Orders were in error because the Circuit Court disregarded the law governing the closing of Kentucky roads. In Kentucky, neither a county road, nor any road maintained by the county, may be closed if any of three circumstances exist: (1) a public need is served by the road; (2) the road provides necessary access for a private person; or (3) the road has been maintained and policed by the county within a three (3) year period. KRS 178.116. All three circumstances exist in the case at bar. (R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D; R. 419, Plat of Batte Lane, Apx. Tab A; R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 504-28, Fiscal Court Record of February 2004 Proceeding).

The public need served by Batte Lane was demonstrated by substantial evidence at the February 2004 hearing, all of which was provided to the Circuit Court. (R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 504-28, Fiscal Court Record of February 2004 Proceeding). Convenience to the public and need are determined by the common good and public sentiment, and public convenience always prevails over individual advantages and wishes. *See Walker v. Lyon County Fiscal Court*, 425 S.W.2d 730, 731 (Ky. 1968). Kentucky courts have noted that a road should be left open where it is in the best interest of the citizens of the county. *See Green v. Owsley Co. Bd. of Ed.*, 258 S.W.2d 700 (Ky. 1953). Here, more than 200 members of the public appeared by petition setting forth the public interest in the Road. (R 528, 2 Volumes, Opposition, Apx. Tab F).

The second exception, regarding necessary access for a private person, is also satisfied. *See* KRS 178.116(1)(b); *Wright v. Flood*, 200 S.W.2d 117, 119 (Ky. 1947),

*overruled in part by Department of Highways v. Jackson*, 302 S.W.2d 373 (Ky. 1957). Batte Lane provides a necessary, and the sole, access to Ms. Robinson's home and more than 20 other landowners beyond Greasy Creek. (R. 419, Plat of Batte Lane, Apx. Tab A; R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 504-28 Fiscal Court Record of February 2004 Proceeding).

The Whitley Movants argue that Ms. Robinson has a deeded easement and therefore the Road is not necessary access. *See* Whitley Movants' Brief at 2. The Movants cite no case law in support of this argument. More importantly, there is no easement that exists across the property of Harold Whitley which is the portion of the Road at issue. *See* Whitley Movants' Brief, Apx. Tab E-L. (R. 324, Whitley Discovery Disk pp.132-52 Robinson Deed).

Even if there was an easement from Movant Whitley, Batte Lane remains the actual sole access to Ms. Robinson's home. In fact, the Court of Appeals of Kentucky has recently upheld a trial court's decision to declare a deeded easement to be a public road on similar facts. *See Williams v. Hayes Leasing Co.*, No. 2009-CA-001069-MR, 2011 WL 346435, at \*3 (Ky. App. Feb. 4, 2011) (Apx. Tab M). Kentucky Courts have specifically prohibited the closing of a county road if a property owner is thereby deprived of his sole or principal means of ingress and egress. *Wright*, 200 S.W.2d. at 119. *Wright* specifically states:

Undoubtedly, a property owner may prevent the closing of a county road which deprives him of his sole or principal means of ingress and egress.

200 S.W.2d at 119.

The Whitley Movants also state that there is no public need served by continuing a county road that serves only as the entrance to private property but again cite to no

evidence, law or the record in this regard. Whitley Movants' Brief at 6. Not only would this fact, if true, be insufficient to divest the road of its public nature, the record contains substantial proof of the public use of the Road. *See infra*, pp.37-38; *Longworth v. Bird*, No. 2006-CA-000167-MR, 2007 WL 2892011, at \*2 (Ky. App. Oct. 5, 2007) (Apx. Tab M). If the Whitley Movant's statement was true, it would apply to almost every county road in this Commonwealth.

Finally, the County Portion had been maintained and policed by Robertson County within three years of the filing of the lawsuit. The Robertson County Road Engineer confirmed maintenance (R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D) and the Whitley Movants themselves alleged numerous instances of county policing (though they offered no proof of the underlying claims of vandalism). (R. 350, Plaintiffs' Motion for Judgment pp. 1-3; R. 107, Response to Motion for More Definite Statement and Renewed Motion for Default Judgment pp. 3, 4). Given that all three circumstances under KRS 178.116 exist (although only one is required), the County cannot discontinue Batte Lane.

**B. THE CIRCUIT COURT ERRED IN FINDING FIND THAT BATTE LANE WAS NOT A PUBLIC ROAD.**

Even if Batte Lane had not been properly adopted, and even if adjoining owners were not estopped from appealing the adoption of Batte Lane almost 20 years later, Batte Lane nonetheless is a public road under KRS 178.025 and cannot be gated. Kentucky courts have noted that if a road is a public passway, "none of the parties have any right whatever to interfere with the free and unrestricted use of this roadway." *Whilden v. Compton*, 555 S.W.2d 272, 276 (Ky. App. 1977).

The determination of whether a road is "public" is necessarily fact-driven. *Cole*

*v. Gilvin*, 59 S.W.3d 468, 474 (Ky. App. 2001), provides several factors in determining whether there was public use including: repair and annual grading, use by the residents, and use by customers. The only evidence before the Robertson Circuit Court concerning public use of the Road was in the certified Fiscal Court record and in affidavits submitted by Ms. Robinson, all of which unequivocally show the Road had been used by the public for at least 40 years prior to the filing of the lawsuit. (R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 504-28, Fiscal Court Record of 2004 Proceeding; R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G).

In this case, before Batte Lane could be gated, it was Whitley Movants' burden to prove Batte Lane was neither a county road nor a public road. *See Porter v. Johnson Co. Judge/Executive*, 357 S.W.3d 500 (Ky. App. 2010). The Circuit Court's Orders below included no findings of fact or conclusions of law, so it is impossible to determine the basis of its Orders. What is clear, however, is that they are not based on the Fiscal Court record or any other evidence before the Court and the Circuit Court erroneously shifted the burden to Ms. Robinson. The August 13, 2009 Order states: "[n]othing in the record indicates that the pertinent section of Batte Lane was ever used by the general public. It only services the people who own land adjacent to the passway." (R. 644, Order entered August 13, 2009, Apx. Tab L). Nothing could be further from the truth, the facts and the Fiscal Court record.

The Record clearly establishes the following facts which reflect the public use of the Road:

- (1) landowners adjoining Batte Lane, including the only landowner adjoining the disputed portion of Batte Lane (Dennis Pfetzer, the Whitley Movants' predecessor-in-title) dedicated Batte Lane to public use by allowing free and open public use, without objection, beginning in 1964. (R. 667-77, Lonnie Cain, Wendall Pratt, and

Darren French Affidavits, Appellant's Brief Apx. Tab G);

- (2) the County Portion of Batte Lane, then known as Milliken Lane, was adopted into the county road system in proceedings which began in October 1987 with a proposal that the new county road map be adopted as the official county road system. (R. 420-24, Fiscal Court Minutes October and November 1987, Apx. Tab B);
- (3) Dennis Pfetzer was present at the October 1987 meeting. (R. 420-22, Fiscal Court Minutes October 1987, Apx. Tab B);
- (4) the Battes' predecessor Billy Batte was also present at the November 1987 meeting. (R. 423-24, Fiscal Court Minutes November 1987, Apx. Tab B);
- (5) on November 20, 1987, the Fiscal Court amended the prior month's minutes to reflect Pfetzer's presence, and then formally adopted as the official county road system all roads depicted on the county road map presented to the Fiscal Court the preceding month which included the County Portion. (R. 423-24, Fiscal Court Minutes November 1987, Apx. Tab B);
- (6) the County began maintaining the County Portion of Batte Lane upon its adoption as a county road in 1987, and continuously maintained it until 2009 when the Circuit Court ordered it closed. (R. 428-29, Affidavit of County Road Supervisor David Carmack, Apx. Tab D);
- (7) Batte Lane is the only access to some 25 separate properties, including Ms. Robinson's. (R.419, Plat of Batte Lane, Apx. Tab A);
- (8) Batte Lane serves a public need. (R. 504-528, Record of February 2004 Fiscal Court Proceeding; R. 528, 2 Volumes, Opposition, Apx. Tab F),
- (9) numerous members of the public regularly travel Batte Lane to Ms. Robinson's and other owners' properties. (R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G; R. 747, Affidavit of MaryAnna Robinson);
- (10) the Whitleys' predecessor did not object when the County renamed Milliken Lane, Batte Lane in 1995. (R. 425-27, Fiscal Court Minutes December 1995);
- (11) in 2001, the County Portion was accepted into the County road system again, by virtue of being on the new county road map adopted by the Fiscal Court. (R. 346-47, 2001 County Road Map, Apx. Tab C; R. 349, Fiscal Court Minutes October 2001);
- (12) there was substantial undisputed evidence at the Fiscal Court public hearing on February 20, 2004, and more than 200 members of the public opposed abandonment of Batte Lane at that public hearing. (R. 504-507, Fiscal Court Minutes February 2004, Apx. Tab J; R. 528, 2 Volumes, Opposition; Apx. Tab F);

(13) both of the Viewers appointed by the Fiscal Court in January 2004, when Whitley Movants filed their petition seeking abandonment of Batte Lane, reported that closing Batte Lane would result in inconvenience to the public and recommended that the county not abandon Batte Lane. (R. 519-524, Report of Viewers, Apx. Tab I);

(14) no one appealed or contested the Fiscal Court's action, and the County Portion of Batte Lane was treated as a county road without any objection until 2004. (R. 515, Petition to Robertson County Fiscal Court; R. 4, Complaint).

The issues regarding Batte Lane are issues regarding the general public. The individual interests of the Whitleys, the sole landowners along the section of Batte Lane at issue, are secondary to those public interests and the public's right to rely on public records, as Ms. Robinson did when she purchased her farm. *Whilden*, 555 S.W.2d at 276-77.<sup>12</sup>

The Whitley Movants' argument that Ms. Robinson and the other 200 individuals that signed the Petition Against Closing of River Road were not members of the general public is simply wrong. (R. 528, 2 Volumes, Opposition, Apx. Tab F; R. 504-28, Fiscal Court Record of February 2004 Proceeding). Batte Lane undisputedly services Ms. Robinson and more than 20 other landowners who are not adjacent to the Disputed Section, and who themselves are members of the public under Kentucky law. KRS 178.400 ("general public" means any person in addition to an owner, agent or tenant of property that abuts any road, street or highway"); *see Whilden*, 55 S.W.2d at 274 (public

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<sup>12</sup> The Whitley Movants reference a lease granted by the Batte family to the Commonwealth of Kentucky Department of Fish and Wildlife Resources (the "Lease") that mentions the public's right to access "the property" (i.e. the boat dock), not the Road. Whitley Movants' Brief at 2. The existence of the Lease, however, has no bearing on the public use of the Road or the County's adoption of the Road. The existence of a lease also has no effect on whether there was a dedication by estoppel. *See Muhlenberg County*, 2004 WL 2315115 at \*4 (Apx. Tab M); *see also Whilden*, 555 S.W. 2d at 274. Furthermore, the Disputed Section runs from the Boat Dock to Greasy Creek, whereas the Lease concerns the Batte's land before the boat dock which admitted by the Whitley Movants. *See Whitley Movants' Brief* at 3. The Disputed Section runs through property owned by the Whitleys. (R. 419, Plat of Batte Lane, Apx. Tab A). Public right to use the Road dated to before 1964, long before the Lease. (R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G).

use includes use by residents and customers and mail service). The Robertson County Circuit Court's implicit ruling that a road that only provides access to a limited number of individuals cannot be "public" is inconsistent with Kentucky law. (R. 644, Order entered August 13, 2009, Apx. Tab L). In Kentucky, extensive use by the public is not required for a finding that a road is public. Rather, public use of private property need only be enough to show a claim of right to use the land as a road to the exclusion of any right of the owner inconsistent therewith. *Muhlenberg County*, 2004 WL 2315115, at \*4 (Apx. Tab M).

In *Muhlenberg County*, 2004 WL 2315115 (Apx. Tab M), the only public use was access to a cemetery located on the road. The Court, however, found that such use was sufficient to support a finding that the road was public and not private. *Muhlenberg County*, 2004 WL 2315115, at \*4 (Apx. Tab M). The *Muhlenberg County* Court determined that although the County had not properly adopted the road so that it could not be considered a county road, the road was public under the theories of dedication by prescription and estoppel. *Muhlenberg County*, 2004 WL 2315115, at \*5 (Apx. Tab M). The Circuit Court's determination herein that the "record" indicates the Disputed Section was not used by the public was erroneous. The County Portion of Batte Lane was not acquired by prescription but by formal adoption. (R. 420-24, Fiscal Court Minutes October and November 1987, Apx. Tab B).

**C. THE CIRCUIT COURT ERRED IN DETERMINING THAT BATTE LANE COULD BE GATED EVEN IF IT WAS PRIVATE.**

Even if Batte Lane was not a public road, a mere holding that a road is private does not automatically mean that it may be gated and the Circuit Court's order in this regard was also erroneous. Contrary to the Whitley Movants' argument, even on a

private road, the placement of a gate is not a “matter of law.” See Whitley Movants’ Brief at 15.<sup>13</sup> The question of whether a private road may be gated is determined by the terms of any express easement, the nature and situation of the road, and the manner in which the road has been historically used. See *Herndon v. McKinley*, 586 S.W.2d 294, 295-96 (Ky. App. 1979); *Muhlenberg County*, 2004 WL 2315115 (Apx. Tab M); see *Raisor v. Lyons*, 189 S.W. 234, 237 (Ky. 1916) (historical use of property necessary to determine whether private passway may be gated). The substantial evidence in this case establishes public use beginning in 1964. (R. 667-77, Lonnie Cain, Wendall Pratt, and Darren French Affidavits, Apx. Tab G). Even if not properly adopted, its historical use as a public road would preclude gating.

No proof was offered by the Whitley Movants that a gate was necessary for proper use or enjoyment of their land. The only claimed justification was base, unsubstantiated allegations of vandalism. Whitley Movants’ Brief at 7. The Circuit Court erred by failing to hold an evidentiary hearing, or otherwise requiring the Whitley Movants to prove that the erection of a gate would not interfere with or lessen Ms. Robinson’s and other owners’ rightful enjoyment of the access provided to their properties by Batte Lane. Without such proof the Court’s determination that the Road could be gated was clearly erroneous. Given the fact that Batte Lane provides the sole means of ingress and egress to Ms. Robinson’s farm, a gate can significantly reduce the value of an individual’s property and is a clear burden and obstruction to the use of the passway. See *Jameison v. Eagle Rod & Gun Club, Inc.*, No. 2007-CA-000072-MR, 2007

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<sup>13</sup> In prior pleadings the Whitley Movants have argued that the type and placement of a gate was not part of their petition for a declaration and therefore not actually before the Court. (Plaintiffs’ Reply Brief at 3, Feb. 11, 2011). The issue of the placement of a gate was specifically addressed in their complaint. (R. 4, Complaint, p. 3).

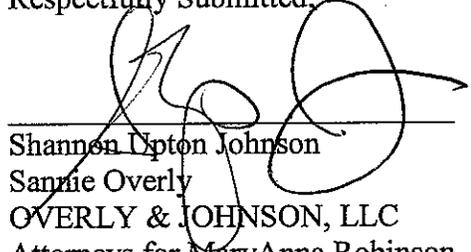
WL 3314011 (Ky. App. Nov. 9, 2007) (Apx. Tab M); *Muhlenberg County*, 2004 WL 2315115 (Apx. Tab M).

The Whitley Movants may have a desire for privacy and quiet; that is exactly why Ms. Robinson herself purchased property at the end of Batte Lane. Ms. Robinson's property was bought at public auction, and any of the Whitley Movants could have purchased it. They did not. Instead, they bought along a public road that was created by the Whitleys', the Battes', the Bertrams' and Ms. Robinson's predecessors and across which all other landowners must travel. In purchasing her home, Ms. Robinson relied on the fact that she had a deeded, unobstructed right-of-way connecting to a county road. Whitley Movants had irrefutable notice they were buying property on or accessible via a county road and they all benefited from the County's maintenance of the County Portion of Batte Lane. If left standing, the Robertson County Circuit Court order would open the floodgates of litigation over county roads and the "Pandora's box" predicted by the Fiscal Court would be realized. (R. 447- 48, Newspaper Article from the Ledger Independent).

#### CONCLUSION

The Opinion of the Court of Appeals should be affirmed and this action remanded to the Robertson County Circuit Court for further proceedings to require the Whitley Movants to remove the gate and to require Robertson County to resume maintenance of Batte Lane as a county road.

Respectfully Submitted:



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# APPENDIX

## APPENDIX

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