RENDERED: OCTOBER 22, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002200-MR

RALPH JONES — APPELLANT

v.

APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW SELF, JUDGE
ACTION NO. 07-CI-00750

SELDON RAY LOCKARD — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, VANMETER, AND WINE, JUDGES.

VANMETER, JUDGE: Ralph Jones appeals from the order of the Christian Circuit Court dismissing his action to quiet title after the jury returned a verdict in favor of Seldon Ray Lockard.[1] For the following reasons, we affirm.

On June 11, 2007, Jones filed this action to quiet title to a one-third undivided interest in a 27-acre tract situated in Christian County, Kentucky. Jones

[1] Appellee is referred to as Sheldon Ray Lockard in Appellee's brief.

alleged that the one-third interest was conveyed to him as a gift from his mother, Hattie Jones, in an unrecorded quitclaim deed that was executed on September 15, 1997. Lockard owns the remaining two-thirds of the 27-acre tract and claims ownership of the remaining one-third interest by deed from Hattie Jones dated April 27, 2000 and recorded in the office of the Christian County Court Clerk.

Lockard failed to appear in the action, and a default judgment was entered by the trial court on August 24, 2007 in favor of Jones declaring him to be the owner of the one-third undivided interest. On October 15, 2008, Lockard filed a motion to set aside the default judgment pursuant to CR[2] 55.02. The trial court granted the motion and set the action for trial.

At trial, Jones proposed the following jury instruction:

> The Respondent Seldon Lockard, has produced evidence that the Deed dated September 15, 1997 from Hattie Jones to the Petitioner, Ralph Jones, cannot be recorded in the office of the Christian County Court Clerk due to its failure to meet the recording requirements under Kentucky Law. However, this evidence should not be considered by you in deciding whether this Deed meets the conditions under Kentucky Law to have constituted a valid conveyance between Hattie Jones and Ralph Jones.

The trial court rejected Jones' proposed instruction, and instead instructed the jury on the legal requirements for a valid deed, which read:

> In order for a deed to be valid and legally binding on the parties, a deed must contain all of the following:
>
> (A) Grantor and grantee;
>
> (B) Delivery and acceptance; and

[2] Kentucky Rules of Civil Procedure.

> (C) A divesting of title by the grantor(s) and the vesting of title in the grantee(s); and
>
> Based on the evidence, do you believe the 1997 Quitclaim Deed between Hattie E. Jones (Grantor), and Ralph Jones (Grantee) is a valid deed?

The jury returned a verdict in favor of Lockard and the trial court entered a judgment dismissing Jones' complaint. This appeal followed.

Jones first argues the trial court erred by setting aside the default judgment entered against Lockard. We disagree.

Trial courts are granted broad discretion in deciding whether to set aside a default judgment, and the exercise of that discretion will not be disturbed absent abuse. *Howard v. Fountain*, 749 S.W.2d 690, 692 (Ky.App. 1988).

CR 55.02 provides: "For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02." A showing of good cause requires "(1) a valid excuse for the default; (2) a meritorious defense to the claim; and (3) absence of prejudice to the non-defaulting party." *PNC Bank, N.A. v. Citizens Bank of N. Kentucky, Inc.*, 139 S.W.3d 527, 531 (Ky.App. 2003) (citation omitted).

Lockard moved the court to set aside the default judgment pursuant to CR 60.02(d), (e), and (f), which provides, in part:

> On motion a court may, upon such terms as are just, relieve a party of his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed

> or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief.

In this case, because the quitclaim deed was not attached to Jones' petition, Lockard did not have notice of the deed and did not respond to the petition because he did not believe the claim to have any merit. Lockard further claimed he was not aware of the default judgment until a copy was sent to him one year and one month after the default judgment was entered, at which point he promptly moved to set aside the judgment. Additionally, the quitclaim deed was void because it was not dated, was not signed by all parties, did not contain a source of title for the property, and the signature of the grantor was not properly notarized. Finally, no evidence exists that Jones changed his position as a result of the default judgment and would thereby be prejudiced by the court setting aside the default judgment. Thus, good cause was shown to support the trial court's decision to set aside the default judgment. Accordingly, the trial court did not abuse its discretion by setting aside the default judgment.

Next, Jones argues the trial court erred by failing to instruct the jury not to consider evidence suggesting the quitclaim deed was not recordable to determine its validity. We disagree.

Any error alleged in the instructions to the jury "is considered a question of law and is reviewed on appeal under a *de novo* standard of review." *Mountain Water Dist. v. Smith*, 314 S.W.3d 312, 315 (Ky.App. 2010) (citations omitted).

Jones argues he was entitled to have the jury instructed based on his theory of the case. *See Young v. Vista Homes, Inc.*, 243 S.W.3d 352, 359 (Ky.App. 2007) (a party litigant is entitled to have the jury instructed on his theory of the case if any substantial evidence exists to support the theory). Notably, Kentucky adheres to the use of "bare bones" jury instructions. *Olfice, Inc. v. Wilkey*, 173 S.W.3d 226, 228 (Ky. 2005) (citation omitted). The "bare bones" of the instruction "may then be fleshed out by counsel on closing argument." *Rogers v. Kasdan*, 612 S.W.2d 133, 136 (Ky. 1981) (citation omitted). In *Webster v. Commonwealth*, 508 S.W.2d 33 (Ky. 1974), the court explained,

> The function of instructions in this jurisdiction is only to state what the jury must believe from the evidence . . . in order to return a verdict in favor of the party who bears the burden of proof. Directions limiting the effect of evidence are not in the category of instructions submitting the law of the case to the jury.

Id. at 36 (citations omitted).

In this case, the trial court properly instructed the jury on the requirements for a valid deed under Kentucky law. *See Smith v. Vest*, 265 S.W.3d 246, 250 (Ky.App. 2007) (holding that a deed is valid if it contains: "(1) a grantor and grantee; (2) delivery and acceptance; (3) a divesting of title by grantor and a vesting of title in the grantee"). Moreover, any comment Jones wished to make on the jury's consideration of evidence suggesting the deed was not recordable could have been "fleshed out" during his closing argument. Accordingly, we find the trial court did not err by rejecting Jones' proposed jury instruction.

The order of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Clint Prow
Providence, Kentucky

BRIEF FOR APPELLEE:

Robert L. Fears
Hopkinsville, Kentucky