

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001576-MR
AND
CROSS-APPEAL NO. 1999-CA-001629-MR

LEON D. "JOE" BALL

APPELLANT/CROSS-APPELLEE

v. APPEAL AND CROSS-APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 95-CI-00116

D. WELDON GREGORY

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Leon D. "Joe" Ball brings this appeal and D. Weldon Gregory brings this cross-appeal from a June 1, 1999, judgment of the Wayne Circuit Court. We affirm.

On November 16, 1858, William Ryan and his wife conveyed to William Dobbs some 190 acres of land which abutted upon the lands of Dobbs already owned. On the same date, William Ryan and his wife also conveyed to their son, George E. Ryan, seven tracts of acreage located to the south of the acreage conveyed to Dobbs. George E. Ryan recorded his deed on December 6, 1858, and William Dobbs recorded his deed on December 7, 1858.

It was stipulated that Ball's title originated with the deed of conveyance to George E. Ryan recorded on December 6, 1858, and that Gregory's title originated with the deed of conveyance to William Dobbs recorded on December 7, 1858.

This dispute arose when Ball allegedly cut timber upon land claimed by Gregory. They both sought quiet title to the real property, and Gregory also sought damages for the cut timber.

On June 1, 1999, the circuit court entered its judgment quieting title in favor of Gregory and awarding \$9,544.65, representing the value of the timber cut. Ky. R. Civ. P. 39.02. This appeal and cross-appeal follow.

On direct appeal, Ball contends the circuit court committed reversible error by concluding that his predecessor in title had constructive notice of exceptions in the deed of conveyance. We disagree. Ball's predecessor in title, as heretofore mentioned, was George E. Ryan. In the deed from William Ryan to George E. Ryan, the following exception was included:

The 250 acre survey herein described is subject to the exception and reservation a small peace (sic) included in the deed made to William Dobbs by said Ryan dated the 16th day of Nov. 1858 and also subject to the exception of all interference of the foregoing tracts with any other lands of older and better title.

The circuit court concluded that the above exception put Ball's predecessor in title, George E. Ryan, on "constructive notice to inquire as to what the exceptions and interferences (sic) entailed in the way of acreage" in the conveyance. Ball,

however, asserts that the exception is void for uncertainty or vagueness. See Justice v. Justice, 239 Ky. 155, 39 S.W.2d 250 (1931). We must disagree with Ball's contention. We believe the exception is clear so as to put Ball's predecessor in title on constructive notice. Indeed, the circuit court was able to determine the proper boundaries of the land in dispute in regard to the exception. As such, we are of the opinion the circuit court committed no error in ruling that Ball had trespassed upon Gregory's land and consequently awarding Gregory a money judgment against Ball.

On cross-appeal, Gregory maintains the circuit court committed reversible error by failing to award triple damages for the timber cut in addition to any legal costs. Kentucky Revised Statutes (KRS) 364.130(1). The circuit court awarded Gregory the actual value of the cut timber, which was \$9,544.65. The court reached such conclusion by determining that KRS 364.130(1), which requires triple damages, became effective July 15, 1994, and the evidence failed to establish that the timber was cut after the effective date of the statute. Thus, the court concluded that Gregory was not entitled to triple damages. Gregory counters that KRS 364.130(1) should be given retroactive effect as a remedial statute. Gregory, however, fails to direct this court to persuasive authority for such proposition. Hence, we are compelled to uphold the circuit court's award for damages.

For the foregoing reasons, the judgment of the Wayne Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-
APPELLEE:

Vernon Miniard, Jr.
Monticello, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT:

Charles C. Adams
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