Cite as 2009 Ark. App. 732

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA09-146

KEVIN KONECNY, KEITH KONECNY, KELLY KONECNY
APPELLANTS

V.

DWIGHT E. ANDERSON LIVING TRUST, DWIGHT E. ANDERSON, TRUSTEE; WILLIAM ANDERSON
APPELLEES

Opinion Delivered NOVEMBER 4, 2009

APPEAL FROM THE PRAIRIE COUNTY CIRCUIT COURT, [NO. CV-07-52]

HONORABLE BILL MILLS, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Three brothers, Kevin, Keith, and Kelly Konecny, owned a one-half interest in a seventy-seven-acre tract of land identified as Farm #1890 as tenants in common with the Dwight Anderson Living Trust, Dwight Anderson, Trustee, which owned the remaining one-half interest. After a dispute developed regarding the lease of part of the property by Dwight Anderson to his son, William Anderson, Dwight filed a complaint to partition the property. The Konecnys responded and also filed a third-party complaint against the Dwight Anderson Living Trust and William Anderson for conversion. The Prairie County Circuit Court granted the Trust's complaint for partition and ordered the property sold at public auction, dismissed the Konecnys' claim for conversion, and granted judgment to the Konecnys in the amount of $1,415 plus interest for rent against William. On appeal, the

Konecnys contend that the circuit court's failure to find appellees liable for conversion was an error of law and clearly erroneous and that the court's limitation of damages to the rental value of the land in a conversion case was an error of law and clearly erroneous. We find no error and affirm the order of the circuit court.

The Konecnys purchased their one-half interest in the property in 1996; the Trust purchased its interest in the property in 2005 with the intent of eventually acquiring full ownership of the land because the Anderson family owned adjoining land. The property comprised 28.3 acres of crop land and the rest timber. When the Konecnys purchased their interest in 1996, Robert Seidenstricker was farming the crop land for an annual cash lease of $60 per acre—$849 to the Trust and $849 to the Konecnys. He continued to lease the property until 2006. Dwight testified at trial that Mr. Seidenstricker informed him in the summer of 2006 that he would no longer be farming the land after the rice crop was harvested. Dwight also testified that Keith Konecny had informed Dwight that he did not care who farmed the land or whether it was farmed because the Konecnys were more interested in deer hunting. Thus, Dwight said that he orally leased the crop land to his son, William, for $100 per acre, with the understanding that William would pay only the Konecnys (the Trust's rent being forgiven). William testified that he knew Mr. Seidenstricker had farmed the land for an annual cash lease of $60 per acre and that he understood he was to pay a cash lease of $100 per acre. However, neither Dwight nor William told the Konecnys that William had succeeded Mr. Seidenstricker as the farmer or that the rent had been

changed to $100 per acre.

William planted wheat on the land in the fall of 2006. At the same time, he also planted wheat on two other tracts of land owned by him and his brother. On December 13, 2006, William informed the Arkansas Farm Service Agency of the United States Department of Agriculture (FSA) on a form entitled "Report of Commodities, Farm, and Tract Detail Listing" that he would receive 100% of the wheat crop planted on the 28.3 acres on Farm #1890. On December 14, 2006, William signed another FSA form entitled "Direct and Counter-Cyclical Program Contract" that reflected his payment share of the crops on Farm #1890 to be 50%, with the remaining 50% to be divided equally among the Konecnys.

William harvested the wheat in May and June 2007 and sold it, keeping all of the sale proceeds. He planted a soybean crop after he harvested the wheat and signed a second "Report of Commodities, Farm, and Tract Detail Listing" at the FSA office on July 2, 2007, reflecting his share of soybeans and wheat to be 100%. Sometime in late July or early August 2007, Kelly Konecny, an experienced farmer in the area, learned that Mr. Seidenstricker was no longer farming Farm #1890. When Kelly went to the FSA office to find out who was farming the land, he found out that William was farming it. That day, August 3, 2007, Kelly signed the "Direct and Counter-Cyclical Program Contract" on behalf of the Konecnys.

In September 2007, after learning that the Konecnys had contacted Dwight inquiring about their lease payment, William contacted Kelly and offered to pay him the cash lease of $100 per acre. No agreement was reached. William then harvested and sold the soybean

crop in November, keeping all of the proceeds. Dwight, as trustee for the Trust, filed a partition suit on November 27, 2007, and the Konecnys filed a third-party complaint against the Trust and William for conversion of the crops.

After a hearing in which William, Dwight, and Kelly testified, the circuit court entered an order finding that the Trust and the Konecnys were equal co-owners of Farm #1890; that either could have entered into an agreement with a tenant farmer; that the Trust did enter into an agreement with William for the farm year 2007; that William farmed the land in 2007; and that, although William signed up for programs with the United States Department of Agriculture showing a fifty-fifty division of crops, the USDA document was not a lease between William and the Konecnys and was merely a report of information required for participation in the program. The court also determined that demand for a fifty-fifty crop division was untenable in this case because the Konecnys provided no proof that they shared any expenses with William for producing the crops. Thus, the court ordered Farm #1890 to be sold at public auction and ordered William to pay $1,415 plus prejudgment interest of $155.65 to the Konecnys for one-half of the $100 per acre cash rent for William's 2007 lease. The court dismissed all claims against the Trust.

On appeal, the Konecnys contend that the circuit court erred in not finding appellees jointly and severally liable for conversion of their interest in the crops. Our standard of review on appeal from a bench trial is whether the trial judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *McQuillan v. Mercedes-Benz*

Credit Corp., 331 Ark. 242, 249, 961 S.W.2d 729, 733 (1998); Ark. R. Civ. P. 52(a). We view the evidence in a light most favorable to the appellees, resolving all inferences in favor of the appellees. *See McSparrin v. Direct Ins.*, 373 Ark. 270, 272, 283 S.W.3d 572, 574 (2008). Disputed facts and determinations of the credibility of witnesses are within the province of the factfinder. *McQuillan*, 331 Ark. at 249, 961 S.W.2d at 733.

Conversion is a common-law tort action for the wrongful possession or disposition of another's property. *McQuillan*, 331 Ark. at 247, 961 S.W.2d at 732. One commits the tort of conversion when he wrongfully commits a distinct act of dominion over the property of another which is inconsistent with the owner's rights. *Dent v. Wright*, 322 Ark. 256, 262, 909 S.W.2d 302, 305 (1995). If one tenant in common of a chattel sells it without the consent of the other, he and the purchasers who have converted the property to their own use are wrongdoers and may be sued jointly or severally for conversion of the property by the act of sale and retention of the proceeds to the exclusion of the rights of the tenant in common who did not authorize the sale. *Harnwell v. Ark. Rice Growers' Co-op. Ass'n*, 169 Ark. 622, 626, 276 S.W. 371, 373 (1925). The Konecnys contend they owned one-half of the crops that William sold, and thus that he converted their property.

We hold that the circuit court did not clearly err in finding that appellees were not liable for the tort of conversion because the Konecnys did not own any of the crops grown, harvested, and sold by William. The Konecnys cite *Arnold v. Grigsby*, 158 Ark. 232, 249 S.W. 584 (1923), for their proposition that title to crops vests in the co-owners of the land. We

disagree that *Arnold* stands for that proposition. In *Arnold*, Dewey Grigsby planted a crop under the mistaken belief that he owned the land. The true owners of the land sued to recover the value of the crop grown and harvested by Mr. Grigsby. The supreme court affirmed the trial court's denial of this claim. While the court noted that "growing crops form part of the real estate and pass by a conveyance thereof" unless another agreement has been made, the court affirmed the trial court's order requiring the true owners to recover only the reasonable rental value of the land because Mr. Grigsby "planted his crop at a time when he was the apparent owner, and should be afforded the right which would be accorded a mere tenant who might have been in possession at the time—that of keeping his crop and paying the customary rent." *Id.* at 236, 249 S.W. at 585–86.

The Konecnys also cite *Dillard v. Wade*, 74 Ark. App. 38, 45 S.W.3d 848 (2001), in which the court held that a co-tenant in property was liable in conversion for wrongfully cutting timber. We do not find this case instructive because it concerned the conversion, not of crops, but of timber, and "an interest in timber is an interest in the land." *Id.* The Konecnys have cited no case stating that an interest in crops is an interest in the land.

Finally, appellants rely upon *Harnwell*, 169 Ark. 622, 276 S.W. 371. In *Harnwell*, the owner of the land and his tenant entered into an agreement pursuant to which title to the crop planted by the tenant was to be one-half in the tenant and one-half in the landowner. The crop was delivered to the defendant Arkansas Rice Growers' Co-op and sold at the direction of the co-defendant bank. Both defendants knew about the agreement between the

tenant and the landowner. The supreme court held that the trial court erred in dismissing the landowner's complaint for conversion in *Harnwell* because "if the contract between the landlord and a person making the crop on his place shows the intention of the parties to become tenants in common, then the title to the crop raised vests as any other chattels held in common." *Id.* at 624, 276 S.W. at 373.

The crop was owned in part by the landowner in *Harnwell* because the tenant, who grew the crop, entered into an agreement with the landowner to become tenants in common of the crop. There was no such agreement in this case. We disagree with the Konecnys' argument that "Direct and Counter-Cyclical Program Contract" was such an agreement. This contract was between William and the United States Department of Agriculture. The Konecnys knew nothing about this document until nine months after William signed it. The information on the document, including the payment share of fifty percent to William and fifty percent to the Konecnys, was information used to determine eligibility for the USDA's program benefits. Whether William made a misrepresentation regarding the payment shares does not turn this document into an agreement between him and the Konecnys to crop share. While it may have constituted some evidence of an intention to create co-ownership of the crops, there was clearly evidence presented that the parties never made an agreement for co-ownership of the crops. William and Dwight both testified that Dwight orally leased the cropland to William for $100 per acre. The only appellant to testify at trial, Kelly, testified that the Konecnys bought the land in 1996 "mostly for hunting and investments." He said

there was no agreement between William and him or his brothers regarding the crop William grew on Farm #1890, harvested, and sold. Kelly also said that in a fifty-fifty crop share the landlord gets half the crop and pays half the expenses. Kelly said that the Konecnys did not pay any expenses for William's crops and that William never billed them for any expenses. Based upon the evidence presented to the circuit court, we cannot say that its findings on this issue were clearly erroneous.

Because of our disposition upholding the circuit court's finding of no liability for conversion, we do not address the Konecnys' argument regarding the proper measure of damages for conversion.

Affirmed.

BAKER and BROWN, JJ., agree.