

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000278-MR

MARK WHITE AND SUSAN
WHITE, HIS WIFE; JOHN E.
WHITE AND UNKNOWN SPOUSE;
JOYCE WHITE AND UNKNOWN
SPOUSE; THOMAS J. WHITE AND
UNKNOWN SPOUSE; JAMES W.
WHITE AND UNKNOWN SPOUSE;
TIMOTHY P. WHITE AND UNKNOWN
SPOUSE; WALLY WHITE AND
UNKNOWN SPOUSE

APPELLANTS

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 03-CI-00719

DENNIE WILLIAMSON AND
LOIS WILLIAMSON, HIS
WIFE; AND PIKE LETCHER
LAND COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: VANMETER AND WINE, JUDGES; SHAKE,¹ SENIOR JUDGE.

VANMETER, JUDGE: Mark and Susan White, et al.² appeal from the judgment of the Pike Circuit Court quieting title to a disputed parcel of property in favor of Dennie and Lois Williamson.³ For the following reasons, we affirm.

The Williamsons brought suit to quiet their title to real property after a dispute arose with the Whites concerning the ownership of a parcel of property located under the ridgeline of a mountain where the watersheds of Long Fork and Shelby Creek meet in Pikeville, Kentucky. The tract is approximately 75 feet wide and 800 feet long, and is situated under the top of the ridge on the Shelby Creek side of the mountain. The dispute arose when the Whites contracted for the removal of timber from the tract.

The trial court conducted a bench trial, during which both parties presented expert testimony. Gary Ousley surveyed the Williamsons' property and testified the property contained 116.4099 acres and traced their title back to the original William Mullins survey and patent deeded from the Commonwealth of Kentucky on October 19, 1859. In addition, Ousley stated that the original Mullins survey extended to the ridgeline and encompassed the tract.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

² John E. White and unknown spouse, Joyce White and unknown spouse, Thomas J. White and unknown spouse, Timothy P. White and unknown spouse, Wally White and unknown spouse, and James White and an unknown spouse.

³ Pike Letcher Land Company was included as an Appellee and appeared at the bench trial as a co-tenant of the property at issue.

The Whites claimed ownership of the disputed tract in part through their chain of title dating back to the William Tackett survey and patent, and in part through a common grantor, Sherwood Osborne. Luke Hatfield surveyed the Whites' property and opined that the disputed tract was not encompassed by the Mullins survey. Hatfield testified that part of the disputed tract was not contained in any original patent deeded from the Commonwealth, and thus believed the area to have been originally owned and subsequently deeded by Osborne. Ousley disputed Hatfield's placement of the property, claiming that the property deeded by Osborne was situated to the east of the disputed tract.

Furthermore, Mark White testified that at one time his family ancestors owned a home and barn on the flat area situated at the top of the ridge on the disputed tract. However, no evidence was presented of remains of buildings or disturbances in the ground to indicate an ancient pattern of farming. The only physical evidence found on the disputed tract was the remains of an old fence that ran along the center of the ridge.

The trial court concluded that the disputed tract was located within the original Mullins survey and therefore owned by the Williamsons. The court further found the Whites' property was located within the Tackett survey on the Long Fork side of the ridge, and not including any property on the Shelby Creek side of the ridge. Subsequently, the trial court issued a judgment declaring the Williamsons to own the disputed tract.⁴ The Whites appealed, arguing that the trial

⁴ The trial court also found the Williamsons failed to meet their burden of proof to establish damages for the removal of timber located on their property. However, this issue is not before

court failed to make findings on their claim of ownership through Osborne as a common grantor. This court remanded the judgment instructing the trial court to make specific findings on the location and validity of the Whites' chain of title through Osborne.⁵

On remand, the trial court reviewed the evidence presented at the bench trial and held a hearing for the parties to introduce additional evidence and make arguments. In a judgment entered November 17, 2009, the trial court found that Osborne was not a common grantor of the disputed tract. The trial court concluded that the property tracing back to Osborne was located east of the disputed property based upon the court's belief that the Mullins survey extended to the top of the ridge. The trial court found that the remains of the fence located at the top of the ridge supported a finding that the Mullins patent extended to that point, and found White to have been mistaken as to the location of his family's past home and barn. As a result, the trial court concluded that the Williamsons were the record title owners of the disputed tract and quieted title to their 116.4099 acres.⁶ This appeal followed.

A trial court's findings of fact are reviewed under a clearly erroneous standard. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005) (citations omitted). Such findings are not clearly erroneous if supported by substantial

our court.

⁵ Mark White, et al. v. Dennie Williamson, et al., No. 2007-CA-001612-MR (Nov. 26, 2008).

⁶ The trial court reiterated its previous holding that the Williamsons' failed to meet their burden of proof to establish damages for the removal of timber on their property.

evidence. *Id.* (citations omitted). Substantial evidence is evidence “that a reasonable mind would accept as adequate to support a conclusion.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (citation omitted). Moreover, the trial court ““may choose between the conflicting opinions of surveyors so long as the opinion relied upon is not based upon erroneous assumptions or fails to take into account established factors.”” *Webb v. Compton*, 98 S.W.3d 513, 517 (Ky.App. 2002) (quoting *Howard v. Kingmont Oil Co.*, 729 S.W.2d 183, 184-85 (Ky.App. 1987)).

The Whites argue the trial court erred by finding they did not possess title to the disputed tract. The Whites maintain they possess record title to the disputed tract through title that traces back to a common grantor, Sherwood Osborne, and that the trial court’s finding otherwise was not supported by substantial evidence. Specifically, the Whites contend that Ousley’s testimony was unreliable and not conclusive to exclude Osborne as a common grantor of the disputed property. We disagree.

In an action requiring proof of title, valid title may be shown one of three ways: “(1) paper title deductible from the Commonwealth; (2) adverse possession for the statutory period; and (3) title to a common source.” *Noland v. Wise*, 259 S.W.2d 46, 48 (Ky. 1953) (citations omitted). In the instant case, Ousley testified that his survey of the Williamsons’ property revealed that the Mullins survey extended to the ridgeline and encompassed the disputed tract. In addition, the Williamsons’ title traced back to the Mullins survey. Thus, if Ousley’s testimony

solely regarding the Mullins survey is to be believed, it necessarily includes the disputed area within the Mullins survey and excludes the Osborne deeded property from the disputed area. Indeed, Ousley testified that he placed the property deeded by Osborne east of the disputed tract. Although the Whites offered conflicting testimony, the trial judge is in the best position to choose between conflicting opinions of surveyors. *See Webb*, 98 S.W.3d at 517.

Since substantial evidence in the record supports the trial court's findings of fact and the Whites have failed to demonstrate that its findings were clearly erroneous, we are bound to accept the trial court's findings.

The judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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