

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000635-MR AND 2015-CA-000299-MR

JERRY T. HURT

APPELLANT

v.

APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE STEVE A. WILSON, JUDGE  
ACTION NO. 12-CI-00823

RAYMOND D. SPEARS

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: DIXON, D. LAMBERT, AND MAZE, JUDGES.

D. LAMBERT, JUDGE: This matter is before the Court on appeal from a series of orders entered by the Warren Circuit Court. These orders include the circuit court's Order and Judgment entered on February 3, 2014 following a bench trial, and a Post-Judgment order entered on March 31, 2014. The Appellant, Jerry T. Hurt, acting *pro se*, also filed additional motions during the pendency of his appeal, which the trial court ruled on, resulting in a second appeal by Hurt. The

interconnected nature of the issues presented in these two appeals necessitates resolving both in a single opinion. Having reviewed the record, we reverse.

## **I. FACTUAL AND PROCEDURAL HISTORY**

### **A. FACTUAL BACKGROUND**

The conflict between the parties originated in a contract which reflected an agreement by which Appellee, Raymond Spears, agreed to sell and Hurt agreed to buy, a 1996 model Oakwood mobile home (hereinafter, the “mobile home”) in an “as-is” condition for a purchase price of \$12,900.00. The contract contemplated the purchase price to be paid in two payments; one payment of \$6,000.00 was to be paid on October 4, 2011, the date of execution of the contract, and the remainder to be paid by November 1, 2011. However, the contract also stated that if the full purchase price was not paid by November 1, 2011, the purchase price could be paid in monthly installments of \$700.00.

The contract noted the parties’ acknowledgment that Spears did not possess title documentation, and Spears could not guarantee title could be obtained. Spears also agreed in the contract to provide Hurt with a Bill of Sale in lieu of title documentation upon receipt of the full purchase price. The contract also contained a “time is of the essence” provision and a “no oral modifications” clause. Finally, the contract specified as follows: “In the event of a default, the defaulting party shall be liable for the attorney fees and court costs expended to enforce this contract.”

It is beyond dispute that Hurt made, and Spears accepted, the initial \$6,000.00 payment toward the purchase price on the date of execution of the contract. Further, Hurt paid, and Spears accepted, a payment of \$700.00 on November 1, 2011, and then the remainder of the outstanding balance on November 22, 2011. It is also undisputed that Spears never provided the Bill of Sale which was to effect the transfer of ownership of the mobile home upon receipt of the funds from Hurt.

Concerned that someone else might assert an adverse ownership interest in the mobile home before he could obtain the Bill of Sale from Spears, Hurt made efforts to learn the identity of the titled owner. Hurt hired a private investigator, who, after running the VIN of the mobile home, learned it was titled to Luther and Agnes Powell. Hurt then made efforts to contact the Powells, and came to learn that Luther Powell was deceased, and Agnes Powell was incarcerated in a Kentucky correctional institution.

Agnes Powell had been unaware of the mobile home's history subsequent to her conviction. She had sold the land on which the mobile home had been located, but not the mobile home itself, to Jimmy Lillard. The mobile home was left sitting on the property, and had fallen into a state of disrepair so extreme that multiple witnesses testified it had a market value of zero. Lillard, concerned that the derelict mobile home drew uninvited children and vandals onto his property, sold it to Spears for one dollar.

The transaction from Lillard to Spears was evidenced by a Bill of Sale introduced into the record along with other written evidence within which Lillard made multiple affirmative representations to Spears that he possessed legal title to the mobile home. Spears expended approximately \$6,400.00 repairing the mobile home before offering it up for sale online.

Upon learning from Hurt of the unpermitted sale of the mobile home by Lillard, Powell not only refused to consent to a transfer of title, but threatened Hurt with criminal charges for receiving stolen property. Hurt then retained counsel to explore his options in obtaining clear title to the mobile home.

## **B. PROCEDURAL HISTORY**

Hurt filed this action in Simpson Circuit Court, asserting causes of action against Spears for breach of contract, fraud, and violations of the Kentucky Consumer Protection Act (KRS chapter 367). In his complaint, Hurt did not request a writ of possession of the mobile home, or specific performance of the contract. In lieu of an answer, Spears moved to dismiss for improper venue. The motion was denied and the matter transferred to Warren Circuit Court.

The Warren Circuit Court ordered Spears to file third party complaints to join Powell and Lillard as necessary parties to the action. Following discovery and motion practice, the Warren Circuit Court heard the matter in a bench trial on December 20, 2013. Hurt, Spears, and Lillard, were present and represented by their respective attorneys, while Powell was present but litigated her interests *pro*

*se.* Hurt presented no evidence, relying entirely on cross-examination of witnesses and documents offered into evidence by other parties to make his case.

On February 3, 2014, the trial court issued its Trial Order and Judgment, containing its findings of fact, conclusions of law, and judgment. The trial court's findings of fact were as follows: 1) the mobile had zero value at the time of the Lillard-to-Spears conveyance; 2) Spears expended a significant amount of money to repair the trailer; 3) Spears entered into a contract with Hurt to sell the mobile home for \$12,900.00; and 4) Hurt agreed to the purchase of the mobile home in an as-is condition, knowing Spears did not have title to it.

Relying on the doctrine of accession described in *Bozeman Mortuary Ass'n v. Fairchild*, 68 S.W.2d 756 (Ky. 1934), the trial court issued the following conclusions of law: 1) the improvements performed by Spears were greater than the market value of the trailer, therefore the interest of Powell was divested in favor of Spears; 2) having been divested of title, Powell was entitled to damages in the amount of the market value of the trailer at the time Lillard took possession, which was zero; 3) because Spears had title to the mobile home, the contract between himself and Hurt was binding, the parties thereto were entitled to the respective benefits of their bargain: Spears was entitled to the purchase price, and Hurt was entitled to ownership with clear title; 4) Lillard owed no damages to any other party, nor was he entitled to damages from any other party.

Based on those findings and conclusions, the trial court disposed of the parties' claims. Agnes Powell was divested of any interest in the mobile home.

All claims by and against Jimmy Lillard were dismissed with prejudice. Hurt was awarded all rights, title and interest in the trailer. All claims by Hurt against Spears were dismissed with prejudice, with Hurt to have no recovery. All claims against Spears by Lillard and Powell were dismissed with prejudice.

At that point, Hurt, apparently unhappy with his attorney's performance, began attempting to re-litigate the case *pro se*. He filed a motion for a new trial, arguing newly discovered evidence necessitated a rehearing of the issues. He contended that the Property Valuation Administrator of Warren County had assessed the value of the trailer at an amount greater than zero for 2012. He also pointed out that because Spears listed two or more mobile homes for sale, he fit into the definition of a "retailer" of "factory built housing" pursuant to KRS 227.550, and was doing so without a license in violation of statute.

Spears also filed a post-judgment motion. He asserted a claim for attorney fees based on the contract provision allowing such recovery. He contended he was the prevailing party on all issues.

The trial court conducted a hearing on both motions on March 31, 2014, and then issued a written order denying Hurt's motion for new trial, which was entered on April 1, 2014. The same order also granted Spears' motion for attorney fees, finding him to be "clearly the prevailing party within this action" with no further elaboration. The trial court also noted that the mobile home had remained in the possession of Spears, and ordered it sold in a commercially reasonable sale, with the proceeds applied first to cover the award of attorney fees

to Spears, with any surplus to Hurt. In order to effect such sale, the trial court issued, on April 15, 2014, a Supplemental Judgment awarding a common law judgment to Spears in the amount of his attorney fees, \$6,366.66, plus interest at the rate of 12% per annum. The property was sold without Hurt ever having taken possession.

Hurt filed a Notice of Appeal on April 24, 2014. He specifically noted that he was appealing from the Trial Order and Judgment entered on February 3, 2014, and the Supplemental judgment entered on April 15, 2014. This initial appeal was assigned number 2014-CA-000635.

Despite the filing of the notice, Hurt continued to file motions before the trial court. On October 24, 2014, he filed a motion for contempt, based on Spears' alleged violation of the trial court's order of April 1, 2014, not to dispose or encumber the mobile home unless ordered by the trial court. Hurt also filed a motion pursuant to CR 60.02 on November 7, 2014, seeking relief from the Supplemental Judgment, arguing that the trial court had made mistakes and inadvertently overlooked certain evidence. The trial court declined to rule on the motions until an order from this Court abating Appeal No. 2014-CA-000635 was entered. Such order was entered, allowing the trial court to re-assume jurisdiction to rule on Hurt's pending motions. In an order entered on February 10, 2015, the trial court denied Hurt's motions, noting that "all matters raised in this his latest motion have been thoroughly covered and ruled upon by this Court."

Hurt filed another Notice of Appeal of that ruling, and his second appeal was assigned number 2015-CA-000299.

## **II. ANALYSIS**

### **A. STANDARD OF REVIEW**

When a party challenges the factual findings of a trial court sitting without a jury, appellate courts review such findings using a clear error standard. “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.” *McVicker v. McVicker*, 461 S.W.3d 404, 416 (Ky.App. 2015) (quoting *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003)). A factual finding is clearly erroneous when it is not supported by substantial evidence. *Hutchinson v. Kentucky Unemployment Ins. Comm’n*, 329 S.W.3d 353 (Ky.App. 2010). The Court, in *Moore v. Asente*, described “substantial evidence” as “[e]vidence that a reasonable mind would accept as adequate to support a conclusion.” *Id.* at 354.

The appropriate standard of review for matters of law is *de novo*. *Nash v. Campbell County Fiscal Court*, 345 S.W.3d 811 (Ky. 2011). The interpretation of the meaning of contractual language is a matter of law. *McMullin v. McMullin*, 338 S.W.3d 315, 320 (Ky.App. 2011).

#### **1. THE TRIAL COURT INCORRECTLY DETERMINED THE CONTRACT BETWEEN THE PARTIES WAS BINDING AND EFFECTIVE**



The trial court applied the common law doctrine of accession to conclude that Spears had acquired title to the trailer. *Bozeman Mortuary Ass'n v. Fairchild*, 68 S.W.2d 756 (Ky. 1934). In *Bozeman*, a bona fide purchaser of a stolen automobile performed repairs and replaced the battery and tires. The Court held that repairs performed by the bona fide purchaser become a part of the thing repaired by accession, but ultimately ruled that the innocent purchaser was entitled to neither title to the automobile nor damages representing the value of the improvements made as against the true owner, applying the common law doctrine of “specification.” *Id.* at 758.

It is only when the property is converted into “something specifically different in the inherent and characteristic qualities,” that a bona fide purchaser may obtain title to property under this doctrine. *Id.* The *Bozeman* Court used the examples of grinding corn into meal, vinification of grapes, and distilling rye into whiskey, as examples of such conversion adequate to create a “new” property to which the purchaser would be afforded good title under the doctrine of specification. *Id.*

Here, the efforts of Spears converted an uninhabitable mobile home trailer into a habitable mobile home trailer. These repairs did not create something specifically different in the inherent and characteristic properties of the mobile home under *Bozeman*. “The right by accession is acquired generally by adding other materials to that of another individual taken innocently and by skill and labor the material must be so changed as to be incapable of being restored to the owner

in its original form.” *Ratliff v. Gallagher & Holman*, 5 Ky.Op. 589 (Ky. 1872).

The repairs merely restored the trailer to its former condition, a feat similar to the automotive repairs completed in *Bozeman*, and, also like *Bozeman*, a feat insufficient to create valid title in the bona fide purchaser against the true owner.

An owner is never divested of his property by theft, and therefore a sale by a thief, or by any person claiming under a thief, does not vest title in the purchaser as against the owner though the sale was made in good faith and in the ordinary course of trade. Title to personal property, like a stream, cannot rise higher than its source.

*Bozeman* at 759. Lillard, as a knowing possessor of the property in which he had void title, could pass nothing other than void title to Spears. Spears, having no legitimate ownership interest in the property as a “person claiming under a thief,” could not contract to pass legitimate ownership onto Hurt.

“It has long been the law in Kentucky that where the parties put their agreement in writing, all prior negotiations and agreements are merged in the instrument, and each is bound by its terms unless his signature is obtained by fraud or the contract be reformed on the grounds of fraud or mutual mistake, or the contract is illegal.” *Jones v. White Sulphur Springs Farm, Inc.*, 605 S.W.2d 38, 42 (Ky.App. 1980). Both parties operated under the incorrect impression that Spears had an alienable ownership interest in the trailer. This mutual mistake renders the contract invalid, and the trial court, in concluding otherwise, erred. Hurt is entitled to rescission of the invalid contract, and any remedies resulting from his performance.

**2. THE TRIAL COURT ERRED IN ITS DISMISSAL OF  
HURT'S CLAIMS AGAINST SPEARS AND THE THIRD PARTY CLAIMS**

This Court having first determined that Spears lacked title to the trailer, the foundation upon which the trial court based its entire ruling below is disrupted. The dismissal of Hurt's claims against Spears was based on an incorrect conclusion of law, and is therefore reversible error. Likewise, the trial court's termination of the third party claims, inasmuch as they relied upon the erroneous determination that Spears possessed title to the trailer by accession or specification was also reversible error.

**3. THE TRIAL COURT IMPROPERLY AWARDED  
SPEARS ATTORNEY FEES**

In light of the conclusions reached by this Court stated herein, the trial court's finding that Spears was the prevailing party in the action below is without legal or evidentiary support and therefore also erroneous.

**III. CONCLUSION**

This Court having reviewed the record and finding multiple instances of error, hereby vacates the February 3, 2014, judgment of the Warren Circuit Court, as well as its Supplemental Judgment of March 31, 2014. Further, we remand the matter to the trial court for further proceedings in light of our decision that the contract between Spears and Hurt is invalid and unenforceable. At the trial court's discretion, this may or may not include consideration of any and all damages to which the various parties, including Hurt, may be entitled.

MAZE, JUDGE, CONCURS.

DIXON, JUDGE, DISSENTS AND WILL NOT FILE A SEPARATE  
OPINION.

BRIEF FOR APPELLANT:

Jerry T. Hurt, pro se  
Fountain Run, Kentucky

BRIEF FOR APPELLEE:

Matthew J. Baker  
Bowling Green, Kentucky