

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0776

JEW
[Signature]

MARTIN DICKERSON AND
OLIVER DICKERSON

VERSUS

AMANDA DAVIS, ET AL.

Judgment Rendered: October 29, 2010

Appealed from the
Seventeenth Judicial District Court
In and for the Parish of Lafourche, Louisiana
Trial Court Number 103,844

Honorable Ashly Bruce Simpson, Judge

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Plaintiffs – Appellees
Martin Dickerson and
Oliver Dickerson

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Defendant – Appellant
Amanda Davis

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

Carter C.J. Carver

WELCH, J.

Amanda Davis appeals a judgment of the trial court dismissing her petitory action; recognizing, restoring, and maintaining possession of the property at issue with Martin Dickerson and Oliver Dickerson (the "Dickersons"); and ordering Amanda Davis to remove the mobile home from the property at issue. For reasons that follow, we affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL HISTORY

On February 11, 1991, pursuant to an "Act of Cash Sale," the Dickersons acquired from Eleanor Jones Lee, in her capacity as the administratrix of the Estate of Thomas Harris, a tract of land described as follows:

A certain lot of land situated in the Parish of Lafourche, State of Louisiana, on the right descending bank of Bayou Lafourche, at about one mile above the town of Thibodaux, measuring thirty-five feet front by five hundred forty-five feet in depth, bounded above by land belonging to the Thibodaux Brick Works, now or formerly, below by land of Julia Davis, now or formerly, in front by other property of Lydia Brown, now or formerly, and in the rear by property of Henry Ricks, now or formerly. Together with all the buildings and improvements thereon and all rights, ways, privileges and servitudes thereunto belonging or appertaining.

Being the same property acquired by Thomas A. Harris from Marguerite Davis Bean, et al[.] by Cash Sale under Private Signature dated July 17, 1966 and recorded on November 12, 1968 COB 395, Page 97, Entry Number 299575; see also May 3, 1948 Act Cash Sale recorded on May 3, 1948 in COB 133, Folio 126, Entry Number 77941.[¹]

Pursuant to a cash sale under private signature, on July 17, 1966, Thomas Harris had acquired the following tract of land from Marguerite Davis Bean, Maude Davis Sartin, Gladiola Davis, and Gerald Howard:

A certain lot of land situated in the Parish of Lafourche, State of Louisiana, on the right descending bank of Bayou Lafourche, at about one mile above the town of Thibodaux, measuring thirty-five feet front by five hundred and forty-five feet in depth, bounded above by land belonging to the Thibodaux Brick Works, now or formerly, below by land of Julia Davis, now or formerly, in front by other property of Lydia Brown, now or formerly, and in the rear by property

¹ The act of sale specifically excluded two parcels from the described property that were previously conveyed by Thomas Harris.

of Henry Ricks, now or formerly.

Together with all the buildings and improvements thereon and all rights, ways, privileges and servitudes thereunto belonging or appertaining.

Since the February 11, 1991 act of sale, the Dickersons have possessed the described property and paid the property taxes.

In 1998, Amanda Davis moved a mobile home onto a piece of property, which she believed belonged to her pursuant to a quitclaim deed executed in her favor by her aunt, Marguerite Davis Bean. The quitclaim deed to Amanda Davis described the property as follows:

Lot- 35' x 545' RB B/Laf. 1 mile above Thibodaux, Above by Thibodaux Brick Works. Below by Julia Davis (Less Lots Sold) Approx 303 Left. (133-126) (351-586) (355-288) 367-65 1053-311 Tax Sale #701982 Act of Co 1055-834 Act of Correction 1056-70 (Less Future Mineral Rights 500' 122 Notre Dame St

Apparently, Marguerite Bean Davis had acquired this property pursuant to a tax deed dated June 28, 1989.²

After numerous discussions and disputes between the Dickersons and Amanda Davis concerning the encroachment of Amanda Davis's mobile home, in May 2006, Amanda Davis erected a temporary fence on the property, which blocked the Dickerson's access to their property. The Dickersons then instituted a possessory action against Amanda Davis, seeking to be restored to the possession of their property, damages, and a preliminary injunction ordering Amanda Davis to remove her mobile home from encroaching on their property. Amanda Davis responded by asserting ownership of the property (or title to the property in herself), thereby converting the suit to a petitory action and judicially confessing possession of the property by the Dickersons in the possessory action. See La. C.C.P. art. 3657.

² The property description contained in the tax deed is as follows: Lot (35' x 545') RB B/Laf 1 mile above Thibodaux; Above by Thibodaux Brick Works; Below by Julia Davis (Less Lots Sold) (Approx 303' Left) (133-126) (351-586) (355-288) (367-65).

After a trial on the merits, the trial court determined that the quitclaim deed did not sufficiently describe the property so that it could be located, and therefore was not a juridical act translative of ownership. Thereafter, the trial court rendered judgment against Amanda Davis and in favor of the Dickersons, dismissing Amanda Davis's petitory action, recognizing, restoring, and maintaining possession of the property in dispute to the Dickersons, and casting Amanda Davis with all costs. The trial court subsequently granted a new trial, on its own motion, to grant the preliminary injunction ordering Amanda Davis to remove her mobile home from the property in the possession of the Dickersons.³ A judgment reflecting the trial court's rulings was signed on January 11, 2010, and from this judgment, Amanda Davis now appeals.

On appeal, Amanda Davis asserts that the trial court manifestly erred in determining that the property description in the quitclaim deed was insufficient to be a juridical act translative of ownership and in admitting lay testimony regarding whether Amanda Davis's trailer was encroaching on property possessed by the Dickersons.

LAW AND DISCUSSION

The Petitory Action

As previously noted, although this matter originally commenced as a possessory action, Amanda Davis asserted title to the property in herself, thereby converting the suit to a petitory action and confessing the Dickersons' possession. See La. C.C.P. art. 3657. To obtain a judgment recognizing ownership of immovable property or a real right therein, the plaintiff in a petitory action shall: (1) prove that he has acquired ownership from a previous owner or by acquisitive prescription, if the court finds that the defendant is in possession thereof; or (2) prove a better title thereto than the defendant, if the court finds that the latter is not

³ See La. C.C.P. art. 1971.

in possession thereof. La. C.C.P. art. 3653; see also La. C.C. art. 531 (providing that “[o]ne who claims the ownership of an immovable against another in possession must prove that he acquired ownership from a previous owner or by acquisitive prescription” and “[i]f neither party is in possession, he need only prove better title.”).

In this case, Amanda Davis asserted both that she acquired ownership of the property from the previous owner, *i.e.*, Marguerite Davis Bean and by acquisitive prescription of ten years, *i.e.*, possession of the property for ten years, in good faith, and with just title. See La. C.C. art. 3475. A just title is a juridical act, such as a sale, exchange or donation, sufficient to transfer ownership or another real right. La. C.C. art. 3483. Thus, in order to either acquire ownership of the property from Marguerite Davis Bean or by good faith acquisitive prescription, Amanda Davis had to prove she acquired the property by a juridical act translatif of ownership. In this regard, she relied on the quitclaim deed executed in her favor by Marguerite Davis Bean. Thus, the issue is whether the quitclaim deed translated ownership of the property to Amanda Davis.

A quitclaim deed at common law is recognized in the civil law as an assignment of rights without warranty. See La. C.C. art. 2502, comment (c). A quitclaim deed has been held to be a deed translatif of title. In other words, the ownership to immovable property may be as effectually transferred by quitclaim as by any other form of conveyance. **Loutre Land and Timber Company v. Roberts**, 45,355, p. 6 (La. App. 2nd Cir. 8/4/10), ___ So.3d ___, ___; **Waterman v. Tidewater Associated Oil Co.**, 213 La. 588, 603-604, 35 So2d 225, 230-231 (La. 1948). However, for a juridical act to be translatif of ownership, the property description in the instrument must be such that the property intended to be conveyed (or transferred) can be located and identified, and the general rule is that the description must fully appear within the four corners of the instrument itself, or

that the instrument should refer to a map, plat, or deed as part of the description, so that same may be clear. **Loutre Land and Timber Company**, 45,355 at p. 7, ___ So.3d at ___. It is not permissible to indulge in speculation when interpreting deeds to real property. *Id.*

As set forth above, the quitclaim deed described the property as follows:

Lot- 35' x 545' RB B/Laf.^[4] 1 mile above Thibodaux, Above by Thibodaux Brick Works. Below by Julia Davis (Less Lots Sold) Approx 303 Left. (133-126) (351-586) (355-288) 367-65 1053-311 Tax Sale #701982 Act of Co^[5] 1055-834 Act of Correction 1056-70 (Less Future Mineral Rights 500' 122 Notre Dame St

The trial court concluded that the property description contained in the quitclaim deed did not sufficiently describe the property so that it could be located and identified. Specifically, the trial court noted that the quitclaim deed had only two (of potentially three or four) boundaries recorded in the description—"Above by Thibodaux Brickworks" and "Below by Julia Davis." The trial court also noted that the quitclaim deed had an inadequate designation of the dimensions of the property, as it first stated "35' x 545'" but then stated "Less Lots Sold" "approximately 303' left."

The trial court then recognized that, in accordance with the "practice" of the assessor of Lafourche Parish, the various numbers that were contained within parenthesis on the quitclaim deed reflected the conveyance book followed by the page number. For instance, the trial court noted that the first entry, 133-126, was to be interpreted as conveyance book 133, page or folio 126. The court then stated that while it was allowed to look at extrinsic evidence to assist it in interpreting whether a property description is adequate or sufficient to identify the property, there was no extrinsic evidence presented by Amanda Davis. Notably, the conveyance book pages purportedly identified in the deed were not admitted into

⁴ In the trial court's reasons for judgment, it stated that it interpreted "RB B/Laf." to be the right bank of Bayou Lafourche.

⁵ The trial court also stated that it interpreted this to be Act of Correction.

evidence.

Thus, from the evidence presented, the trial court was unable to determine whether the numerical entries within the property description reflected prior juridical acts in the chain of title or whether those numbers reflected lots that had been sold from the property. Additionally, the trial court noted that it was also unable to determine whether the actual numbers contained within the quitclaim deed were accurate. For instance, it was unclear if one would find a juridical act referencing the disputed property in conveyance book 133 on page 126, as suggested by the entry “133-126.”

After reviewing the record in its entirety, the trial court’s factual finding that the property description contained within the quitclaim deed did not sufficiently describe the property so that it could be located and identified is reasonably supported by the record and is not clearly wrong. The quitclaim deed itself fails to fully describe the property’s boundaries and size. And although there appear to be references to other documents within the description—purportedly to deeds or other documents filed in the Lafourche Parish conveyance records—the referenced documents or instruments were not made part of the record. Since we are prohibited from speculating when interpreting the quitclaim deed, we are unable to determine whether those references make the description of the property clear. Thus, the trial court’s ultimate conclusions that the quitclaim deed was not a juridical act translatable of ownership and that Amanda Davis failed to carry her burden of proving that she was the owner of the property either by acquiring the property from a previous owner or by good faith acquisitive prescription was not manifestly erroneous.

Lay Opinion Testimony

In Amanda Davis’s second assignment of error, she asserts that the trial court erred in admitting lay testimony, rather than expert testimony, regarding

whether her mobile home encroached on property possessed by the Dickersons. At the trial of this matter, Martin Dickerson testified as to his co-ownership and possession of the property at issue and to the disturbance of his possession of the property when Amanda Davis moved her mobile home onto it. During his testimony, he was presented with a property map, which included the property at issue, and was asked several questions concerning the encroachment of the mobile home on the property. Amanda Davis objected to the line of questioning on the basis that Martin Dickerson was not qualified to interpret the map, as he did not prepare the map. The trial court sustained the objection as to the testimony, and then allowed the map to be entered into evidence. Thereafter, Martin Dickerson was questioned concerning his personal knowledge of the mobile home being placed on and encroaching on the property at issue.

Based on this testimony, at the motion for new trial, the trial court granted a preliminary injunction and ordered Amanda Davis to remove her mobile home from the property. Amanda Davis argues that it was error to allow Martin Dickerson to offer any opinion as to whether her mobile home encroached upon the property he was possessing and therefore, the judgment of the trial court should be reversed.

Louisiana Code of Evidence article 701 provides:

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (1) Rationally based on the perception of the witness; and
- (2) Helpful to a clear understanding of his testimony or the determination of a fact in issue.

The trial court is vested with broad discretion in determining whether to admit testimony of lay witnesses as to opinions or inferences under this article. La. C.E. art. 701, comment (b). Therefore, an appellate court should not disturb a trial

court's evidentiary ruling on the admissibility of lay opinion evidence absent an abuse of discretion. See Cooper v. Louisiana State Department of Transportation and Development, 2003-1847, p. 4 (La. App. 1st Cir. 6/25/04), 885 So.2d 1211, 1214, writ denied, 2004-1913 (La. 11/8/04), 885 So.2d 1142.

With regard to the testimony of Martin Dickerson that Amanda Davis's mobile home was encroaching on property that he possessed, the trial court stated at the hearing on the motion for new trial, "I do not believe that that is an opinion which would require an expert to testify to. I believe lay people are clearly capable of identifying and testifying whether or not something encroaches upon property that they have ... possessed." Thus, the trial court apparently concluded that Martin Dickerson's testimony was rationally based on his perception and helpful to the determination of a fact at issue in the case. The evidence in the record establishes that Martin Dickerson was very familiar with the property that he possessed and had first-hand knowledge of the encroachment of Amanda Davis's mobile home on that property. Therefore, based on the record before us, we find no abuse of discretion in the trial court's ruling admitting lay opinion testimony of Martin Dickerson, or in its subsequent ruling ordering Amanda Davis to remove her mobile home from encroaching on the property at issue.

CONCLUSION

For all of the above and foregoing reasons, the January 11, 2010 judgment of the trial court is hereby affirmed. All costs of this appeal are assessed to the appellant, Amanda Davis.

AFFIRMED.