

RENDERED: OCTOBER 8, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001360-MR

MONNIE KING CASTLE AND
RALPH CASTLE

APPELLANTS

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 07-CI-00509

MARTHA SLONE AND
BONITA VANHOOSE

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON AND KELLER, JUDGES; BUCKINGHAM,¹ SENIOR
JUDGE.

CLAYTON, JUDGE: This is an appeal from the Johnson Circuit Court regarding
a property dispute. The appellants, Monnie King Castle (“Castle”) and Ralph

¹ Senior Judge David C. Buckingham 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.

Castle, argue that the trial court erred in finding they did not have title to a piece of property located adjacent to their property based on adverse possession. For the foregoing reasons, we affirm the decision of the trial court.

BACKGROUND INFORMATION

Castle purchased a piece of property with a house upon it from Roy and Lizzie Meadows in June of 1978. At that time there was a pending case in Johnson Circuit Court regarding the boundary of the property. It appears that Castle was unaware of the case and in April of 1979, the Johnson Circuit Court issued a judgment which removed several feet from the property Castle had purchased. This property was awarded to Germaine Terry, an adjacent landowner. The loss to Castle was a total of sixteen feet running along the boundary between the two properties.

As part of the judgment, the court required the removal and movement of a fence between the properties. Castle testified that at this time she spoke with Roy Meadows and that he made an oral gift of sixteen feet of his remaining property due to her loss of property under the judgment. Castle stated that from 1978 through 2007 she used this strip property as her own. It is this strip of land that is the subject of the current litigation.

During the time period at issue, the Meadows created a life estate in their property and granted the remainder to their daughter, appellee Martha Slone. Lizzie Meadows died and Roy Meadows was remarried to Nancy Meadows in 1993. In 2005, Roy Meadows died and the property became Slone's. Slone

thereafter evicted Nancy Meadows and sold the property to Life Vanhooose. In 2007, Vanhooose approached Castle and asked her to remove vehicles on the strip of property since he intended to use the property as a road to the hollow behind his property. Castle and her husband then brought an action in the Johnson Circuit Court contending that they were the owners of the property under adverse possession.

The trial court found “that Roy Meadows did not convey any interest in the property that is the subject of this lawsuit to the Plaintiffs.” (Opinion at p. 8.) Regarding the issue of adverse possession, the trial court found:

15. With respect to the Plaintiff’s claim of fee simple title by adverse possession, the Court finds that the actions of the Plaintiffs with respect to the property in question have consisted of parking one or more vehicles on the property in question, and mowing the grass. The Court finds no evidence that the Plaintiffs constructed any buildings on the property, fenced the property, or took any other steps to claim the property. The Court finds that there is no evidence that the use of the property by the Plaintiffs was adverse to the ownership interest of Roy Meadows.

The appellants brought this appeal contending that the trial court erred in finding they had not obtained title to the property through adverse possession.

STANDARD OF REVIEW

Pursuant to Kentucky Rules of Civil Procedure (CR) 52.01, “Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” In

appeals of property title issues, “the appropriate standard . . . is whether . . . the trial court was clearly erroneous or abused its discretion[.]” *Church and Mullins Corp. v. Bethlehem Minerals Co.*, 887 S.W.2d 321, 323 (Ky. 1992), cert. denied, 514 U.S. 1110, 115 S.Ct. 1962, 131 L.Ed.2d 853 (U.S. Ky. 1995). With this standard in mind, we turn to the issue of whether the trial court erred in finding there was no adverse possession of the property.

DISCUSSION

In deciding on the merits of this action, we note that there was no real dissention regarding the facts. All parties agree that the Castles used the strip of property in question during the entire time they lived on the property until Vanhoose asked them to remove their personalty from it. The question is simply whether they established title through adverse possession as a result of their use. We agree with the trial court that they did not.

“In order to establish title through adverse possession, a claimant must show possession of disputed property under a claim of right that is hostile to the title owners interest.” *Phillips v. Akers*, 103 S.W.3d 705 (Ky. App. 2002).

Everyone agrees that under the recorded title, the Castles are not the owners of the property in question. Thus, we must determine whether they fulfilled the requirements under the law of adverse possession.

In determining whether title through adverse possession is appropriate we must examine whether the following elements are met:

the possession must be shown to be actual, open and notorious, exclusive, and continuous for a period of fifteen years. *Tartar v. Tucker, Ky.*, 280 S.W.2d 150, 152 (1955); *Creech v. Miniard, Ky.*, 408 S.W.2d 432, 436 (1965); KRS 413.010. “The ‘open and notorious’ element requires that the possessor openly evince a purpose to hold dominion over the property with such hostility that will give the non-possessory owner notice of the adverse claim.” *Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Ky.*, 824 S.W.2d 878, 880 (1992)(citing *Sweeten v. Sartin, Ky.*, 256 S.W.2d 524, 526 (1953)). Mere intentions or verbal expressions of a claim to property is not sufficient absent physical acts appearing on the land evidencing a purpose to hold the property hostile to the rights of and giving notice to the title holder. See *Gatliff Coal Co. v. Lawson, Ky.*, 247 S.W.2d 375, 377 (1952); *Warfield Natural Gas Co. v. Ward*, 286 Ky. 73, 149 S.W.2d 705 (1940); *D.B. Frampton & Co. v. Saulsberry, Ky.*, 268 S.W.2d 25 (1954). Absent proof that the possessor made physical improvements to the property, such as fences or buildings, there must be proof of substantial, and not sporadic, activity by the possessor. (Citation omitted).

Phillips, 103 S.W.3d at 708.

In the present action, no fences were erected on the property to create a man-made boundary. The Castles contend that they parked vehicles on the property and continuously used the property for more than fifteen years. All indications from testimony, however, are that the use by the Castles of the property was with the consent of Roy Meadows. “The ‘open and notorious’ element requires that the possessor openly evince a purpose to hold dominion over the property with such hostility that will give the nonpossessory owner notice of the adverse claim.” *Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co.*, 824 S.W.2d 878, 880 (Ky. 1992). Castle asserts that she did not have to

occupy the land openly and notoriously since there was a parol gift by Roy Meadows of the property to her. “Claimed parol gifts of land are closely scrutinized and must be established by strong and convincing evidence.” *Jones v. Caddell*, 244 S.W.2d 744, 745 (Ky. 1951). In this action, the trial court did not find evidence of a parol gift. We do not find any error in the court’s determination. Thus, we believe the Castles were using the property, but not in a notorious way. This is an essential element of a claim under adverse possession.

Thus, we affirm the decision of the trial court that the Castles do not have title of the property at issue under adverse possession.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephen Nick Frazier
Paintsville, Kentucky

BRIEF FOR APPELLEE:

George K. Wells
Paintsville, Kentucky