

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-001491-MR

HUFFORD WILLIAMS AND
ANN WILLIAMS

APPELLANTS

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 04-CI-00968

J. T. MCCOY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, CHIEF JUDGE; STUMBO, JUDGE; AND KNOFF,¹ SENIOR JUDGE.

STUMBO, JUDGE: Hufford and Ann Williams appeal from Findings of Fact, Conclusion of Law and Judgment of the Pike Circuit Court awarding a parcel of real property to J.T. McCoy under the doctrines of adverse possession and champerty. The Williamses contend that the circuit court erred in finding that the record supported the application of those doctrines. For the reasons stated below, we affirm the judgment on appeal.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In 1989, J.T. McCoy acquired a parcel of real property from his mother by way of deed. The parcel resulted from an earlier division of a farm owned by James and Vicy Maynard. It is situated in Pike County, Kentucky, and is described as

Beginning on a planted stone near the Branch, thence with the Branch to Anna Margett Maynard's line, thence with said line to top of point, thence with Burly Maynard line to top of hill to oak, thence a straight line down hill to hollow, (are Branch), thence Branch to corner of fence, thence back to beginning corner. So as to include all land in said boundary - and the Linnie Maynard is to have a road right-of-way to creek

In 2001, the Williamses acquired a tract of land bordering the McCoy property to the northeast. That parcel, which was acquired from Lacy Blackburn and Freda Blackburn, is described by deed as

Beginning on a planted stone, on stone of the John Maynard line, thence with the John Maynard line to a point to a double dogwood, thence in a straight line down the point to the branch, thence running with the branch, thence running with the branch down thence by the road to the lower corner garden up the creek to apple tree, thence from apple tree to planted stone thence a straight line up the creek to beginning corner.

For some period of years preceding the Williamses' purchase of their parcel, McCoy allegedly asserted claim of title to a 2 - 3 acre portion of property encroaching over the northeastern boundary of his parcel and onto that which would later be purchased by the Williamses. The Williamses' predecessor in title, in fact, had previously filed an action against McCoy to quiet title, said action ultimately resulting in dismissal for lack of prosecution. At the time of the Williamses' purchase, McCoy was using the disputed portion which he maintained by mowing, and upon which he had placed two mobile homes and two box trailers.

On June 12, 2004, the Williamses filed a complaint in Pike Circuit Court against McCoy noting McCoy's use of the disputed parcel and seeking a declaration of

the property line along with injunctive and punitive relief. McCoy answered by asserting the doctrine of adverse possession and claiming that the Williamses' action was barred by champerty.

The matter proceeded to a bench trial after which the circuit court rendered Findings of Fact, Conclusions of Law and Judgment on May 7, 2007. Based on its review of the parties' surveys, as well as witness testimony and the trial judge's examination of the property and disputed boundaries, the court found as a matter of law that McCoy had acquired title to the disputed parcel by way of adverse possession. In so doing, it noted McCoy's open and notorious possession of the parcel for the statutory period. It further found that even if adverse possession had not been shown, the statutory doctrine of champerty protected McCoy's inchoate interest by voiding the Williamses' deed to the extent that the property was being held adversely by McCoy. It fixed the boundary as to include with McCoy's parcel that area adversely possessed, said boundary including approximately 2 acres northeast of the boundary which McCoy's surveyor indicated was expressed in McCoy's deed. This appeal followed.

The Williamses now argue that the trial court erred in granting title of the disputed parcel to McCoy. Specifically, they contend that the circuit court improperly applied the doctrine of champerty to the facts at bar; that champerty does not apply to boundary disputes; that the court should have accepted the Williamses' survey which relied in part on a fence row, since fence rows are a strong indicator of original boundary lines; and, that there are numerous discrepancies between the boundary line based on the deed calls versus the boundary line found by the court. In sum, the Williamses contend that the court incorrectly relied on the doctrine of champerty to award the disputed parcel to McCoy, and should be instructed on reversal and remand to enter a judgment reflecting the boundary found by the Williamses' surveyor.

We have closely studied the record and the law, and find no basis for reversing the judgment on appeal. We must note from the outset that though the Williamses take issue with the circuit court's purported application of champerty (i.e., that a deed is void which purports to transfer title to a parcel currently under a claim of adverse possession), it was the doctrine of adverse possession rather than champerty upon which the court based its judgment. The court stated that, "McCoy, to acquire title by adverse possession, had to show open and notorious possession of the property, hostile to the claims of all others and exclusively in nature for 15 years. As a matter of law McCoy has met this burden." It later stated that, "Title to the disputed property, as a matter of law, was vested in McCoy as a result of adverse possession."

In order to prevail on a claim of adverse possession, the party claiming title must establish through clear and convincing evidence all of the following elements as to possession: 1) it must be hostile and asserted under a claim of right; 2) it must be actual; 3) it must be exclusive; 4) it must be continuous; and 5) it must be open and notorious for the statutory period of 15 years. *Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Inc.*, 824 S.W.2d 878 (Ky. 1992).

The standard of review on property title issues is whether the trial court was clearly erroneous or abused its discretion. *Phillips v. Akers*, 103 S.W.3d 705 (Ky. App. 2002). On such issues the appellate court may not substitute its opinion for that of the trial court absent clear error. *Id.*

In the matter at bar, evidence exists in the record upon which the trial court reasonably concluded that McCoy acquired the disputed parcel by adverse possession. Evidence was adduced that McCoy possessed the parcel for the statutory period, dating back to a date which preceded the Williamses' purchase. The court found that the Williamses were aware of McCoy's claim of title when they acquired the

adjoining parcel. It further noted the open and notorious nature of the claim as evidenced by McCoy maintaining and mowing the parcel, and placing mobile homes and box trailers upon it. This claim was substantiated when Judge Coleman directly inspected the parcel. The finding of adverse possession is not clearly erroneous, and we have no basis for disturbing the judgment on appeal as it relates to this issue.

The corpus of the Williamses' claim of error is that the circuit court improperly applied the doctrine of champerty. As noted above, the court resolved the matter by reliance on adverse possession and not champerty. It stated, however, that "[e]ven if McCoy had not had his title vested by adverse possession, KRS 372.070, [sic] would have protected his inchoate interest by voiding Williams's deed to the extent that the property was being held adversely by McCoy." Thus, the circuit court's reference to the champerty statute (KRS 372.070)² was *arguendo* and in the abstract since the stated basis for its judgment was adverse possession and not champerty. As such, the Williamses' claims of error arising from the court's purported application of champerty are not persuasive.

The Williamses also argue that the circuit court improperly failed to accept their surveyor's opinion that certain fences on or near the disputed parcel are strong evidence of the original boundary lines and should have been accepted by the trial court in establishing the correct boundary line. We find no error on this issue. In addressing this argument, the court noted that neither of the deeds set forth fences as boundary lines or markers. It stated that, "If the parties to the Deeds had intended to call for a fence line to establish the boundary line, it appears that they would have referred to the fence." Irrespective of this, the judgment on appeal was not based on physical markers such as fences, stones or trees, nor upon deed calls and boundaries, but upon adverse

² KRS 372.070 states that, "Any sale or conveyance . . . of any land . . . of which any other person has adverse possession at the time of the sale or conveyance, is void"

possession. Similarly, and for the same reason, the Williamses' final argument - that the adjudicated boundary does not match the deed or deeds - is also not persuasive.

For the foregoing reasons, we affirm the Findings of Fact, Conclusions of Law and Judgment of the Pike Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Lawrence R. Webster
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Stephen L. Hogg
Pikeville, Kentucky