

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002230-MR

RONNIE REAMS
ROSA H. REAMS

APPELLANTS

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA ADAMS, JUDGE
ACTION NO. 92-CI-757

WALLACE CHRISMAN
MARJORIE CHRISMAN

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, EMBERTON AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Ronnie and Rosa Reams (the Reamses) appeal from an amended and corrected judgment of the Madison Circuit Court entered on March 19, 1998. The amended judgment set aside a prior judgment entered quieting title to a disputed piece of property in favor of the Reamses and instead found in favor of Wallace and Marjorie Chrisman (the Chrismans) as to the disputed property. We affirm.

The factual and procedural history of this case is quite complicated, requiring us to spend a considerable amount of time laying out the events that led to the dispute at hand.

Factually, the Chrismans and the Reamses own adjoining property

in Madison County. The Chrismans purchased their property in 1970 from Burnam Baker (Baker). At the time of purchase, Baker showed the Chrismans the boundary lines of the property. Specifically, Baker showed the Chrismans the fence line that separated their property from the property eventually purchased by the Reamses.

The Reamses purchased their property in 1978 from Marvin and Kathryn Wethington. At the time the Reamses purchased their property, they placed into the records of the Madison County Clerk's Office an affidavit from Baker regarding the boundaries of the property they purchased. Paragraph two of the affidavit states:

That this property has been surrounded by a fence and that portion of the fence adjacent to the Old Bark Road and Baker property has been in existence for over 50 years and that the remaining fence around the perimeter of the property to the new Bark Road has been in existence for over forty years and there is a new fence along the road frontage so that the entire property is now under fence.

This affidavit was filed immediately proceeding the Reamses' deed. In 1992, the Reamses tore down the fence separating their property from the Chrismans.

Procedurally, the Chrismans filed a complaint in the Madison Circuit Court on November 25, 1992. In that complaint the Chrismans alleged that the Reamses had trespassed upon their property and sought to quiet title in the disputed area. In dispute was the area of property located between the former fence line and the old mountain road, where the Reamses claim their

property line extended.¹ A trial to the court was held on December 9, 1997. Prior to the trial date, on April 1, 1996, Judge Julia Hylton Adams, the parties (or their representatives) and their respective counsel physically walked and observed the property in dispute. At trial, the court heard testimony from nineteen witnesses, including two land surveyors. After reviewing the testimony and the evidence presented at trial and upon considering the arguments presented by counsel on both sides, the trial court entered a Judgment in favor of the Reamses on January 26, 1998.²

On February 5, 1998, the Chrismans filed two motions for reconsideration based upon factual errors by the trial court. The trial court heard the motions on February 12, 1998. On March 19, 1998, the trial court issued an amended and corrected judgment Pursuant to CR 52, acknowledging that it had erred in its reading of the chain of title. In its Amended and Corrected Judgment the trial court set aside its previous judgment in favor of the Reamses and instead found in favor of the Chrismans on the property dispute.³ Specifically, the trial court found that the Reamses were aware of the boundaries of their property in 1978

¹The complaint also contained unrelated allegations against Walter and Flossie Hill(the Hills) for trespass and conversion of trees and logs.

²The trial order also resulted in judgment in favor of the Chrismans as to their claims of trespass and conversion against the Hills.

³The trial court let stand its judgment in favor of the Chrismans with regard to their dispute with the Hills in all respects except "intent" to convert.

when they relied upon the affidavit of Baker, which they recorded at the Madison County Clerk's office. Alternatively, the trial court found that the Chrismans were entitled to the disputed property by way of adverse possession. On August 12, 1998, the trial court overruled the Reamses' motion to alter, amend and vacate. This appeal followed. Additional facts will be presented as needed.

The Reamses raise two issues on appeal: (1) the Reamses argue that the trial court erred in setting aside its original judgment; and (2) the Reamses argue that they are entitled to the disputed piece of property through adverse possession. We disagree. On appeal, findings of fact made by a trial court pursuant to CR 52.01 will be upheld unless found clearly erroneous. Commonwealth v. Flint, Ky., 940 S.W.2d 896 (1997).

The trial court has the power to set aside its own judgment based upon CR 52.02, which states:

Not later than 10 days after entry of judgment the court of its own initiative, or on the motion of a party made not later than 10 days after entry of judgment, may amend its findings and may amend the judgment accordingly....(emphasis added).

In its initial judgment, the trial court found that the Chrismans and the Reamses shared a common source of title from the original grantors, James E. and Sarah Combs found in Deed Book 66, Page 282. Based upon the submitted chains of title, the trial court ruled that the property owned by the Reamses extended beyond the fenced area to the Combs Mountain Road. The Chrismans filed a motion for reconsideration and argued that the trial court erred

in finding that they and the Reamses shared a common source of title.

After hearing arguments on the issue, the trial court acknowledged its error in the Amended and Corrected Judgment. The trial court found that the Reamses chain of title could not be traced back beyond 1954. Thus, the trial court held that the Reamses were bound by the property description given to them at the time of purchase, stating:

Given the previous location of the fence, the lapse in title from 1954 in the Reamses chain, and the Reamses' reliance on the Burnam Baker affidavit filed contemporaneously with the 1969 (sic) deed (and affirming the exterior fencing on the subject of property), together with the plaintiff's (sic) [Chrismans] chain of title, which is continuous and can be traced back to 1879--clearly, the Chrismans have superior title to the area in dispute, contrary to the Court's previous findings.

The trial court's finding comports with the law in this Commonwealth which states:

It is well settled that where the boundary lines of adjoining landowners are not definitely known or their location is in dispute, such owners may establish the lines by either written or by a parole agreement; such boundary lines may also be established by their mutual recognition of, and acquiescence in, certain lines as the true boundary lines, the courts being reluctant to interfere therewith after the lines have been permitted to exist over such a period of time that satisfactory proof of the true line is difficult.*** It is well established that if adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for a long period of time--usually the time prescribed by the statute of limitations--they are precluded from claiming that the boundary line thus recognized and acquiesce it is not the true one. In other words, such

recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line.

Liberty Nat. Bank & Trust Co. v. Merchant's and Manufacturer's paint Co., Ky., 209 S.W.2d 828 (1948) (citing Hotze v. Ring, Ky., 115 S.W.2d 311, 313 (1938) (emphasis added)).

Unquestionably, the trial court spent a considerable amount of time reviewing the facts of this case and the law related thereto. The trial court acted within its discretion when it amended its previous judgment after the Chrismans filed for reconsideration. In so doing, the trial court thoroughly set out its reasoning and the factual circumstances that led to its decision to set aside the previous judgment. The trial court took under consideration the fact that the Reamses had knowledge at the time they purchased the property that the fence line was the boundary to their property. (See Arthur v. Martin, Ky. App., 705 S.W.2d 940 (1986) where we held that courts must consider the intention of the parties at the time of conveyance and their actions thereafter in determining what interest was conveyed). Moreover, the Reamses recognized the fence line as the boundary to their property for more than fourteen years. Considering that the Reamses were unable to trace their chain of title prior to 1954 while the Chrismans could be traced continuously back to 1879, we cannot say that the trial court erred in finding that the former fence line is the boundary to the Reamses property.

In the alternative, the Reamses claim the property in dispute by way of adverse possession. The court found that the

Reamses could not lay claim to the property through adverse possession because they had not met the requisite time period for such claim to vest. The Reamses did not remove the fence line until 1992 and the Chrismans filed suit in the later portion of the same year. The statutory period for adverse possession in this Commonwealth is fifteen years. KRS 413.010; see also Tartar v. Tucker, Ky., 280 S.W.2d 150, 152 (1955). The trial court did not err in making this decision.

For the foregoing reasons, the judgment of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert C. Moody
Richmond, KY

BRIEF FOR APPELLEE:

Karen G. Chrisman
Simpsonville, KY