

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001986-MR
&
NO. 2007-CA-002539-MR

PATRICIA GERMANY

APPELLANT

v.

APPEALS FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 06-CI-00181

G. W. CHANDLER AND
TIA WATKINS

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: LAMBERT, STUMBO, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: Patricia Germany appeals from a directed verdict in favor of

G.W. Chandler and Tia Watkins,¹ finding that Patricia failed to establish the

¹ Tia Watkins is the illegitimate daughter of Patricia's now deceased brother. Tia intervened in the action to assert her 1/6 property right, which Chandler had mistakenly purchased from Lucille Germany, Judge Germany's ex-wife, who had wrongfully inherited her deceased son's 1/6 interest through intestacy. Upon the discovery of Tia's existence and interest in the property, Chandler amended his complaint to include Tia.

elements of adverse possession. Patricia also appeals from the grant of Chandler's motion for judicial sale. After careful review, we affirm the order of the Bullitt Circuit Court.

Judge Germany, Patricia's father, died intestate in 1990. Patricia and three of her siblings, as administrators of her father's estate, entered an informal final settlement with the Jefferson Circuit Court in 1992. The settlement listed the disputed property in Bullitt County among the inventory specifically divided in the informal final settlement. The settlement shows that Patricia and each of her five brothers and sisters received a 1/6 interest in their father's estate at the close of administration.

In August 2005 Chandler sought out and acquired 5/6 of the property in dispute.² Patricia was the only one unwilling to sell to Chandler. When it became clear that she was completely unwilling to sell, Chandler filed a complaint in the Bullitt County Circuit Court against Patricia, seeking Commissioner's sale of the property. Patricia answered by claiming adverse possession of the property. After a bench trial on July 27, 2007, the court granted the motion for directed verdict in favor of Chandler and Watkins, finding that Patricia could not show that her claim to the disputed property was continuous for the requisite fifteen years to establish adverse possession nor was it open and notorious. The court also ordered the judicial sale of the property, since there was no formal motion for partition of

² More accurately, he rightfully purchased 4/6 of the property since the 1/6 interest Lucille Germany sold him was not rightfully hers to sell but Tia's.

the property. Patricia entered a motion for a new trial, which was denied. She now appeals.

On a motion for directed verdict, the trial judge must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion. When engaging in appellate review of a ruling on a motion for directed verdict, the reviewing court must ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party. *Meyers v. Chapman Printing Co., Inc.*, 840 S.W.2d 814 (Ky. 1992). Once the issue is squarely presented to the trial judge, who heard and considered the evidence, a reviewing court cannot substitute its judgment for that of the trial judge unless the trial judge is clearly erroneous. *Davis v. Graviss*, 672 S.W.2d 928 (Ky. 1984).

Bierman v. Klapheke, 967 S.W.2d 16, 18 (Ky. 1998).

After reviewing the record thoroughly, we find that the trial court properly drew all reasonable and fair inferences in favor of Patricia, but the settlement agreement signed by Patricia in 1992 defeats her claim for adverse possession as a matter of law. Patricia, as the trial court correctly stated in its order, “recognized [in 1992] the one-sixth interests in the property held by each of her brothers and sisters. Therefore, the date to start the clock for [her] adverse possession claim would have to be, at the earliest, May 13, 1992, the day after she signed the Informal Final Settlement.” Chandler filed suit in this matter on February 10, 2006, thus only thirteen years and nine months had passed between Patricia’s written recognition of her siblings’ interests and this complaint. As a matter of law, a claim for adverse possession may only ripen after fifteen years of

hostile possession. *See, e.g., Tartar v. Tucker*, 280 S.W.2d 150, 152 (Ky. 1955); *Phillips v. Akers*, 103 S.W.3d 705, 708 (Ky.App. 2002). Therefore, the trial court properly granted the directed verdict.

As to Patricia's claim that the trial court erred in granting the judicial sale of the property, it was within the sound discretion of the trial judge to order the sale and subsequently to confirm the sale of the disputed property, particularly in light of Patricia's failure to move for partition at trial. Moreover, there is no evidence in the record to support Patricia's claims of fraud or any evidence of activity that would shock the conscience with regard to the judicial sale, and inadequacy of price alone is insufficient to void a sale. *See Maynard v. Maynard*, 167 S.W.2d 853 (Ky. 1943).

Accordingly, we affirm the order granting the motion for directed verdict and further affirm the order confirming the judicial sale of the property.

ALL CONCUR.

BRIEF FOR APPELLANT:

Terrence L. McCoy
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BRIEF FOR APPELLEES

G. W. CHANDLER AND TIA
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