

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001614-MR

CLAUDE MARTIN

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 07-CI-00011

FLOYD COUCH, JR.

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; DIXON AND KRAMER, JUDGES.

KRAMER, JUDGE: On February 23, 1944, certain real property situated in Clay County, Kentucky, as described in a deed recorded in Deed Book 82, Page 237, of the records of the Clay County Clerk, was conveyed from Pharis Martin to Theo and Maude Martin. Maude Martin later became a 75% owner of the real property. When Maude died testate in 1978, she left her 75% ownership interest to her son,

Winston Martin. Winston Martin, in turn, died testate on July 6, 1999, leaving all of his real and personal property to his nephew, appellant Claude Martin.

The overarching issue presented in this matter is whether Winston Martin parted with his 75% ownership interest in the aforementioned property on May 12, 1999, shortly before his death. Appellee Floyd Couch, Jr., contends that Winston conveyed his interest in the property to him by way of a deed executed on that date, which Couch eventually recorded on November 5, 2004. Claude, however, contends that he owns Winston's 75% interest by virtue of Winston's will, and that Winston's signature on the deed purporting to memorialize Winston's conveyance to Couch is a forgery.

With that said, the issue presented in this appeal is not whether evidence of record supports that the purported Winston-Couch deed is a forgery. Instead, it is whether the circuit court correctly granted Couch's motion to dismiss Claude's action based upon the statute of limitations. As stated in the circuit court's September 2, 2014 order now under review, the specifics of the circuit court's reasoning were, in relevant part, as follows:

Findings of Fact

1. The intervening Complaint was filed by the Intervening Plaintiff, Claude Martin, on November 21, 2012.
2. The Deed that is the subject matter of this proceeding was recorded in the Clay County Clerk's office on November 5, 2004, in Deed Book 275, Page 214.
3. The alleged fraud, if any, occurred on May 12, 1999, when the deed was signed by Winston Martin.
4. The recording of the deed in the Clay County Clerk's office on November 5, 2004, was notice to Claude Martin as to begin the running of the statute of limitations.

Conclusions of Law

KRS 413.120 sets forth certain actions that must be commenced within five years. Specifically, *Section 12* states that "an action for relief or damages on the ground of fraud or mistake must be commenced within five (5) years after the cause of action accrued." Additionally, *KRS 413.130(3)* provides that "in an action for relief or damages for fraud or mistake, referred to in subsection (12) of *KRS 413.120*, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or perpetration of the fraud."

In *Hollifield v. Blackburn*, 170 S.W.2d 910 (Ky. 1943), the Kentucky Court of Appeals set forth the general rule that the recording of a deed obtained by fraud is notice to the grantor, and the grantor must bring an action to set aside the deed within five years after the recording of the deed, or within ten years of the execution of the deed, whichever is earlier.

Order

Based upon the authorities cited above, it is hereby Ordered that the Intervening Complaint is time barred by

both *KRS 413.120(12)* and the savings provision of *KRS 413.130(3)*; and is, therefore, dismissed with prejudice.

This appeal followed.

As an aside, the circuit court's order of dismissal was based upon undisputed facts, the application of legal principles, and was entered pursuant to either Kentucky Rules of Civil Procedure (CR) 12.02(f) or CR 56. Thus, our standard for reviewing it is *de novo*. *Certain Underwriters at Lloyd's, London v. Abundance Coal, Inc.*, 352 S.W.3d 594, 596 (Ky. App. 2011); *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

Upon review, we conclude that the circuit court erred in determining that *KRS 413.120(12)* and *KRS 413.130(3)* barred Claude from asserting his claim. As to why, we will borrow from and paraphrase the sound reasoning of another (albeit unpublished)¹ case which involved roughly identical facts and legal issues, *Mitchem v. First Bank Nat. Ass'n*, No. 2001-CA-001927-MR, 2003 WL 1860269 (Ky. App. April 11, 2003).

Under the ruling of the circuit court, Claude had no more than ten years to assert a claim that his interest in property had been transferred by a forged deed or else he would lose his interest in the property. In support, the circuit court relied on the case of *Hollifield v. Blackburn*, 294 Ky. 74, 170 S.W.2d 910 (1943), for the principle that “the recording of a deed obtained by fraud is notice to the grantor, and the grantor must bring an action to set aside the deed within five years

¹ We find *Mitchem* to be persuasive authority in this case and proper to cite as it fulfills the criteria of CR 76.28(4).

after the recording of the deed, or within ten years of the execution of the deed, whichever is earlier.” However, in *Blackburn* the issue was whether a deed was procured through fraud and duress, not forgery.

This distinction is critical. A deed procured through fraud or duress is merely voidable. *Hagemeyer v. First Nat. Bank & Trust Co.*, 306 Ky. 774, 209 S.W.2d 320, 321 (1948). As such, statutes of limitations apply to them. See *Skaggs v. Vaughn*, 550 S.W.2d 574 (Ky. App. 1977)

Conversely, “[a] forged deed is void.” *Lincoln Building & Loan Ass’n v. Cohen*, 292 Ky. 234, 238, 165 S.W.2d 957, 960 (1942). “[A] forged deed is absolutely void and is ineffectual for any purpose.” *Lowther Oil & Gas Co. v. McGuire*, 189 Ky. 681, 684, 225 S.W. 718, 719 (1920). “[A] claim of title under a void deed, although recorded, [will not] ripen into a fee by lapse of time, nor will limitations run against the owner of record in favor of a claimant not in possession.” *Kypadel Coal & Lumber Co. v. Millard*, 165 Ky. 432, 443, 177 S.W. 270, 275 (1915). Further, “[a] mere claim of title, even of record, unaccompanied by an adverse holding, will not start the statute.” *Id.*

In short, if Claude proves to the satisfaction of the court that the deed conveying Winston’s interest to Couch was forged, then the deed is void. If the deed is void, Claude would not have had to assert his interest in the property within any time period. A forged deed does not become valid simply by the passing of a period of time.

Lastly, we note that Claude—like the appellant in *Mitchem, supra*—did not raise the argument in his brief or before the circuit court that the deed was *void* due to forgery. Rather, his argument—like the argument offered by the appellant in *Mitchem*—was that the statute of limitations applied to his claim, but that it had not expired because he did not actually notice the allegedly forged deed existed until long after it had been executed, and because he eventually filed his suit at a time when the discovery rule relating to the statute of limitations rendered his action timely.

Under a *de novo* standard of review, however, this court gives no deference to the circuit court because fact-findings are not at issue. *Stewart v. University of Louisville*, 65 S.W.3d 537, 540 (2001). Rather, we must determine whether Couch was entitled to judgment as a matter of law. *See Scifres v. Kraft*, 916 S.W.2d 779, 781 (1996). Here, like the appellant in *Mitchem*, Claude *did* raise the issue that the deed was forged and that summary judgment was therefore inappropriate. As this Court held in *Mitchem*, that is enough to raise the issue of whether the deed is void; and, in turn, that is enough for this Court to agree with Claude that Couch was not entitled to summary judgment on the basis of the statute of limitations. *See Mitchem*, 2003 WL 1860269 at *4.

We therefore vacate the summary judgment of the circuit court and remand for further proceedings not inconsistent with this opinion.

ALL CONCUR.

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