

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-002059-MR

WILLIE BUNCH, JR.

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE DANIEL BALLOU, JUDGE
ACTION NO. 10-CI-00576

DENNIS TEAGUE; PAMELA TEAGUE;
PHYLLIS BUNCH; SHANNON BUNCH
AND PATSY BUNCH

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: D. LAMBERT, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: Willie Bunch, Jr. appeals from a summary judgment and order of sale of the Whitley Circuit Court. He contends a material issue of fact exists regarding whether fragments of a purported deed, when read together, is a valid deed conveying him the sole interest in a tract of real property involved in

this partition action. We agree that sufficient proof of a valid deed was presented to create a question of material fact precluding summary judgment. We reverse and remand for further proceedings.

As set forth in the partition complaint, the disputed tract was acquired by Willie Bunch, Sr. and Elsie Bunch, husband and wife, as tenants in common without rights of survivorship by deed dated May 21, 1947, and recorded in the Whitley County clerk's office. By deed dated December 8, 1950, and recorded in the Whitley County clerk's office, Willie Bunch, Sr. conveyed his entire interest in the tract to Elsie. No further chain of title to the tract is set forth in the complaint.

Elsie died intestate in November 1969. An affidavit of descent filed after this partition action was filed indicates Elsie was survived by Willie Bunch, Sr. and her children, Willie Bunch, Jr., Floyd Jackie Bunch, Shannon L. Bunch, and Pamela Bunch Teague. Willie Bunch, Sr. died testate in October 1990 and devised his entire interest in the tract to his and Elsie's children per stirpes.

The appellees Pamela Teague and her husband Dennis Teague, Shannon Bunch and his wife Patsy Bunch, and Phyllis Bunch, the widow of Floyd Bunch, filed this partition action on July 23, 2010, alleging they and Willie Bunch, Jr. own the tract, jointly and equally as tenants in common, subject to the marital interests of their respective spouses, through their mother, Elsie Bunch, and father, Willie Bunch, Sr.¹ Willie Bunch, Jr. filed a *pro se* answer alleging the tract was

¹ Two other tracts are involved in the partition action but are not the subject of this appeal.

conveyed to him by Willie Bunch, Sr., Pamela and Dennis Teague, Shannon and Patsy Bunch and Floyd and Phyllis Bunch by warranty deed.

During their deposition, each appellee denied signing a deed transferring any interest each had in the tract to Willie Bunch, Jr. but each testified he or she transferred their interest in the tract to Willie Bunch, Sr., making him the sole owner after Elsie's death. Willie Bunch, Jr. testified that Willie Bunch, Sr., Pamela and Dennis Teague, Shannon and Patsy Bunch, and Floyd and Phyllis Bunch, conveyed the tract to him in 1974 by warranty deed.

Despite the appellees' testimony that the tract was conveyed to Willie Bunch, Sr. in 1974, there is no deed in the record supporting their testimony. Moreover, the partition does not describe a conveyance from the appellees to Willie Bunch, Sr. However, throughout this litigation, on several occasions, copies of a purported deed of the tract to Willie Bunch, Jr. have been introduced into the record. As noted by the trial court in its summary judgment, each time it has been copied and assembled, it is in a different order and, until the final copy produced, difficult to read in its complete context.

The first copy of a deed purporting to convey the tract to Willie Bunch, Jr. is inexplicably found in the record just after the complaint and prior to service upon Willie Bunch, Jr. Because of its chronological sequence, this Court is unable to discern which party filed the deed or for what purpose. Regardless of its origin in the record, it is substantially the same deed as appears later in the litigation. It is dated March 29, 1974, and purports to convey the tract to Willie

Bunch, Jr. and signed by Willie Bunch, Sr., Pamela and Dennis Teague, Shannon and Patsy Bunch, and Floyd and Phyllis Bunch and notarized by Dorothy Davis Owens. It further describes the tract conveyed and consideration of \$1.00 and love and affection.

The second copy of a deed was substituted as an exhibit to Willie Bunch, Jr.'s deposition. The copy consists of six pages. While not in the same order as the first copy, the pages contain virtually identical information, including identifying the grantee as Willie Bunch, Jr. and the grantors, a property description, statement of consideration, the signatures of the grantors and Owens's notary certificate.

The final copy of the deed is much more readily comprehended because it is presented in sequential order. It begins by stating it is a deed of conveyance, made and entered into on March 29, 1974, by Willie Bunch, Sr. and specifies the remaining grantors and purports to convey the tract to Willie Bunch, Jr. for \$1.00 and love and affection. It describes the property as the same land conveyed to the first parties by inheritance from Elsie Bunch, deceased, and the same land as conveyed to Elsie Bunch by Willie Bunch, Sr. in 1950 and describes the tract. Like the prior copies, the final copy contains the signatures of Willie Bunch, Sr., Pamela and Dennis Teague, Shannon and Patsy Bunch, and Floyd and Phyllis Bunch and Owens's notary certificate.

Also filed is an affidavit of the Whitley County Deputy Court Clerk. It states that the deed is a recordable warranty deed.

The trial court concluded that Willie Bunch, Jr. had not produced a valid deed to the tract nor given any valid reason why the property should not be sold and the proceeds divided among the parties. The trial court specifically noted that the “[t]he document attached to [Willie Bunch, Jr.’s] deposition does not bear notarized signatures of any of the parties.” After Willie Bunch, Jr.’s motion to alter amend or vacate the judgment was denied, this appeal followed.

Summary judgment is not a substitute for trial and is proper only “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 judgment as a matter of law.” Kentucky Rules of Civil Procedure 56.03. The trial court must view the record “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 Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Because no factual issues are involved and only legal issues are before the trial court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier–Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

The appellees argue the copies of the deed produced do not comply with the Kentucky Revised Statutes (KRS) 382.135(1), which addresses the specific requirements of a recordable deed. One of those requirements in the case of transfer by gift or nominal consideration is a “notarized certificate signed by the

grantor or his agent and the grantee or his agent...stating that the transfer is by gift and setting forth estimated fair cash value of the property.” KRS 382.135 (1)(d)(2).

We have admittedly struggled with the state of the record in this case. The copies of the deeds have been presented in different formats and at different times, with the last copy submitted by Willie Bunch, Jr. being the most comprehensible. We have also struggled to understand the trial court’s conclusion that no copy contains a notary’s certificate when each contains such a certificate. However, our basis for our reversal is that the trial court misapplied the law to the facts so far developed.

In this Commonwealth, to be valid between a grantor and grantee, a deed is not required to be recordable or recorded. *Howard v. Kelsay*, 230 Ky. 61, 63, 18 S.W.2d 884, 885 (1929). “A deed may not be properly recorded unless the statute is complied with, but although it is not properly recorded it is a valid transfer of title and is effective as between the grantor and the grantee.” *Id.* The law was developed early in our jurisprudence that the absence of the statutory requirements for recording a deed does not void a conveyance:

These requisitions were made for the benefit of innocent purchasers and creditors, alone, and that without the required attestation, or recording the deed, if otherwise good, would pass the title, as between the parties to it. The three witnesses were necessary only to prove the deed for recording. The recording was necessary only to secure the title against subsequent creditors and purchasers; and therefore, between the vendor and vendee, the title was not affected by an omission to record the deed, or to obtain the attestation of

three witnesses, who were required only to prove the execution, in order to record it.

Travis v. Saunders, 198 Ky. 742, 249 S.W. 1040 (1923)(quoting *Fitzhugh v. Croghan*, 25 Ky. 429 (1829)).

In a more recent case, this Court applied the same reasoning to our present recording statutes stating that a deed is valid if it contains the fundamental elements necessary to a valid and enforceable deed. As stated in *Smith v. Vest*, 265 S.W.3d 246, 250 (Ky.App. 2007):

The statute did not contravene the common law regarding the validity of any deed. As between the grantor and grantee, and third parties with notice, even a complete failure to include the consideration certificate called for in KRS 382.135 will not affect the validity of a deed if that deed contains the fundamental elements necessary to a valid and enforceable deed. The deed will remain unrecordable, however, until it substantially complies with KRS 382.135.

A valid and enforceable deed requires only three fundamental elements, which are:

“(1) a grantor and grantee; (2) delivery and acceptance; (3) a divesting of title by grantor and a vesting of title in the grantee. If each of these elements is present, the deed’s recordability . . . is irrelevant.” *Id.* (internal citation omitted).

The validity of the deed presented by Willie Bunch, Jr. is a separate question from whether the deed is recordable. As the record currently exists, there is a question of fact whether the signatures are genuine, whether there was delivery and acceptance, and title divested. Therefore, summary judgment was improper. On remand, the trial court is to resolve these factual issues.

The summary judgment of the Whitley Circuit Court is reversed and the case remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

David S. Hoskins
Corbin, Kentucky

BRIEF FOR APPELLEES:

Mary-Ann Smyth
Corbin, Kentucky