Cite as 2009 Ark. App. 855

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-615

THURSTLE MULLEN APPELLANT	**Opinion Delivered** December 16, 2009
V.	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, [NO. CV-2008-0131 (DL)]
AGNES SHOCKLEY, a/k/a LOTTIE SHOCKLEY, SHELIA CHAPMAN, and DAVID CHAPMAN APPELLEES	HONORABLE DAVID N. LASER, JUDGE REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Thurstle Mullen appeals from an order of the Craighead County Circuit Court denying his motion to set aside a summary-judgment order. The grant of summary judgment dismissed with prejudice Mullen's complaint in foreclosure against appellees Agnes Shockley, Sheila G. Chapman, and David Chapman. On appeal, Mullen argues that the trial court erred in 1) granting summary judgment because the petition for revivor filed in Cross County extended the judgment lien in Craighead County; and 2) dismissing his amended complaint filed after the trial court ruled from the bench on the summary-judgment motion, but before the summary-judgment order was filed for record. We reverse and remand.

On June 6, 1994, Margaret Novak won in Cross County a $753,000 judgment against Agnes Shockley. The judgment was recorded in Craighead County on June 23, 1998. A petition for scire facias was filed in Cross County Circuit Court on May 19, 2004, and an order

of revivor was entered on January 10, 2005. The revivor order was filed in Craighead County on January 13, 2005.

However, on August 10, 2004, Shockley deeded real property located in Craighead County to her daughter, Sheila Chapman. The deed was recorded on August 11, 2004. On January 22, 2008, Novak assigned the judgment to Mullen for $2000. On February 22, 2008, Mullen filed a complaint in foreclosure against the appellees, seeking to have the real property that Shockley deeded to Chapman sold to satisfy the judgment. Appellees answered and moved for summary judgment. Relying on *Drum Commission Co. v. Simms*, 89 Ark. 165, 116 S.W. 183 (1909), they asserted that at the time Shockley conveyed the Craighead County real property to Shelia Chapman, no valid judgment lien existed.

The summary judgment motion was heard on December 18, 2008. The trial court ruled from the bench in favor of the appellees. On January 6, 2009, Mullen filed an amended complaint in which he asserted that the transfer of the property was a fraudulent conveyance. The summary-judgment order was filed for record on January 7, 2009. The appellees timely filed an answer. Mullen then filed a motion to set aside the summary judgment on January 22, 2009. In it he alleged that he should be granted a new trial due to irregularity in the proceedings, misconduct of the prevailing party, and the judgment was clearly contrary to the preponderance of the evidence. The trial court denied the new-trial motion, found that the summary judgment stood, and dismissed with prejudice the complaint and amended complaint and Mullen appealed.

As noted previously, there are no disputed material facts before us. Accordingly, this appeal only presents issues of law, which we review de novo. The question of standing is a matter of law for this court to decide. *Pulaski County v. Ark. Democrat-Gazette, Inc.*, 371 Ark. 217, 264 S.W.3d 465 (2007).

Mullen first argues that the trial court erred in granting summary judgment to the appellees because filing the petition for revivor in Cross County extended the judgment lien in Craighead County. He notes that pursuant to Arkansas Code Annotated section 16-65-117 (Repl. 2005), a judgment becomes a lien upon real property of a defendant in a county other than where the judgment was entered only when the judgment is filed in the foreign county. Further, he asserts that under the "plain meaning" of Arkansas Code Annotated section 16-65-501(e) (Repl. 2005),[1] the lien in Craighead County was revived on the date that the scire facias was sued out. Mullen does, however, concede that the case relied upon by the trial judge, *Drum Commission Co.*, *supra*, compels a different conclusion. There, interpreting what is now subsection (d) of Arkansas Code Annotated section 16-65-117,[2] the supreme court held

[1] (e) If a scire facias is sued out before the termination of the lien of any judgment or decree, the lien of the judgment revived shall have relation to the day on which the scire facias issued. However, if the lien of any judgment or decree has expired before suing out the scire facias, the judgment of revival shall be only a lien from the time of the rendition of the judgment.

[2](d) The liens authorized by this section shall continue in force for ten (10) years from the date of the judgment and may be revived. A transcript of the judgment of revivor, when filed in other counties, shall have the same and like effect as a judgment of revivor has in the county in which it is rendered.

that the judgment of revivor did not become effective until it was filed in the foreign county.

We summarily dispense with Mullen's argument because he misapprehends the authority of this court. It is axiomatic that we must follow the precedent set by the supreme court, and are powerless to overrule its decisions. *Rice v. Ragsdale*, 104 Ark. App. 364, 292 S.W.3d 856 (2009).

Mullen next argues that the trial court erred in granting summary judgment on the claims of fraudulent conveyance and constructive trust because the appellees never moved for summary judgment on those claims, and those claims presented issues of material fact. We find merit in this argument.

We acknowledge that the trial court is given broad discretion to determine whether an amendment should be allowed to stand and only abuse of that discretion will require reversal. *Dupree v. Twin City Bank*, 300 Ark. 188, 777 S.W.2d 856 (1989). However, a clearly erroneous interpretation or application of a law or rule will constitute a manifest abuse of discretion. *See Little Rock Wastewater Util. v. Larry Moyer Trucking, Inc.*, 321 Ark. 303, 902 S.W.2d 760 (1995).

The plain language of Arkansas Civil Procedure Rule 15 clearly encourages liberal amendments of pleadings. *Dupree, supra.* Rule 15(a) states in pertinent part:

> [A] party may amend his pleadings at any time without leave of the court. Where, however, upon motion of an opposing party, the court determines that prejudice would result or the disposition of the cause would be unduly delayed because of the filing of

> an amendment, the court may strike such amended pleading or grant a continuance of the proceeding.

When we interpret a rule of civil procedure, we are obligated to construe it just as it reads, giving words their ordinary and usually accepted meaning in common language. *Wilson v. Dardanelle Dist. of Yell County Dist. Court*, 375 Ark. 294, 290 S.W.3d 1 (2008). Accordingly, wherein Rule 15(a) permits the filing of an amended complaint "at any time," we must conclude that it means at any time before the entry of a final judgment.[3] Under Rule 58 of the Arkansas Rules of Civil Procedure, a judgment or decree is only effective when it is "entered."

We note further, that the supreme court stated in *Kay v. Economy Fire & Casualty Co.*, 284 Ark. 11, 678 S.W.2d 365 (1984), that the committee that drafted Rule 15 intended that "amendments to pleadings should be allowed in nearly all instances without special permission from the court." It is incumbent upon the opposing party to timely object to an amendment and assert that prejudice or undue delay in the disposition of the case would result. Ark. R. Civ. P. 15(a). Here, rather than moving to strike the amendment, the appellees timely filed an answer. Moreover, we believe that Mullen acted without significant delay in amending his pleadings—he did so before the time had elapsed for him to file a Rule 59 motion. *Cf. Dupree, supra*.

---

[3] By so holding, we wish to note that this is not the situation contemplated by subsection (b) of Arkansas Civil Procedure Rule 15, which clearly allows amendment of the pleadings even after judgment so as to make the pleadings conform to the proof.

Accordingly, we hold that the trial court misapplied Rule 15(a), and as a consequence abused its discretion in refusing to consider the amended pleadings. Because the appellees' summary-judgment motion did not address the new claims raised in the amended complaint, we hold that the trial court erred in denying Mullen's Rule 59 motion. We therefore reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

VAUGHT, C.J., and ROBBINS, J., agree.