ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-1182

MONTE R. PIKE and SANDY M. PIKE, APPELLANTS V. JANICE SPRADLIN and ESTATE OF CARRIE OLGA BOLING, DECEASED APPELLEES	**Opinion Delivered** MAY 13, 2009 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT, [NO. CV-06-90-3] HONORABLE JAY T. FINCH, JUDGE AFFIRMED

KAREN R. BAKER, Judge

Appellants Monte and Sandy Pike appeal from an order of the Benton County circuit court reforming their 1994 deed from Danny Boling. For the reasons discussed herein, we affirm.

The property described in the deed is located in the Davidson Subdivision of the town of Hiwassee in Benton County. In 1961, Cecil and Carrie Boling purchased two adjacent lots in the subdivision, Lot 6 on the north and Lot 7 to the south. During the Bolings' ownership, a fence ran east and west across their property.

In 1973, the Bolings deeded their son Robert one acre north of the fence line. In 1979, Robert deeded that property to his brother, Danny Boling, and the elder Bolings deeded Danny the remainder of Lots 6 and 7, less and except certain described portions of Lot 7. According to the testimony of Boling family members, the intent of these conveyances was to grant Danny approximately 5.5 acres north of the fence, with the elder Bolings retaining

the property south of the fence. It was later determined that the deeds' descriptions actually reflected a conveyance to Danny of approximately eight acres, including land south of the fence.

In 1994, Danny contracted with appellants Monte and Sandy Pike to sell them 5.52 acres. Danny's deed to the Pikes contained a description similar to those in the deeds from his family in 1979. In 2004, the Pikes commissioned a survey, which revealed that Danny's deed to them described a total of 8.13 acres, including 2.71 acres south of the fence. At that point, the Pikes demanded that the Boling family cease all activity on the land south of the fence. The executrix of Ms. Carrie Boling's estate, appellee Janice Spradlin, filed suit in 2005 asking the circuit court to reform the erroneous descriptions in the 1979 and 1994 deeds to reflect an intended conveyance of approximately five-and-one-half acres north of the fence. Danny answered pro se and agreed that the deeds should be reformed. The Pikes denied the allegations in Spradlin's complaint and asserted the defense of estoppel by deed.

The case was tried to the circuit judge. Surveyor Michael James testified that Danny's deed to the Pikes described 8.13 acres, which consisted of 5.42 acres north of the fence and 2.71 acres south of the fence. James said that Danny's deed to the Pikes conveyed the same land that Danny had received from his brother and his parents in 1979. Danny's siblings testified that the 1979 deeds to Danny were meant to convey approximately five-and-one-half acres above the fence that, according to them, had always been considered a boundary line. They said that their parents, Cecil and Carrie Boling, used the property south of the fence after the 1979 conveyances to Danny, and that Carrie Boling, after being widowed, continued

to use the land south of the fence following Danny's 1994 conveyance to the Pikes. The Boling siblings further said that the Pikes never claimed an interest in the property south of the fence prior to 2004 and that the Pikes once moved some sewer lines on the south side of the fence back across the north side at Carrie Boling's request. Danny Boling testified that he told the Pikes that the fence represented the southern boundary of his property and that his mother, Carrie Boling, owned the property south of the fence. Danny also referred to the 1994 real-estate contract signed by himself and the Pikes, which reflected an intended conveyance of 5.52 acres.

In contrast, Monte Pike testified that Danny did not tell him that the fence was the southern border of the property. Pike said that he thought he owned land south of the fence, but he did not know how much. Pike admitted that he had trouble with reading and trouble with his memory but thought he had purchased approximately seven acres. Pike also stated that he did not use the property south of the fence and that the Boling family used that property for approximately ten years after the Pikes' 1994 purchase. Sandy Pike likewise testified that she and Mr. Pike never interfered with Carrie Boling's use of the property south of the fence between 1994 and 2004.

After hearing the above evidence, the circuit court issued a letter ruling reforming the Pikes' deed to describe 5.42 acres lying north of the fence. The court found that Danny had intended to sell and the Pikes had intended to buy approximately 5.5 acres north of the fence and that the deed from Danny to the Pikes mistakenly described 8.13 acres, including 2.71 acres south of the fence. However, the court also declared that Danny warranted clear title

to the land described in the deed, and the court ordered an appraisal to ascertain any lost value to the Pikes.

Upon receiving the court's letter ruling, Janice Spradlin and Danny Boling filed a joint motion for reconsideration. They argued that the court's breach-of-warranty finding was inconsistent with its finding that the deed should be reformed due to mutual mistake. The court agreed and deleted the breach-of-warranty finding from its ruling. On October 17, 2007, the court entered a judgment reforming the 1994 deed to reflect the Pikes' ownership of all of Lot 6 and that portion of Lot 7 lying north of the fence, as described on the 2004 survey, and to reflect the Boling estate's ownership of the 2.71 acres south of the fence, which was described in the same survey as Lot 7-A. This appeal followed.

We review traditional equity cases, such as those involving reformation, de novo. *Statler v. Painter*, 84 Ark. App. 114, 133 S.W.3d 425 (2003). We do not reverse the circuit court's findings of fact unless they are clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the firm conviction that a mistake has been committed. *Royal Oaks Vista v. Maddox*, 372 Ark. 119, 271 S.W.3d 479 (2008).

The Pikes argue first that the circuit court erred in finding that the Bolings conveyed the same property to Danny in 1979 that Danny conveyed to the Pikes in 1994. In reviewing the court's rulings, we detect no such finding. Furthermore, the Pikes stipulated prior to trial that the 1979 deed from the Bolings to Danny contained the same description as the deed from Danny to the Pikes. The Pikes are bound by their stipulation and should not be heard

on appeal to assert an argument that is contrary to it. *See generally Sec. Pac. Housing Servs. v. Friddle*, 315 Ark. 178, 866 S.W.2d 375 (1993); *Rooker v. City of Little Rock*, 234 Ark. 372, 352 S.W.2d 172 (1961).

Next, the Pikes contend that the circuit court erred in finding that the subdivision property "apparently had not been surveyed" between 1911 and 2004. The Pikes point out that the 1979 and 1994 deeds in this case contain metes and bounds descriptions, and they argue that those descriptions could only have come from a survey performed after the 1911 survey, which was little more than a block plat. However, the Boling witnesses testified that they did not know the source of the deeds' legal descriptions and that they, along with surveyor Michael James, were unaware of any surveys other than the ones performed in 1911 and 2004. Under these circumstances, we cannot say that the circuit court clearly erred in determining that the property apparently had not been surveyed between 1911 and 2004.

The Pikes' third argument concerns the motion for reconsideration filed by Janice Spradlin and joined in by Danny Boling. The motion asked the court to re-visit its decision to award the Pikes breach-of-warranty damages against Danny. The Pikes argue that Spradlin was not harmed by the court's breach-of-warranty ruling and therefore had no standing to move for reconsideration. Whether Spradlin had standing or not, Danny Boling was clearly prejudiced by the court's ruling and stood to benefit from the court's reconsideration of it. Danny therefore had standing to file the motion. *See Springdale Sch. Dist. v. Evans Law Firm*, 360 Ark. 279, 200 S.W.3d 917 (2005) (recognizing that a person who suffers an injury or a prejudicial impact has standing to raise a legal challenge). The fact that Danny joined in the

motion filed by Spradlin instead of filing his own motion does not deprive him of standing.

Next, the Pikes contend that reformation was barred by the doctrine of estoppel by deed. Estoppel by deed bars one party to a deed and his privies from asserting as against the other party and his privies any right or title in derogation of the deed, or from denying the truth of any material facts asserted. *Cummings v. Shults*, 91 Ark. App. 48, 207 S.W.3d 572 (2005). A grantor is estopped to assert anything in derogation of his deed; thus, a specific recital in a deed, to the effect that the grantor has title to or that he is in possession of the land conveyed, will estop him from asserting the contrary as against the grantee. *Id*.

Estoppel by deed does not prohibit reformation of a deed where the prerequisites for reformation are present. *See* 7 Joseph Perillo, *Corbin on Contracts* § 28.33 (rev. ed. 2002); *Groff v. Kohler*, 922 P.2d 870 (Alaska 1996); *Dennett v. Mt. Harvard Dev. Co.*, 604 P.2d 699 (Col. App. 1979). As a practical matter, reformation of a deed would be virtually impossible if a grantor could not contradict the recitations in his deed. The rationale behind the equitable remedy of reformation is that the deed mistakenly fails to reflect the parties' agreement and should therefore be altered. *See Statler*, *supra*.

The Pikes rely on *Cummings*, *supra*, but its fact situation is inapposite. There, we held that a party in a boundary line dispute could be estopped from claiming that a boundary was in a different location than he had represented in his deed. Unlike the present case, *Cummings* did not involve mutual mistake or reformation but rather a situation in which a party knowingly represented one thing in a deed while simultaneously asserting another.

Finally, the Pikes argue that the circuit court erred in reforming the 1994 deed.

Reformation is an equitable remedy that is available when the parties have reached a complete agreement but, through mutual mistake, the terms of their agreement are not correctly reflected in the written instrument purporting to evidence the agreement. *Statler*, *supra*. A mutual mistake is one that is reciprocal and common to both parties, each alike laboring under the same misconception in respect to the terms of the written instrument. *Id*. A mutual mistake must be shown by clear and decisive evidence. *Id*. However, the proof need not be undisputed. *Id*. The test on review is not whether we are convinced that there is clear and convincing evidence to support the trial judge's findings but whether we can say that the trial judge's findings are clearly erroneous. *Id*. Furthermore, even in reformation cases, where the burden of proof is by clear and convincing evidence, we defer to the superior position of the trial judge to evaluate the evidence. *Id*. Whether a mutual mistake warranting reformation occurred is a question of fact. *Id*.

Contrary to the Pikes' argument, reformation is a proper remedy where the buyer and seller intend to enter a transaction involving a certain quantum of land and the deed mistakenly describes a different, larger area. *See, e.g., Colbert v. Gann*, 247 Ark. 976, 448 S.W.2d 649 (1970); *Meeks v. Borum*, 240 Ark. 805, 402 S.W.2d 408 (1966); *Warner v. Eslick*, 239 Ark. 157, 388 S.W.2d 1 (1965); *City of Ft. Smith v. France*, 234 Ark. 477, 353 S.W.2d 186 (1962); *Wood v. Wood*, 207 Ark. 518, 181 S.W.2d 481 (1944). In the present case, the evidence demonstrated that Danny intended to sell and the Pikes intended to buy approximately five-and-one-half acres north of the fence rather than 8.13 acres covering both sides of the fence, as described in the deed. In particular, the real-estate contract, which was

signed by Danny and the Pikes, shows that both the grantor and the grantees contemplated a deal for 5.52 acres. Further, Danny testified that he considered the fence to be the southern border of his property and that he relayed that information to the Pikes. Danny also said that he told the Pikes that his mother owned the property south of the fence. Consistently with this, the Pikes did not interfere with Mrs. Boling's use of the southern tract during the ten years after they purchased their land. Given these circumstances, the court's decision to reform the contract was not clearly erroneous. *See Colbert*, *supra*; *Meeks*, *supra*; *Warner*, *supra*; *France*, *supra*; *Wood*, *supra*.

The Pikes argue that the Boling witnesses' testimony was self-serving and that the court should have given more credit to Sandy Pike's testimony. However, we defer to the superior position of the trial judge to evaluate the evidence. *Statler*, *supra*. The Pikes also argue that their acquiescence in Mrs. Boling's use of the land south of the fence was permissive. Again, this is a credibility determination for the circuit court. *Id*. The Pikes' allowing Mrs. Boling to use the south tract for ten years is equally if not more indicative of the Pikes' belief that they did not own that tract.

The Pikes further contend that Danny and his predecessors cannot seek reformation because they must have known what land was described in their deeds. The Pikes cite *Whisenhunt v. First State Bank of Conway*, 79 Ark. App. 395, 90 S.W.3d 438 (2002), where we denied reformation to a party who was aware of the true facts of a real-estate transaction. We note initially that *Whisenhunt* involved reformation based on fraud rather than mutual mistake. A party cannot seek reformation based on fraud if he knows the true facts. In any event, the

evidence in this case does not indicate knowledge by the Boling family that the deeds described 8.13 acres of land rather than the intended conveyance of approximately 5.5 acres. Surveyor Michael James testified that the deeds in the Davidson Subdivision contained numerous discrepancies and were a "mess." Further, the Boling family stated that, through several conveyances, Mrs. Boling retained ownership of the land south of the fence and that any deeds indicating otherwise were a mistake.

In light of the foregoing, we affirm the circuit court's order reforming the 1994 deed. Our decision makes it unnecessary for us to address Spradlin's alternative argument for affirmance based on adverse possession.[1]

Affirmed.

VAUGHT, C.J., and MARSHALL, J., agree.

[1] The Pikes argue briefly that the circuit court erred in not allowing them to recover damages from Danny for breach of warranty. However, where a circuit court grants reformation of a deed, the parties to the deed receive what they actually contracted for, and breach-of-warranty damages should not be awarded. *See Wood*, *supra*.