

RENDERED: FEBRUARY 17, 2017; 10:00 A.M.  
 NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-000180-MR

JAMES MICHAEL YOUNG

APPELLANT

v. APPEAL FROM MERCER CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 15-CI-00194

THE ESTATE OF CHARLOTTE YOUNG; RICKY YOUNG,  
INDIVIDUALLY AND AS NATURAL PARENT AND NEXT  
FRIEND OF SAMANTHA YOUNG AND JESSI YOUNG; JOETTA  
YOUNG; JESSICA L. YOUNG, INDIVIDUALLY AND AS NATURAL  
PARENT AND NEXT FRIEND OF KAYLEA MEREDITH AND  
KENNEDY MEREDITH; EDITH BRITTANY DENNY; CHRIS  
DENNY; FARREN YOUNG; SAMANTHA YOUNG; JESSI  
YOUNG; CALEB YOUNG; KAYLEA MEREDITH; AND  
KENNEDY MEREDITH

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, MAZE AND STUMBO, JUDGES.

STUMBO, JUDGE: James Michael Young (“Appellant”) appeals from an Order  
of Dismissal rendered in Mercer Circuit Court in his action to quiet title and

seeking specific performance and partition. Appellant now argues that the circuit court improperly dismissed his claims and should have allowed the matter to proceed to discovery. We find no error and AFFIRM the Order on appeal.

Jesse L. Young died testate on October 7, 2007. Appellant James Michael Young and his brother Jesse C. Young are the decedent's sons. The Last Will and Testament of Jesse L. Young devised the family farm, situated in Mercer County, Kentucky, to Jesse C. Young with the stipulation that Jesse C. Young make payments totaling \$300,000 to various heirs.

On February 3, 2011, a deed to the parcel was executed in favor of Jesse C. Young, which included language stipulating that Jesse C. Young paid the \$300,000 purchase price and that the Estate acknowledged receipt of those funds. The Mercer Circuit Court would later find that the February 3, 2011 deed conveyed the parcel in fee simple without lien or other reservation. On February 8, 2011, Jesse C. Young conveyed the parcel to himself and his wife, Charlotte Young (now deceased), as joint tenants with right of survivorship.

Appellant would later allege that on October 2, 2013, he entered into an Estate Settlement and Real Property Agreement ("the Agreement") with Jesse C. Young. According to Appellant, the Agreement acknowledged that Appellant provided funds to Jesse C. Young to purchase the farm and stated that Appellant was entitled to recover from Jesse C. Young the sum of \$225,000. According to Appellant, the Agreement - which was prepared by the Estate's attorney - granted Appellant a one-half interest in the farm.

Jesse C. Young died testate on March 12, 2014, and his wife Charlotte Young died the following year. Appellant allegedly made numerous offers and demands to the heirs of Charlotte Young to settle the purported obligation under the Agreement. On June 26, 2015, and after allegedly receiving no response from the heirs, Appellant filed the instant action in Mercer Circuit Court. The Complaint included counts for specific performance, partition and to Quiet Title.<sup>1</sup> Appellant, without leave of the court, filed a First Amended Complaint on September 2, 2015, adding numerous other counts including fraud, *quantum meruit* and unjust enrichment. The Appellees herein are the heirs of Charlotte Young.

The matter proceeded in Mercer Circuit Court, where Appellees filed a Motion to Dismiss on August 14, 2015. On November 6, 2015, the Mercer Circuit Court entered an Order of Dismissal and subsequently denied Appellant's Motion to Alter, Amend or Vacate. In support of the Order of Dismissal, the court found that the Estate of Jesse L. Young conveyed the parcel to Jesse C. Young in fee simple without lien or other reservation. It found that at the death of Jesse C. Young, all interest in the parcel vested with Charlotte Young free and clear of any encumbrances or claims. The court went on to conclude that the case law cited by the Defendants (now Appellees) on the issues of specific performance, partition and quiet title were persuasive, and that Appellant did not state a claim against those Defendants. Finally, the court determined that no Defendant in the instant

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<sup>1</sup> Page 4 of the Complaint is missing from the Mercer Circuit Court record. A complete copy of the Complaint is appended to Appellant's written argument.

action signed or is obligated to the Plaintiff/Appellant under the Agreement. This appeal followed.<sup>2</sup>

Appellant now argues that he is entitled to recover the payment provided for under the Agreement and to enforce his interest in the real property. He maintains that he was granted “an interest” in the parcel by virtue of his father’s will and another one-half interest as set out in the Agreement with Jesse C. Young. Appellant contends that he has standing to prosecute a Quiet Title action pursuant to KRS<sup>3</sup> 411.120 and that the Mercer Circuit Court erred in dismissing his claim. Appellant goes on to argue that he is entitled to partition the subject parcel or to specific performance of the Agreement.

Appellant also contends that even if he cannot recover under the Agreement, he is entitled to recover under the equitable theory of unjust enrichment. He directs our attention to the elements of unjust enrichment as set out in *Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009), and argues that the facts support its application because he provided the funds to Jesse C. Young to purchase the parcel, the Appellees have inherited the parcel, and they are attempting to retain possession without paying Appellant its value.

In sum, Appellant argues that the Mercer Circuit Court erred in its application of CR<sup>4</sup> 12.02(f) dismissing the action and improperly terminated the

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<sup>2</sup> On September 9, 2015, Judge Peckler stated at a hearing that “I’m not allowing the Amended Complaint”. The Order of Dismissal rendered on November 6, 2015, however, addresses claims raised in the Amended Complaint.

<sup>3</sup>

Kentucky Revised Statute.

<sup>4</sup> Kentucky Rule of Civil Procedure.

litigation before he was allowed to prove his case by engaging in discovery. He contends that he provided sufficient facts and documentation to support the claim, and that the circuit court erred in failing to so rule.

The matter before us centers on the effect, if any, of the Agreement entered into between Appellant and Jesse C. Young executed on October 2, 2013, and duly notarized. The Agreement provides as follows:

**ESTATE SETTLEMENT  
AND REAL PROPERTY AGREEMENT**

**WHEREAS**, Jesse Young, by the terms of his Last Will and Testament recorded in Will Book 55, page 30, in the Mercer County Clerk's Office, granted his son, J.C. Young, the right to purchase his farm. A description of which is attached hereto and marked as Exhibit A. This transaction could be completed by J.C. Young paying the sum of Three Hundred Thousand Dollars (\$300,000) to the Jesse Young Estate. Michael Young [Appellant] agreed to and did furnish J.C. Young, funds sufficient to complete the transaction. In return, Michael Young, by the agreement has received a one-half (1/2) interest in the farm, consisting of 57 acres, more or less, a description of which is attached hereto. J.C. Young has the desire to pass title to the farm to his children or grandchildren and/or their spouses. By this agreement, J.C. Young agrees to pay to Michael Young the sum of Two Hundred Twenty Five Thousand Dollars (\$225,000), or one-half of the sales price, whichever is greater.

It is further a part of this agreement that should Michael Young desire to sell his interest in the property, J.C. Young has the first option to purchase said property at a reasonable price agreed to by the parties.

The Agreement appears to have been recorded in the Mercer County mortgage book, as it bears the stamp "MERCER COUNTY M590 PG517", and the Complaint so alleges.<sup>5</sup>

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<sup>5</sup> The Complaint alleges that the Agreement was recorded by the Mercer County Clerk on December 4, 2013, in Mortgage Book 590, page 517.

In dismissing Appellant's claims, the Mercer Circuit Court rendered the following Conclusions of Law:

1. That no named Defendant in the instant action signed or is obligated to the Plaintiff under whatever obligation may exist, if any, in the "Estate Settlement and Real Property Agreement."
2. That as a matter of law the deed from the Estate of Jesse L. Young conveyed to Jesse C. Young all the subject property in fee simple without lien or other reservation on or about February 3, 2011. Subsequently, Jesse C. Young conveyed to himself and his wife, Charlotte Young, on February 8, 2011, a deed as joint tenants, between husband and wife, with right of survivorship.
3. As a matter of law, at the death of Jesse C. Young, no encumbrance existed of record and none has been presented to this Court. Therefore, at the death of Jesse C. Young all rights, title and interest to the Vanarsdall Road property, by operation of deed left Charlotte Young as the exclusive owner of the subject property, free and clear of any and all encumbrances or claims.

Thus, the circuit court determined that title to the parcel passed without encumbrance from the Estate of Jesse L. Young to Jesse C. Young, then from Jesse C. Young to himself and his wife Charlotte Young as joint tenants with right of survivorship, then from Estate of Jesse C. Young to Charlotte Young, and finally from the Estate of Charlotte Young to the Appellees herein. As of the date when the Order on appeal was rendered, the Estate of Jesse C. Young was open and Appellant had filed no claim against it.

CR 12.02(f) provides that a party may, by motion, defend an action by asserting that the Plaintiff failed to state a claim upon which relief may be granted. When considering a motion to dismiss for the failure to state claim on which relief

can be granted, “the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.” *Littleton v. Plybon*, 395 S.W.3d 505, 507 (Ky. App. 2012) (footnote, citation, and quotation marks omitted). “Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue *de novo*.” *Id.* (citation and quotation marks omitted). The court should not grant a motion to dismiss for failure to state claim “unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *Edmonson Cty. v. French*, 394 S.W.3d 410, 413 (Ky. App. 2013) (citation and quotation marks omitted).

In reviewing this matter *de novo*, the dispositive question is whether Appellant would be “entitled to relief under any set of facts which could be proved in support of his claim.” *Edmonson Cty., supra*. We first note that the Mercer Circuit Court correctly determined that no named Defendant/Appellee herein was a party to the Agreement or is otherwise obligated to the Appellant under the terms of the Agreement; therefore, any contract claim as against the Appellees based on the Agreement must necessarily fail. In Count I of the Complaint, for example, Appellant claims entitlement to specific performance of the Agreement as against Appellees; however, as Appellees, as non-signatories, had no duty to perform under the Agreement, Appellant has failed to state a claim as to specific performance upon which relief may be granted.

Counts II and III of the Complaint seek to Quiet Title (KRS 411.120) and partition the parcel. KRS 411.120, however, requires a Quiet Title Petitioner to have “both the legal title and possession of land[.]” *Arguendo*, even if Appellant had legal title to the land by virtue of the Agreement, which the limited record does not demonstrate, it is uncontested that he does not have possession. While Appellant contends that he has the *right* to possess by virtue of the Agreement, he does not have *actual* possession. A necessary prerequisite to Quiet Title is lacking; therefore, Appellant has not stated a claim to Quiet Title under which relief may be granted.

Appellant goes on to argue that even if he cannot recover under the Agreement, he may recover the amounts provided by equitable relief via unjust enrichment. He directs our attention to *Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009), which provides that the elements of unjust enrichment are “(1) benefit conferred upon defendant at plaintiff’s expense; (2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of benefit without payment for its value.” In rejecting this argument, the Mercer Circuit Court relied on *Guerin v. Fulkerson*, 354 S.W.3d 161 (Ky. App. 2011). *Guerin*, wherein a home contractor converted client funds to improve his own home and from which his wife later benefitted, is controlling. As in *Guerin*, Appellant herein is at best an unsecured creditor of the Jesse C. Young Estate. He has no equitable claim as against Charlotte Young or her children and grandchild, and the Mercer Circuit Court properly so found.

Ultimately, we conclude that the Mercer Circuit Court correctly found that none of the Defendant/Appellees herein was a party to the Agreement and that as such no claim of contract or specific performance may stand as against them. Additionally, Appellant may not prosecute a Quiet Title action as he has neither legal title nor actual possession of the parcel. Finally, the equitable claims against the wife, children and grandchildren of Jesse C. Young are unsupported by the record and the law. The Mercer Circuit Court properly found that title passed without encumbrance to Jesse C. Young, then Charlotte Young and then the heirs of Charlotte Young. Appellant would have a cause of action, if at all, against the Estate of Jesse C. Young which was open during the pendency of the proceedings below. We find no error.

For the foregoing reasons, we AFFIRM the Order of Dismissal and Order Denying Motion to Reconsider of the Mercer Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Noel Mark Botts  
Harrodsburg, Kentucky  
  
William Erwin  
Danville, Kentucky

BRIEF FOR APPELLEES:

J. Hadden Dean  
Christopher J. Tucker  
Danville, Kentucky