

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001100-MR

ALLEN MOORE

APPELLANT

v.

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE JOHN KNOX MILLS, JUDGE
ACTION NO. 03-CI-00120

INA ROBINSON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

DIXON, JUDGE: Allen Moore appeals a judgment of the Knox Circuit Court granting his sister, Ina Robinson, a directed verdict in a quiet title action. We affirm.

On July 6, 2001, Ina and Allen's mother, Ollie Moore (now deceased), conveyed a small house and lot in Corbin, Kentucky, to Ina. Ina

promptly recorded the deed with the Knox County Clerk. At the time Ollie executed the deed to Ina, Allen had been living in the house since the fall of 1999. In 2002, Ina instituted eviction proceedings against Allen due to his refusal to vacate the house. Allen contended the house belonged to him pursuant to a handwritten document, signed by Ollie and notarized in January 1988, purporting to convey the house to Allen. Allen's document was not recordable as a deed because it was not properly acknowledged as required by KRS 382.130; consequently, he recorded the instrument in the miscellaneous book at the Knox County Clerk's office in August 2002.

In March 2003, Ina filed a complaint to quiet title, contending Allen was fraudulently asserting title in himself. Allen denied the allegation and asserted that title should be quieted in his name pursuant to the handwritten instrument.

After several years of inaction, a jury trial was held in March 2010. Both Ina and Allen testified, and the jury also heard from the parties' siblings and the notary public who signed the 1988 document. At the conclusion of the evidence, the trial court granted a directed verdict in favor of Ina, finding her the fee simple owner of the property pursuant to the July 2001 deed. The court concluded the evidence established Ina was the first to record her deed without notice of the instrument executed from Ollie to Allen. This appeal followed.

“On a motion for directed verdict, the trial judge must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion[.]” *Bierman v. Klapheke*, 967 S.W.2d 16, 18 (Ky. 1998), and the motion

cannot be granted “unless there is a complete absence of proof on a material issue or if no disputed issues of fact exist upon which reasonable minds could differ.”

Id. at 18-19.

At the outset, we note KRS 411.120 provides that an action to quiet title may be brought by “[a]ny person having both the legal title and possession of land . . . against any other person setting up a claim to it.” It is undisputed that Ina was not in possession of the property; however, Ina alleged Allen fraudulently seized her legal title. “[A]n action to quiet title may be maintained by one who is the owner of land but not in possession when an effort is made on the part of the defendant to seize and fraudulently appropriate the particular title under which the plaintiff claims.” *Williams v. Thomas*, 285 Ky. 776, 149 S.W.2d 525, 528 (Ky. App. 1941).

Viewing the evidence most favorably to Allen, he possessed an instrument conveying property, though not properly acknowledged as a deed and not recordable. Generally, an unrecorded deed is enforceable between the parties, *Kerr v. Watkins*, 234 Ky. 104, 27 S.W.2d 679, 681 (Ky. App. 1930), and it is enforceable against a subsequent grantee who had notice of its existence prior to his purchase. *Turner v. McIntosh*, 379 S.W.2d 470, 472 (Ky. 1964). However, pursuant to KRS 382.270, an unrecorded deed is not valid against a subsequent purchaser for valuable consideration who was without notice of the prior deed.

Allen contends a directed verdict was improper because issues of fact exist regarding whether Ina was a subsequent purchaser for valuable consideration without notice of the prior deed.

The deed from Ollie to Ina recites consideration of \$1.00, love and affection, and “other good and valuable consideration.” Ina also testified that, in 1997, she gave Ollie approximately \$4000.00 to make a down payment on a mobile home. “A valuable consideration might consist of anything of any value, and it may be the assumption of an obligation--the mere altering of the condition of the party to be affected.” *Snyder v. Snyder*, 193 Ky. 233, 235 S.W. 743, 746 (Ky. App. 1921). Further, “[o]ne dollar is our unit of value” and constitutes sufficient consideration to support a contract. *Union Gas & Oil Co. v. Wiedemann Oil Co.*, 211 Ky. 361, 277 S.W. 323, 330 (Ky. App. 1924).

The record also indicates Ina did not have notice of the prior conveyance to Allen. Allen simply testified “everyone” knew Ollie conveyed the property to Allen in 1988; however, Allen admitted he never told Ina about the instrument. Ina testified that when Allen moved into the house in late 1999, he agreed to make repairs and maintain the property. Ina stated that she had no knowledge of the conveyance from Ollie to Allen until she instituted the eviction proceeding against Allen in 2002. Even considering the evidence in a light most favorable to Allen, there was no evidence indicating that Ina knew or should have known about Allen’s deed. “While it is the jury's province to weigh evidence, the court will direct a verdict where there is no evidence of probative value to support the opposite result and the jury may not be permitted to reach a verdict based on mere speculation or conjecture.” *Gibbs v. Wickersham*, 133 S.W.3d 494, 496 (Ky. App. 2004).

After careful review, we conclude the evidence established that Ina held superior title to the property as a subsequent purchaser for valuable consideration without notice; consequently, a directed verdict in Ina's favor was proper.

For the reasons stated herein, we affirm the judgment of the Knox Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Marcia A. Smith
Corbin, Kentucky

BRIEF FOR APPELLEE:

Jeffery R. Tipton
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