REL: April 15, 2022

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200815

Jerryl Carl Corriveau and Patsy Ann Corriveau

v.

Charles B. Whitcomb

2200816

Charles B. Whitcomb

v.

Jerryl Carl Corriveau and Patsy Ann Corriveau

Appeals from Dale Circuit Court
(CV-17-900143)

MOORE, Judge.

These appeals arise out of a judgment entered by the Dale Circuit Court ("the trial court") awarding ownership of a strip of land ("the disputed property") to Charles B. Whitcomb and denying Whitcomb's claims against Jerryl Carl Corriveau and his wife, Patsy Ann Corriveau, alleging breach of contract and fraud.

Background

The relevant facts are largely undisputed. Julian Brown owned a large parcel of real property in Dale County upon which he resided. Another house was also located on the Brown property approximately 100 yards south of Brown's residence. In December 2008, Brown leased that house and one acre of the surrounding property ("the Whitcomb property") to Whitcomb. On October 15, 2009, Brown conveyed the Whitcomb property to Whitcomb. At some point, Brown died, and, in 2016, the Corriveaus acquired the property immediately north of the Whitcomb property where Brown had formerly resided ("the Corriveau property").

A dispute arose between Whitcomb and the Corriveaus concerning the boundary line between the two properties. The deeds to both the Whitcomb property and the Corriveau property described the same boundary line, but Whitcomb treated the Whitcomb property as extending further north beyond that boundary line to an old fence line. Whitcomb had even erected a carport on the disputed property. The Corriveaus informed Whitcomb of the boundary line described in the deeds and asked Whitcomb several times to remove the carport, but Whitcomb refused.

In 2016, Whitcomb offered to purchase from the Corriveaus the disputed property, i.e., the strip of land lying between the boundary line described in the deeds and the old fence line, for $2,500. The attorneys for the parties corresponded with one another regarding the proposal from late 2016 through April 2017, but, ultimately, the Corriveaus did not convey the disputed property to Whitcomb.

On August 21, 2017, Whitcomb commenced an action against the Corriveaus. In the complaint, Whitcomb alleged that the Corriveaus had breached a contract to convey to him the disputed property and that they

had also committed fraud by refusing to convey him the disputed property as promised. Whitcomb sought specific performance of the alleged contract. Alternatively, Whitcomb requested that the trial court declare the true boundary line between the Whitcomb property and the Corriveau property.[1]

After a February 22, 2021, trial, the trial court entered a judgment on March 1, 2021, stating, in pertinent part:

> "Based on the evidence represented and the case of Strickland v. Markos, 566 So. 2d 229 ([Ala.] 1990) the Court finds that [Whitcomb] adversely possessed the disputed property by clear and convincing evidence for a period of over 10 years and said possession was ... exclusive, open and notorious, [and] hostile. Therefore, the Court finds a Judgment for [Whitcomb] and against [the Corriveaus] as to the [disputed property]."

[1]Whitcomb later amended his complaint to add Mortgage Electronic Registration Systems, Inc. ("MERS"), the mortgagee that held the mortgage and note on the Corriveaus' property, as a defendant. The trial court ruled that MERS did not have to appear in the litigation but that MERS would be bound by any judgment affecting its interest in the disputed property.

The trial court established the boundary line as running along the old fence line, as Whitcomb had contended. All other requests for relief were denied.

On March 30, 2021, the Corriveaus filed a postjudgment motion. Whitcomb did not file a postjudgment motion. The trial court denied the Corriveaus' postjudgment motion on May 14, 2021. The Corriveaus filed their notice of appeal to the Alabama Supreme Court on June 24, 2021. Whitcomb filed his cross-appeal on June 25, 2021. The supreme court subsequently transferred the appeals to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

Discussion

The Corriveaus' Appeal

We first address the Corriveaus' appeal, designated as appeal number 2200815. The Corriveaus argue that Whitcomb had not adversely possessed the disputed property for the requisite 10-year period and that Whitcomb could not tack his period of possession onto that of another person because, they say, there was no previous adverse possessor of the disputed property. Because the relevant evidence in this

case is undisputed, this court must utilize the de novo standard of review, "'"indulging no presumption in favor of the trial court's application of the law to those facts."'" Key v. Allison, 70 So. 3d 277, 281 (Ala. 2010) (quoting State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996), quoting in turn Stiles v. Brown, 380 So. 2d 792, 794 (Ala. 1980)).

In Strickland v. Markos, 566 So. 2d 229, 232-33 (Ala. 1990), the case upon which the trial court relied in its judgment, our supreme court explained the law concerning adverse possession as follows:

> "Essentially there are two forms of adverse possession in Alabama: 1) adverse possession by prescription; and 2) statutory adverse possession. Adverse possession by prescription requires actual, exclusive, open, notorious, and hostile possession under a claim of right for a 20-year period. Fitts v. Alexander, 277 Ala. 372, 170 So. 2d 808 (1965).
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> > "'"Statutory adverse possession requires the same elements, but the statute provides further that if the adverse possessor holds under color of title, has paid taxes for ten years, or derives his title by descent cast or devise from a possessor, he may acquire title in ten years, as opposed to the twenty years required for adverse possession by prescription. Code 1975, § 6-5-200. See, Long v. Ladd, 273 Ala. 410, 142 So. 2d 660 (1962)."

> "'Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616, 618 (Ala. 1980); see, also, Morgan v. Alabama Power Co., 469 So. 2d 100 (Ala. 1985).'

"Daugherty v. Miller, 549 So. 2d 65, 66-67 (Ala. 1989).

"With respect to statutory adverse possession, this Court in Brown v. Alabama Great Southern R.R., 544 So. 2d 926, 931 (Ala. 1989), stated:

> "'In Carpenter v. Huffman, 294 Ala. 189, 314 So. 2d 65 (1975), Justice Jones summarized the applicability of our adverse possession statute, now Ala. Code 1975, § 6-5-200, as it relates to coterminous landowners:
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> > "'"The three alternative prerequisites 1) deed or other color of title, 2) annual listing of land for taxation, or 3) title by descent cast or devise from a predecessor, therefore, are not necessary to sustain a claim to title by a coterminous owner. Lay v. Phillips, 276 Ala. 273, 161 So. 2d 477 (1964); Sylvest v. Stowers, 276 Ala. 695, 166 So. 2d 423 (1964). That is to say, although the claimant is relieved of these three alternative conditions prescribed by [§ 6-5-200], he may still acquire title by the exercise of adverse possession for a period of ten years. Cambron v. Kirkland, 287 Ala. 531, 253 So. 2d 180 (1971); Lay v. Phillips, supra; McNeil v. Hadden, 261 Ala. 691, 76 So. 2d 160 (1954). However, the requirements that possession be open,

> notorious, hostile, continuous and exclusive are still applicable. Thompson v. Odom, 279 Ala. 211, 184 So. 2d 120 (1966)."' (Emphasis added in Brown.)

"See, also, McCollum v. Reaves, 547 So. 2d 433, 435-36 (Ala. 1989), special concurrence by Jones, J., wherein the author stated that '[t]he statutory procedure for determining disputed boundaries between coterminous owners is found in [Code 1975,] § 35-3-1 et seq.; and the applicable period of limitations is found in the general statute of limitations on actions, [Code 1975,] § 6-2-33(2).' It should be emphasized that the claimant has the burden of proving that all of the requisites of statutory adverse possession have been satisfied for a ten-year period. Lilly v. Palmer, 495 So. 2d 522 (Ala. 1986).

"....

"To satisfy the element of continuous possession, the claimant must prove uninterrupted possession for 10 or more years. Prestwood v. Gilbreath, 293 Ala. 379, 304 So. 2d 175 (1974). Within the context of continuous possession lies the doctrine of 'tacking.' That doctrine allows an adverse possessor to add -- or 'tack' -- his time of possession onto that of a previous adverse possessor in order to reach the required statutory period. Sparks v. Byrd, [562 So. 2d 211 (Ala. 1990)]."

See also Smith v. Cherry, 684 So. 2d 1322, 1324 (Ala. Civ. App. 1996) (recognizing that, "[i]n a boundary line dispute between coterminous

landowners, a claimant must show adverse possession for a ten-year period").

In Smith v. Cherry, this court explained that, because the purported adverse possessor acquired his property in 1985 and the complaint in that case was filed in 1994, "it [was] apparent that the ten-year statutory time period had not ripened before th[e] suit was initiated." 684 So. 2d at 1324. Similarly, in the present case the undisputed evidence indicates that Whitcomb did not begin using the disputed property under a claim of ownership until November 2009, fewer than 10 years before the present lawsuit was initiated on August 21, 2017. Therefore, Whitcomb did not satisfy the requisite 10-year period for proving adverse possession in a boundary-line dispute.

The trial court could not have properly applied the doctrine of tacking to meet the 10-year requirement. "The doctrine of 'tacking' allows an adverse possessor to add or 'tack' his time of possession onto that of a previous adverse possessor in order to reach the required statutory period. Strickland v. Markos, 566 So. 2d 229, 233 (Ala. 1990)." Bohanon v. Edwards, 970 So. 2d 777, 781-82 (Ala. Civ. App. 2007). In

Bohanon, this court explained that an adverse possessor cannot "tack" onto his or her time of possession that of a previous owner who was not possessing the property adversely. In the present case, Brown, the previous owner of the disputed property, was not occupying the disputed property adversely. Because Brown had owned both the Whitcomb property and the Corriveau property, it would be legally impossible for him to have adversely possessed the disputed property. See, e.g., Glover v. Graham, 459 A.2d 1080, 1085 (Me. 1983) ("Needless to say, one may not hold adversely to oneself."); Peavey v. Moran, 256 Mass. 311, 316, 152 N.E. 360, 362 (1926) ("It is plain that a person cannot hold land adversely to himself."); and Patton v. Smith, 171 Mo. 231, 71 S.W. 187, 190 (1902) ("There could be no adverse possession while Remelius and his heirs owned both tracts, and the defendant has only shown eight years' adverse possession, which is not sufficient to create title by limitation in the defendant."). Because, like in Bohanon, 970 So. 2d at 783-84, there was no evidence that the previous possessor of the disputed property at issue was holding that property adversely, Whitcomb cannot rely on the

doctrine of tacking to meet the requisite 10-year period required for adverse possession in a boundary-line dispute.

Based on the foregoing, we conclude that the trial court erred in determining that Whitcomb had acquired the disputed property by adverse possession. We, therefore, reverse the trial court's judgment as to Whitcomb's adverse-possession claim.

Whitcomb's Cross-Appeal

In his cross-appeal, which is designated as appeal number 2200816, Whitcomb argues that, even if the trial court erred in finding that Whitcomb had acquired the disputed property by adverse possession, this court may still affirm the judgment for other reasons. "[T]his court may affirm a trial court's judgment if it is supported by another valid, legal basis," GEICO Gen. Ins. Co. v. Curtis, 279 So. 3d 1171, 1176 (Ala. Civ. App. 2018). However, in the judgment, the trial court denied all other relief requested by Whitcomb, including his claims alleging fraud and breach of contract and his request for specific performance of the alleged contract. If we were to affirm the judgment, we would be confirming that the trial court appropriately denied those claims. See Black's Law

Dictionary 73 (11th ed. 2019) (defining "affirmance" as "[t]he formal confirmation by an appellate court of a lower court's judgment, order, or decree"); see also In re Estate of Cashmore, 836 N.W.2d 427, 431 (N.D. 2013) (quoting Geier v. Tjaden, 84 N.W.2d 582 Syll. 1 (N.D. 1957)) (" 'The effect of an affirmance by [an appellate court] of a judgment of a [trial] court is to leave the judgment in the same state as if no appeal had been taken....' ").

The only way Whitcomb can obtain the relief he is seeking would be if this court were to determine that the trial court had erred in denying Whitcomb's fraud and breach-of-contract claims and, thus, reversed the judgment based on that error. See In re Staley, 320 S.W.3d 490, 499 (Tex. App. 2010) ("Specific performance is not a separate cause of action, but an equitable remedy that may be awarded upon a showing of breach of contract."). Whitcomb basically argues that the trial court committed reversible error in denying his fraud and breach-of-contract claims because the evidence was sufficient, or, as Whitcomb says, "undisputed," to establish that the Corriveaus committed fraud and a breach of contract by refusing to convey to him the disputed property.

In a nonjury case, when the trial court denies a claim without entering any findings of facts regarding that claim, a party must move for a new trial or otherwise properly raise before the trial court the issue that the evidence was sufficient to support the denied claim. See Childs v. Pommer, [Ms. 1190525, Sept. 3, 2021] ___ So. 3d ___ (Ala. 2021). Whitcomb did not file a postjudgment motion or otherwise argue to the trial court that it had erred in denying his claims alleging fraud and breach of contract or in refusing to order specific performance of the alleged contract. In their postjudgment motion, the Corriveaus challenged the trial court's determination that Whitcomb had acquired the disputed property through adverse possession, alerting Whitcomb that the judgment might not be sustained on that theory. If Whitcomb believed that he was also entitled to the disputed property and to damages based on the alternative claims asserted in his complaint, he should have requested that the trial court amend its judgment, which he did not do. He cannot now raise those arguments for the first time on appeal. Id. Accordingly, we affirm the judgment insofar as it denies

Whitcomb's fraud and breach-of-contract claims and his request for specific performance.

2200815 -- REVERSED AND REMANDED WITH INSTRUCTIONS.

2200816 -- AFFIRMED.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.