

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-285

BRETT A. DAVIS, ARNEVA K. DAVIS,
and MARK A. DAVIS

APPELLANTS

V.

JEREMY GILLAM, CARISSA GILLAM,
DOUG GILLAM, LEXMIN, LLC,
CHESAPEAKE EXPLORATION, LLC,
and FIRST COMMUNITY BANK

APPELLEES

Opinion Delivered December 7, 2011APPEAL FROM THE WHITE COUNTY
CIRCUIT COURT

[No. CV-09-634-2]

HONORABLE ROBERT EDWARDS,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellants Brett Davis, Arneva Davis, and Mark Davis claim that the trial court erred in granting the counterclaim of appellees Jeremy Gillam, Carissa Gillam, Doug Gillam, Lexmin, LLC, Chesapeake Exploration, LLC, and First Community Bank for quiet title based on an oral contract for the purchase of real property. Specifically, appellants argue that there was not clear and convincing evidence of the terms of the oral contract in regard to the purchase price; that the trial court erred in its conclusion that Dennis Gillam (father of appellees Doug and Jeremy) was appellees' "natural guardian" and acted as their agent in negotiation and purchase of the real property in question; that the trial court erred in its dismissal of appellants' complaint for ejectment after finding that the deed through which appellees claimed ownership was a forgery; and that the trial court erred in finding that it had jurisdiction to quiet title in this case despite appellants' contention that the statutory notice requirements were not strictly met. We disagree

and affirm on all points.

Appellants owned approximately two hundred acres in White County, Arkansas. In 1997, Dennis Gillam entered into an oral agreement with appellants. The parties concede the existence of this oral agreement; the only dispute concerns the precise terms of the agreement and whether there was performance of the contract. According to his trial testimony, Dennis Gillam agreed to purchase the land for a payoff of the mortgage in the amount of \$137,218.34, plus \$70,000 payable after the mortgage was paid off in full. Appellants were to remain on the land until they could build a new residence. Once the additional \$70,000 was paid, Dennis Gillam's sons, Jeremy and Doug, would take possession of the land.

Appellants disputed Dennis Gillam's version of the contract and claimed that the purchase price was \$290,000, which included the mortgage payoff. They acknowledge that Dennis Gillam did pay off the mortgage and tendered additional payments of \$25,000 and \$30,000. However, appellants claimed that he still owed approximately \$100,000. Dennis Gillam testified that he fully performed the oral contract and, accordingly, appellants placed appellees in possession of the land. According to Dennis Gillam's trial testimony, once in possession of the land, his sons made substantial improvements to the land in the ensuing years.

Appellants eventually filed suit seeking to eject Doug and Jeremy Gillam from the property on August 19, 2009. In their complaint, appellants alleged that they were the "titled owners" of the property and they were entitled to eject Doug and Jeremy Gillam because of a forged deed.¹ The complaint alleged that appellee First Community Bank (FCB) had a lien

¹The existence (or lack thereof) of a forged deed, although an interesting question, is not an issue in this appeal.

interest in the property based on several mortgages. Doug and Jeremy Gillam and FCB filed answers to the complaint. Doug and Jeremy Gillam asserted a counterclaim on December 23, 2009, seeking an order quieting title based on their assertion that their father had purchased the property for them in 1997.

After a bench trial on November 22, 2010, the circuit court entered a judgment and a letter opinion. The court found that Dennis Gillam's testimony relating to the terms of the oral contract was more credible than the testimony of appellants and that the evidence showed that he had in fact purchased the property for his sons for the mortgage pay-off, plus \$70,000. The court also found that Dennis Gillam had fully performed the contract. Finally, the court ruled that the oral contract was enforceable, and quieted title in Doug and Jeremy Gillam. Appellants responded with a timely appeal that is now the subject of our review.

On appeal, we must determine whether the circuit court's finding that Dennis Gillam purchased the property for his sons through an oral contract was clearly erroneous. As a starting point, we note that appellants' "lack of capacity" argument is misplaced and is not essential to the resolution of the question on appeal. Contrary to appellants' argument, Dennis Gillam did not bind his sons to a contract. Instead, he entered into a contract for their benefit under which he was the only obligee. Parties may contract for the benefit of third parties, who in turn may enforce the agreement. *Perry v. Baptist Health*, 358 Ark. 238, 245, 189 S.W.3d 54, 58 (2004) (holding that a "contract is actionable by a third party when there is substantial evidence of a clear intention to benefit that third party"). Doug and Jeremy Gillam's quiet-title action is simply an effort to enforce an agreement made for their benefit, and they have indicated their acceptance of the purchase of the property by working and improving the land for several years.

Lack of capacity is not a defense to a contract when the party lacking capacity affirms the contract. *Id.* at 245, 189 S.W.3d at 58.

The evidence supports the court's finding that Dennis Gillam purchased the property for his sons. He testified that during his negotiations with Brett Davis he informed Davis "that the boys would take possession of the property immediately." He also testified that he bought the property for his sons—that he was buying it and giving it to them. There is ample evidence supporting the court's conclusion that Dennis Gillam purchased the land, that he was of sufficient age to validly enter into a contract, and that after he gave the property to his sons, they possessed and improved the land.

Moving to the crux of the issue on appeal, we consider the trial court's findings of fact relating to Dennis Gillam's performance of the oral contract. On appeal, we will not reverse the trial court's findings unless they are clearly erroneous or against the preponderance of the evidence. *Foundation Telecommunications, Inc. v. Moe Studio, Inc.*, 341 Ark. 231, 240, 16 S.W.3d 531, 537 (2000). Additionally, we will defer to the trial court's credibility assessments. *Id.*, 16 S.W.3d at 537. At trial, Dennis Gillam testified that the parties agreed to a contract with the following terms: 1) that he pay off the \$137,218.34 mortgage for the land; 2) allow the Davises to live on the property until they could complete construction on their new home; and 3) pay an additional \$70,000 to the Davises once Doug and Jeremy Gillam were permitted to take possession of the land. Dennis testified that contrary to the Davises' assertion, they never discussed a \$290,000 purchase price. He also testified that he fully performed the contract and that Doug and Jeremy took possession of the land.

The trial court found Dennis Gillam's testimony, albeit confusing at times, to be more

credible than that of the Davises. Specifically, the court placed great weight on the fact that the Davises were facing severe financial difficulties (which ultimately ended in bankruptcy), yet failed to attempt to collect on the alleged \$100,000 debt. This finding is supported by the record, which shows that the Davises filed for bankruptcy protection in 1999, a little over a year after the parties entered into the agreement for the sale of the property. The trial court was also heavily persuaded by the fact that, in the record of the Davises' bankruptcy hearing submitted in this trial, the papers listed neither the \$100,000 allegedly owed them from Dennis Gillam nor an interest in the property. The lengthy schedule submitted by the Davises included only one piece of real property (their new residence), yet the filing was extremely detailed.² The trial court held that the omissions were proof of the Davises' belief that the property had been sold with the purchase price paid in full.

Next, the trial court noted that the fact that the Davises waited almost eight years before making any attempt to collect the so-called debt was suspicious. The court reasoned that the natural inference is that the Davises did not believe a debt was owed. Also, the record reflects that the Gillams made over \$1 million in improvements to the land, including chemical-storage units, barns, and irrigations systems. Brett Davis testified that he had knowledge that Doug and Jeremy Gillam began making substantial improvements to the land after taking possession and continued to do so over the ensuing years.

Sufficient evidence exists in the record to support that the circuit court's findings were not clearly erroneous or against the preponderance of the evidence. The evidence presented

²Under the "personal property" section of the Davises' bankruptcy filing, a dog valued at ten dollars was listed.

supports the finding that Dennis Gillam entered into a valid oral contract with appellants and performed according to the terms of the contract for the benefit of his sons. Therefore, the trial court's decision to quiet title in favor of Doug and Jeremy Gillam is affirmed. As a result, appellants' ejectment claim naturally fails as it is dependent on a finding that either a valid contract did not exist and or that it was not performed. A party who no longer has an interest in the land cannot have a claim for ejectment. Ark. Code Ann. § 18-60-201 (Repl. 2002) (establishing that an "action for ejectment may be maintained in all cases in which the plaintiff is legally entitled to the possession of the premises"). Therefore, the trial court did not err in dismissing the ejectment complaint as it could not stand in conjunction with a valid quiet title.

Finally, appellants claim that because the notice requirement of Ark. Code Ann. § 18-60-503 (Repl. 2002) was not met, the circuit court did not have jurisdiction to render a judgment in the case. However, this argument is a nonstarter. The code section and corresponding case law cited by appellants in pursuit of this argument detail the importance of giving notice to the record owner of the land when an adverse party is seeking to gain the land by quieting title. However, the code section is inapplicable here, because the record owners had more than adequate notice of the action—they were parties to the case. The trial court correctly found that the notice requirements outlined in *Koonce v. Mitchell*, 341 Ark. 716, 19 S.W.3d 603 (2000), were satisfied based on the fact that the record owners of the land were a party to the suit.

Affirmed.

PITTMAN and GRUBER, JJ., agree.