

RENDERED: OCTOBER 31, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002083-MR

JAMES GAY AND EARL GAY, ON
BEHALF OF PROVIDENCE MISSIONARY
BAPTIST CHURCH

APPELLANTS

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 03-CI-00604

HOWARD'S CREEK DISTRICT
ASSOCIATION; JAMES TRENT,
REVEREND; JAMES HOOTEN;
JOHN HOOTEN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND WINE, JUDGES; LAMBERT,¹ SENIOR JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

WINE, JUDGE: James and Earl Gay (the Gays), on behalf of Providence Missionary Baptist Church (Providence), appeal from a summary judgment dismissing their declaratory judgment action to set aside a conveyance of the church's property. We agree with the trial court that the congregation's subsequent ratification of the conveyance and the appointment of the trustees render the Gays' claims moot. Hence, we affirm.

Providence is located on Old Stone Church Road in Winchester, Clark County, Kentucky. On October 30, 2001, Reverend James Trent, James Hooten, and John Hooten, as pastor and trustees, respectively, of Providence, executed a deed transferring the property to the Howard's Creek District Association. The deed recited that the conveyance was authorized by a resolution of the membership of Providence taken in July of 2000. The deed also recited that the conveyance was for the consideration of \$1.00. By subsequent deeds of correction, Providence transferred the property to the Howard's Creek District Missionary and Educational Association and the Howard's Creek District Missionary Baptist Church Convention. All deeds are recorded with the Clark County Clerk's Office.

On October 29, 2003, the Gays filed this action against the Howard's Creek Association, Reverend Trent, and James and John Hooten (the Howard's Creek Defendants). The Gays sought declaratory and injunctive relief, including for the court to set aside the conveyance. In the complaint, they alleged that the

conveyance was not authorized by a majority of the membership of the church, and that Reverend Trent and James and John Hooten were not authorized to transfer the property to the Howard's Creek Association.

The matter proceeded through discovery and an extended period of inactivity by all parties. On April 26, 2007, the Howard's Creek Defendants filed a motion for summary judgment. In support of the motion, they argued that: (1) James and Earl Gay lacked standing to bring this action because they were not eligible to vote as members of the church; and (2) a majority of members of the church ratified the transfer through a subsequent vote taken on November 5, 2006, and resolution signed on March 7, 2007. The trial court granted the motion on July 3, 2007, finding that there were no genuine issues of material fact and that the Howard's Creek Defendants were entitled to judgment as a matter of law:

2. The members of the Providence Missionary Baptist Church that are eligible to vote (the "Members") ratified and approved of all previous actions taken with regard to the transfer of the church and the real property on which it sits, including authority given and actions taken with regard to transfer of the property in July of 2000 and in October of 2001, when a Deed transferring the property was recorded, and approved the transfer of any further interest it still had, if any, to the Howard's Creek District Missionary and Educational Association and Howard's Creek District Missionary Baptist Convention at a meeting held November 6, 2006 and by Resolution signed March 4, 2007.

3. Thus, any questions that have been raised by Plaintiffs with regard to the authority or ability, or otherwise, of Providence Missionary Baptist Church to transfer the church and the real property upon which it sits are no longer an issue. The Deeds recorded on October 30, 2001 and January 12, 2007 and the Deeds of Correction

recorded on February 1, 2002, January 29, 2004 and January 12, 2007 are proper to transfer said property.

Thereafter, the Gays filed a motion to alter, amend or vacate pursuant to Kentucky Rules of Civil Procedure (CR) 59.05, arguing that there were genuine issues of material fact for trial. After considering the arguments of the parties, the trial court denied the motion on September 14, 2007. This appeal followed.

The Gays argue that summary judgment was not appropriate because there were genuine issues of material fact for trial. In reviewing an order granting summary judgment, “[t]he standard of review on appeal . . . is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996), *citing* CR 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. *Goldsmith v. Allied Building Components, Inc.*, 833 S.W.2d 378, 381 (Ky. 1992). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. In making this determination, the trial court must consider all evidence of record, including depositions, answers to interrogatories, stipulations and admissions on file. “[S]ummary judgment is proper only where the movant shows that the adverse party could not prevail under any circumstances.” *Steelvest, Inc. v.*

Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991), *citing Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985).

As the trial court correctly held, the subsequent ratification of the conveyance renders moot most of the issues raised by the Gays. The Gays do not challenge the evidence that a majority of the Providence congregation voted to ratify the prior conveyance on November 6, 2006, and by resolution signed on March 4, 2007. Likewise, the Gays raise no question as to the propriety of this vote. Furthermore, any deficiencies in the deeds' legal description of the property are outside of the scope of this action. Therefore, any disputed matters were not material and did not preclude summary judgment.

The only remaining question concerns the Gay's argument that James and John Hooten were not properly appointed as trustees. The Gays correctly point out that Providence's constitution authorizes only trustees to convey church property. They assert that Earl Gay has been a trustee of Providence since 1968. The Gays further allege that John and James Hooten were never properly appointed as trustees.

However, the Gays present no documentation supporting these assertions. In contrast, the Howard's Creek Defendants submitted an affidavit by Reverend Trent stating that he appointed James and John Hooten as trustees. In addition, the resolution signed by the Providence congregation on March 7, 2007, affirms the appointment of James and John Hooten as trustees. These documents

are authenticated by affidavits from Reverend Trent, from Providence's clerk Anna Mason, and from a majority of the members of Providence's congregation.

Further, our Courts should not make determinations about ecclesiastical questions such as who is eligible to vote or who is eligible to serve as a trustee. *Cargill v. Greater Salem Baptist Church*, 215 S.W.3d 63, 68 (Ky. App. 2006). While limited civil court intervention may be appropriate when reviewing property rights, the concerns about appointments and membership do not meet the review exceptions recognized by our Courts. *Music v. United Methodist Church*, 864 S.W.2d 286, 287 (Ky. 1993).

“[Summary judgment] is proper only after the party opposing the motion has been given ample opportunity to complete discovery and then fails to offer controverting evidence.” *Suter v. Mazyck*, 226 S.W.3d 837, 841 (Ky. App. 2007), citing *Pendleton Brothers Vending, Inc. v. Commonwealth, Finance & Administration Cabinet*, 758 S.W.2d 24, 29 (Ky. 1988), and *Hartford Insurance Group v. Citizens Fidelity Bank & Trust Co.*, 579 S.W.2d 628 (Ky. App. 1979). Furthermore, a party opposing a properly-supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there are genuine issues of material fact for trial. *Steelvest*, 807 S.W.2d at 482. In this case, the Gays had ample opportunity to pursue discovery on their claims over the four years that this action was pending. However, they failed to produce evidence of any material issues of fact on their claims. Therefore, the trial court properly granted summary judgment for the Howard's Creek Defendants.

Accordingly, the judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

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