

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001334-MR

DANIEL McFARLAND and MARGARET
McFARLAND, his wife

APPELLANTS

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE RON JOHNSON, SPECIAL JUDGE
ACTION NO. 96-CI-000285

U. WAYNE GREENE and DANA GREENE d/b/a
GREENE & GREENE; and JEFFREY W. HELTON

APPELLEES

OPINION
REVERSING AND REMANDING
** ** * * * * *

BEFORE: BUCKINGHAM, McANULTY and MILLER, JUDGES.

McANULTY, JUDGE: This is an appeal from the Bell Circuit Court's order denying a motion to alter, amend or vacate an order which denied Appellants' motion for summary judgment and granted Appellees' motion to dismiss. The question posed is whether the trial court properly dismissed Appellants' action to discharge the Lis Pendens Notice filed on their real property.

Appellants purchased from Billie Owens on March 15, 1996, what had been the Owens marital residence. In order to understand the reason for the lis pendens notice, the Court must discuss the action for the dissolution of the marriage of Donald

Owens and Billie Owens, filed in Bell Circuit Court, Civil Action No. 91-CI-313. Among the marital assets of the Owens were two closely-held corporations. The divorce court was overseeing the disposition of the marital assets and holding in an escrow account the proceeds of the sale of some of the assets, for distribution to the creditors, both personal and corporate.

On August 3, 1994, Appellees Wayne and Dana Greene filed an intervening complaint in the dissolution action, for the purposes of collecting fees for accounting services rendered to the Owens and their corporations. On August 4, 1994 the Owens tendered an agreed order distributing to the creditors the proceeds being held in escrow. This order failed to include the Greenes. As such, the court issued a subsequent order, on September 22, 1994, authorizing the Greenes to trace the proceeds from the sale of assets. Discovery concerning the application of the proceeds indicated that the Owens used some of the proceeds to satisfy an indebtedness on the marital residence. Consequently, on March 4, 1996, the Greenes filed a Notice of Lis Pendens against the property.

A deed of conveyance indicates that on February 15, 1996, Billie Owens transferred the marital residence to the Appellants, Daniel and Margaret McFarland. Curiously, the closing on the sale did not occur until March 15, 1996. However, the deed was not filed until March 22, 1996, which was subsequent to the filing of the notice of lis pendens.

The McFarlands filed the instant action in July of 1996. In ruling on the Appellants' Motion for Summary Judgment

and the Appellees' Motion to Dismiss the trial court concluded that the filing of a lis pendens notice is not an encumbrance or a lien upon the property and that the McFarlands had failed to show actual harm or loss sustained due to the lis pendens notice. The Court further held that the case relied upon by the McFarlands, Bonnie Braes Farms, Inc. v. Robinson, Ky. App., 598 S.W.2d 765 (1980), was inapplicable in light of the order authorizing the Greenes to trace the proceeds as distributed by the Owens.

We are of the opinion that a simple review of the chronology of events, as well as the lis pendens statute, KRS 382.440, is dispositive of this appeal.

A notice of lis pendens is "a notice filed on public records for the purposes of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment." Black's Law Dictionary, 6th ed., p. 932. Moreover, KRS 382.440(1) clearly provides that

No action...shall in any manner affect the right, title or interest of any **subsequent purchaser**, lessee, or encumbrancer of such real property, or interest for value and without notice thereof, **except from the time there is filed**, in the office of the county clerk of the county in which such real property or the greater part thereof lies, a memorandum stating...
(Emphasis added)

In that the McFarlands have a deed stating that the property was conveyed to them on February 15, 1996 and the Greenes filed their notice of lis pendens on March 4, 1996, the notice of lis pendens was not timely filed as to the McFarlands and cannot affect their interest in the property. KRS 382.440(1).

Having so determined, we must necessarily conclude that the trial court erred in not discharging the notice of lis pendens. We therefore reverse and remand for the entry of an order removing the cloud on the McFarlands' title.

ALL CONCUR.

BRIEF FOR APPELLANT:

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GREENE AND DANA GREENE d/b/a
GREENE AND GREENE:

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