Not Designated For Publication

# ARKANSAS COURT OF APPEALS

DIVISION II
**No.** CA08-436

ELVIS E. YARBROUGH
APPELLANT

V.

RALPH L. MACK AND JANIS MACK
APPELLEES

**Opinion Delivered** October 1, 2008

APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT,
[NO. CV-07-733]

HONORABLE RHONDA WOOD, JUDGE

AFFIRMED

**SARAH J. HEFFLEY, Judge**

Appellant Elvis Yarbrough brings this appeal from a decree reforming a deed by which appellees, Ralph and Janis Mack, conveyed to appellant two lots in Hendrickson Acres located in Faulkner County. For reversal of that decision, appellant contends that appellees' request for reformation was barred by a five-year statute of limitation and that the trial court erred by *sua sponte* allowing an amendment to appellees' pleadings. We affirm.

On August 1, 1993, the parties entered into a land-sale contract whereby appellant purchased the lots from appellees for $24,838. The purchase price was to be paid in monthly installments, and the agreement contained a provision stating "[n]o mineral rights conveyed." The contract was filed of record on August 12, 1993. When the debt was satisfied, appellees executed a warranty deed conveying the property to appellant, and the deed was filed of record on July 8, 1996. The deed, however, contained no reservation of the mineral rights.

In the fall of 1998, the county tax assessor's office brought to appellees attention the discrepancy between the contract and the deed with regard to the mineral rights. Based on the advice of the title company that had prepared the 1996 deed, appellees executed a correction deed that was filed of record on February 10, 1999. The correction deed included the following provision:

> This deed is given by the grantors to the grantees to make mention that in a Warranty Deed executed by grantors to grantees, dated July 3, 1996, filed for record in Warranty Deed Book 635, page 681, that no mineral rights were to be conveyed with the property. Said mineral reservation was inadvertently omitted from said deed. This instrument is being recorded to in fact reserve by grantors all oil, gas and minerals in, on and under lands.

Appellant instituted this lawsuit in September 2007 by filing a declaratory judgment action, in which he sought to strike and set aside the correction deed. Appellees answered the complaint and filed a counterclaim requesting reformation of the 1996 deed on the ground of mutual mistake. Appellees subsequently moved for summary judgment on their counterclaim. They alleged in their motion, which was supported by affidavits and the land-sale contract, that neither party intended the conveyance to include mineral rights and that the deed omitted the reservation of mineral rights due to a drafting error. Also, appellees conceded in the motion that the correction deed was invalid. In response, appellant asserted, without supporting affidavit, that the mistake in the deed was unilateral and unaccompanied by fraud. Appellant also contended that appellees' claim for reformation was barred by laches and the five-year statute of limitations found at Ark. Code Ann. § 16-56-111 (Repl. 2005).

The case was submitted to the trial court on the motion for summary judgment. The parties waived a hearing on the merits and agreed to let the court decide the matter based on

the pleadings. By written order, the trial court ruled that appellees had made a prima facie showing of entitlement to summary judgment on their claim for reformation. The court noted that the contract of sale was a clear expression of the parties' mutual intent to exclude mineral rights from the conveyance, and the court concluded that the failure of the deed to contain a reservation was the result of a drafting error. With a prima facie case shown, the trial court granted appellees' motion for summary judgment because appellant had not denied the assertion that the deed should have contained a mineral-right reservation, and because he failed to offer any evidentiary support for his allegation that the mistake was unilateral. The trial court also ruled that appellees' claim for reformation was not untimely.

In his first point, appellant argues that appellee's claim for reformation was barred by the five-year statute of limitations for writings under seal set out in Ark. Code Ann. § 16-56-111 (Repl. 2005). We are not convinced, however, that the trial court ruled on the statute of limitations issue raised by appellant. In finding that appellees' claim was not untimely, the trial court distinguished the case of *Smith v. Olin Industries, Inc.*, 224 Ark. 606, 275 S.W.2d 439 (1955), where it was held that laches barred a claim for reformation where there was a seventeen-year delay in bringing suit. We thus construe the trial court's ruling as only addressing appellant's contention that appellees' claim was barred by laches, but not his argument concerning the statute of limitations. In order to preserve an issue for appellate review, appellant was obligated to obtain a specific ruling on it from the trial court. *Reed v. Guard,* ___ Ark. ___, ___ S.W.3d ___ (June 19, 2008). We will not review a matter on which the trial court has not ruled, and a ruling will not be presumed. *Id.*

In addition, we are not persuaded that the statute of limitations relied upon by

appellant is applicable to a claim for reformation of a deed. *Cf.* Ark. Code Ann. § 18-61-101 (Repl. 2003) (governing actions to recover land, tenements or hereditaments). Appellant has not cited any case law applying Ark. Code Ann. § 16-56-111 or any other statute of limitations to a claim in equity for reformation. We also note that, in a proper case, a court of equity will not be bound by a limitations period fixed by statute where it would be inequitable or unjust to do so. *See Meath v. Phillips County*, 108 U.S. 553 (1883); *Indiana & Arkansas Lumber & Mfg. Co. v. Brinkley,* 164 F. 963 (E.D. Ark. 1908). Appellant's point on appeal raises questions that are not developed in either his arguments before the trial court or us on appeal. Assignments of error that are unsupported by convincing argument or authority will not be considered on appeal unless it is apparent without further research that they are well taken. *Sparrow v. Arkansas Dep't of Health and Human Services*, 101 Ark. App. 193, ___ S.W.3d ___ (2008). We simply will not address issues that are not appropriately developed. *Hendrix v. Black*, 373 Ark. 266, ___ S.W.3d ___ (2008).

Appellant next argues that the trial court erred in concluding that appellant was put on notice of the mistake in the original deed by the filing of the correction deed. Appellant claims error based on the assertion that the trial court's conclusion amounts to a *sua sponte* amendment of appellees' pleadings to include an argument that appellant's petition for declaratory judgment was barred by limitations. We do not see that this argument provides any basis for reversal because the trial court's statement was not interposed as a bar to appellant's declaratory judgment action. That matter had become moot by the parties' agreement that the correction deed was invalid, as clearly recognized by the trial court in its order.

As stated, appellant has raised the two enumerated issues discussed above. Interspersed within these issues are tid-bits of arguments that appellant also raised below, but it is not altogether clear whether appellant is asserting these issues on appeal. Out of an abundance of caution, we will briefly address these points.

In response to appellees' claim for reformation, appellant asserted the defense of "estoppel by deed," maintaining that appellees could not obtain reformation because of the rule enunciated in *Henry v. Texaco Co.*, 201 Ark. 996, 147 S.W.2d 742 (1941), that a grantor is not competent to impeach his own deed. The rule appellant speaks of applies to recitals in deeds concerning such things as title and possession of the land. Here, appellees were not disavowing their interest in the land, so this rule does not apply. Moreover, to accept appellant's argument would be to emasculate the remedy of reformation of a deed, even where there is a mutual mistake. As did the trial court, we reject appellant's argument.

Appellant also contends that the mistake in this case was unilateral because he had no hand in preparing the deed. This fact does not make the mistake any less mutual. In reformation cases, the issue is whether the document truly expresses the agreement made by both parties. *See Lambert v. Quinn*, 25 Ark. App. 184, 798 S.W.2d 448 (1990) (mutual mistake found even where one party did not read the deed).

Lastly, appellant argued below that the claim for reformation was barred by laches. The doctrine of laches is based on a number of equitable principles that are premised on some detrimental change in position made in reliance upon the action or inaction of the other party. *Jaramillo v. Adams*, 100 Ark. App. 335, ___ S.W.3d ___ (2007). Laches or estoppel does not arise merely by delay, but by delay that works a disadvantage to the other. *Id.* So long as the

parties are in the same position, it matters little whether one presses a right promptly or slowly. *Id.* Appellant asserted no prejudice or detrimental reliance. The case he relies upon, *Smith v. Olin Industries*, 224 Ark. 606, 275 S.W.2d 439 (1955), is distinguishable. There, the seventeen-year delay in bringing a cause of action for reformation was barred by laches because the rights of bona fide purchasers had intervened. We affirm on this point as well.

For the reasons discussed herein, we affirm the trial court's decision.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.