

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001368-MR

VERNON MILLS

APPELLANT

v.

APPEAL FROM KNOX CIRCUIT COURT  
HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 00-CI-00422

EDVARD GRANDE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,<sup>1</sup> CHIEF SENIOR JUDGE.

STUMBO, JUDGE: Vernon Mills appeals from an Order of the Knox Circuit Court sustaining Edvard Grande's motion for Summary Judgment. Mills' action alleged that Grande, who is a professional land surveyor, incorrectly located a boundary line and improperly moved Mills' property line. We find no error in the

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<sup>1</sup> Chief Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

trial court's determination that two prior judgments in separate actions have previously resolved the boundary issue raised by Mills, and accordingly affirm the Summary Judgment on appeal.

On September 12, 2000, Mills filed a *pro se* action in Knox Circuit Court against Grande in which Mills claimed title to a parcel of real property located in Knox County, Kentucky. The complaint alleged that Grande, in his capacity of professional land surveyor, made a mistake in a land survey completed for Marie Nunnery Sowders which Mills claims adversely affected his interest in the real property in question. It alleged that Grande was grossly negligent and incompetent; that Grande unlawfully moved a property line without Mills' consent; and, that Mills suffered "torment . . . and pain" as a result.

The action languished for a number of years, resulting in Grande filing a Motion to Dismiss for lack of prosecution in 2005, and Mills responding with a motion to hold the action in abeyance. Grande's motion was sustained, and the action was dismissed. Mills appealed to this Court, which rendered an Opinion on August 18, 2006, reversing the dismissal and remanding the matter to Knox Circuit Court for further proceedings.

The matter continued in Knox Circuit Court in relative inaction for about four more years, when Grande moved for Summary Judgment on March 9, 2010. In support of the motion, Grande directed the trial court's attention to two

related judgments, namely *William Sexton, et al. v. George Hibbard, et al.* (90-CI-00245) and *William Sexton, et al. v. Vernon Mills* (05-CI-00494), which Grande maintained addressed the same subject matter of the instant action and which resolved the issues set out in Mills' complaint.

After taking proof on the motion, the trial court rendered an Order Sustaining Defendant's Motion for Summary Judgment on June 16, 2010, which forms the basis of the instant appeal. The court determined in relevant part that the two judgments cited by Grande addressed the same subject matter of Mills' instant action and – when read in concert – disposed of the issues raised in Mills' complaint. The court noted that *Sexton v. Mills* did pertain to the same property which Mills was claiming in the case *sub judice*. It found that the Judgment in *Sexton v. Mills* specifically stated that Mills was claiming an interest in property that he received from a deed from Marie Nunley Sowders and her husband, recorded in Deed Book 310, page 1, and that this parcel was the same property referred to in Mills' instant complaint. The court dismissed Mills' contention that a party named Hibbard did not prevail in the 1990 case of *Sexton v. Hibbard* because Hibbard did not retain counsel and neglected to answer requests for admissions. Ultimately, the trial court determined that

Though the plaintiff [Mills] seems to poke jabs at the now final judgments in *Sexton v. Hibbard* (09-CI-0002450) and *Sexton v. Mills* (05-CI-00494), the plaintiff has failed to squarely address the underlying premise of Grande's argument: That when read together the

holdings of *Sexton v. Hibbard* and *Sexton v. Mills* support Grande's survey, being the same Grande survey complained of by the plaintiff in the case *sub judice*.

The court concluded that Summary Judgment was warranted, and this appeal followed.

Mills, *pro se*, now argues that the Knox Circuit Court erred in rendering Summary Judgment in favor of Grande. Mills contends that the trial court improperly determined that the correctness of the survey at issue was conclusively and finally established in *William Sexton, et al. v. George Hibbard, et al.* and *William Sexton, et al. v. Vernon Mills*, and that Mills is foreclosed from now arguing that the survey was not correct. As best we can tell from Mills' *pro se* written argument, the focus of his claim of error is that the trial court in the instant action improperly relied on *William Sexton, et al. v. George Hibbard, et al.* and *William Sexton, et al. v. Vernon Mills* because Sexton's surveyor allegedly did not have a professional license. The "Argument" section of Mill's appellate brief consists of a single paragraph, in which Mills states that,

A judge that would let a man that did not have a State of Kentucky surveyors licensed [sic] to be a expert [sic] to testify is the COURT ROOM [sic] to take his word and he did not have any deeds to support the survey he said he did, This [sic] court must see by the evidence that this case must be over turned [sic] and sent by to a Judge who will go by the Laws of the state of Kentucky.

Elsewhere in his brief, Mills claims that the County Attorney acted improperly with regard to this action, that Mills had to have heart surgery as a result of the stress of dealing with the dispute, and that an adjacent land owner pointed a gun at

him but was never subject to criminal prosecution. The substance of Mills' argument, however, appears to be that the Knox Circuit Court erred in relying on *William Sexton, et al. v. George Hibbard, et al.* and *William Sexton, et al. v. Vernon Mills* in concluding that the boundary dispute in Mills' instant action was moot.

We have closely examined the record and the law, and find no error in the Knox Circuit Court's determination that *William Sexton, et al. v. George Hibbard, et al.* and *William Sexton, et al. v. Vernon Mills* operate to render moot Mills' instant action. *Sexton v. Mills* (05-CI-494) expressly states that Mills was claiming an interest in property that he received from a deed from Marie Nunley Sowders and her husband, and which was recorded in Deed Book 310, Page 1. This same parcel is the subject matter of Mills' September 12, 2000 Complaint which initiated the instant action, and which is set out in Paragraph 3 of that Complaint. *Sexton v. Mills* (05-CI-494) was rendered in favor of Sexton and was affirmed on appeal to this Court in action No. 2007-CA-000043-MR.

Discretionary review by the Kentucky Supreme Court was denied by way of an Order rendered on October 21, 2009, thus making that action *res judicata*.

In reviewing a judgment resulting from a boundary dispute, our duty is to "review the lower court's findings of fact for clear error and its legal determinations *de novo*." *Arnold v. Patterson*, 229 S.W.3d 923, 924 (Ky. App. 2007). The matter is before us, however, by way of an Order Sustaining Defendant's Motion for Summary Judgment. Summary judgment "shall be

rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky.1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id.* “Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact.” *Id.* Finally, “[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

When viewing the record in a light most favorable to Mills and resolving all doubts in his favor, we must conclude that the trial court correctly found that there were no genuine issues as to any material fact and that Grande was entitled to a judgment as a matter of law. The record supports the Knox Circuit Court’s conclusion that *William Sexton, et al. v. George Hibbard, et al.* and *William Sexton, et al. v. Vernon Mills* established the boundaries of the same parcel which is the subject matter of the instant action. Those prior actions are *res*

*judicata* and render moot the claims set out in Mills' September 12, 2000

Complaint. Accordingly, we find no error.

For the foregoing reasons, we affirm the Order Sustaining Defendant's Motion for Summary Judgment of the Knox Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Vernon Mills, *Pro Se*  
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BRIEF FOR APPELLEE:

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