

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000292-MR

LEROY HAYCRAFT
AND JESSIE HAYCRAFT

APPELLANTS

v.

APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 10-CI-00139

JOYCE DECKER,
ADMINISTRATRIX OF THE
ESTATE OF MARY DECKER

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE , KRAMER, AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Leroy and Jessie Haycraft appeal a judgment of the Grayson Circuit Court declaring a tract of land with improvements to be the property of appellee, the Estate of Mary Decker, and dismissing the Haycrafts' claim of adverse possession. After reviewing the record in conjunction with applicable legal authority, we affirm the judgment of the circuit court.

BACKGROUND

For a purchase price of \$35,000, the Haycrafts purchased from Leitchfield Deposit Bank & Trust Company what they believed to be real property consisting of 97.5 acres. In 2010, some 30 years later, after the death of Mary Decker, her estate filed the underlying declaratory judgment action claiming ownership to a 37-acre parcel which the Haycrafts had asserted was part of the 97.5 acres they purchased from the bank.

The original owners of the 97.5 acres were Lloyd and Mary Decker. Over time, the Deckers conveyed various tracts and parcels back and forth between them. Ultimately Mary Decker conveyed most of the property to her son Elroy and his wife Katherine. In the various conveyances between Mary and her son and his wife, a tract consisting of a house, barn, and 37 acres, more or less, was omitted from all descriptions.

At some point, Elroy obtained a mortgage from Leitchfield Bank on the various tracts which had been conveyed to him by his mother. The bank failed to have the property subject to the mortgage surveyed prior to accepting the various tracts as security for the loan. In a separate Grayson Circuit Court action, the bank foreclosed on its mortgage and subsequently purchased the property subject to its mortgage and lien at a master commissioner's sale. Thereafter, in 1990, the bank sold the property to the Haycrafts by general warranty deed.

Although Leroy Haycraft testified that representatives of the bank advised him he was being conveyed 97.5 acres, the circuit court ultimately concluded that the Haycrafts had been deeded at most 67 acres, more or less.

It is undisputed that Mary Decker lived on the 37-acre tract until her death in 2008. At that time, the Haycrafts attempted to assert ownership over the property. In response to the Haycrafts' action, the estate of Mary Decker filed this declaratory action seeking to quiet title to the property. In their answer and counterclaim, the Haycrafts asserted their ownership of the 37-acre tract and brought in the bank as a third-party defendant based upon an alleged deficiency in the general warranty deed it had provided the Haycrafts. It was the Haycrafts' contention that they had obtained ownership of the disputed property either through the deed from the bank or, in the alternative, by adverse possession. Prior to conducting a bench trial, the circuit court dismissed the bank from the proceedings on the basis that the statute of limitations on their alleged conduct had expired prior to its joinder.

This appeal followed the entry of judgment declaring the estate to be the owner of the 37-acre tract and dismissing the Haycrafts' claim of adverse possession.

STANDARD OF REVIEW

Following a bench trial, a trial court's 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." Kentucky Rules of Civil Procedure ("CR") 52.01. A factual finding is not clearly erroneous if it is supported by substantial evidence. *Gosney v. Glenn*, 163 S.W. 3d 894, 898 (Ky. App. 2005). "Substantial evidence is evidence, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Id.* (citations omitted). However, a trial court's conclusions of law "are subject to independent de novo appellate determination." *Id.*

ANALYSIS

The Haycrafts raise two issues on appeal: 1) that the 1990 deed from the bank confirms their purchase of the 37 acres in question; and 2) that, regardless of the deed, they acquired the disputed property via adverse possession. We agree with the circuit court's analysis and conclusions as to both issues.

The facts adduced at trial demonstrate that Elroy Decker, Mary Decker's son, obtained a mortgage on five tracts of land, four of which were deeded to him by his mother. The bank, which failed to conduct a survey before executing the mortgage, eventually foreclosed on the property and then purchased

the same five tracts at the master commissioner's sale. It was those five tracts which the Haycrafts ultimately purchased.

The parties to the dispute agreed to jointly hire an expert, Tim Smith, to review the deeds, research the chain of title, and make a determination as to which party owned the disputed 37 acres. Smith testified at trial that a survey and plat made for the bank on August 14, 1990, clearly showed that the bank had acquired only 67.7514 acres which did not include the 37.5 acres which the Haycrafts claim they purchased from the bank. Smith also stated that some of the descriptions in the Haycrafts' deed, and in deeds tracing the source of title to the property, overlap and therefore the Haycrafts did not obtain the 97.5 acres they are claiming. Noting that the property was conveyed by metes and bounds and not by the acre, Smith testified that the various conveyances simply do not include the disputed 37 acres.

In addition, the circuit court specifically found that a survey conducted on April 8, 2011, concluded that deeds going all the way back to the initial conveyances to Lloyd and Mary Decker included only 61.66 acres, with 37.5 acres reserved to the Deckers.

The Haycrafts nevertheless argue that the Decker family believed that Elroy owned all 97.5 acres of property, mortgaged it to the bank, and then lost it all in the foreclosure action. Although Leroy Haycraft testified that the bank told him

he was obtaining the 97.5 acres, the deed to the purchased property does not actually convey more than 67 acres, more or less. In addition, the Haycrafts argue that any ambiguities should be resolved against the Decker heirs because it was a member of the Decker family, Elroy Decker, who provided the description of the property when he mortgaged the property to the bank. It is important to note, however, that the Haycrafts did not request a survey prior to their purchase of the property from the bank.

Construction of a deed is a question of law and “the intention of the parties is to be gathered from the four corners of the instrument.” *Phelps v. Sledd*, 479 S.W.2d 894, 896 (Ky. App. 1972) (citation omitted). Here, the trial court made specific findings regarding conveyances of three separate parcels from Lloyd and Mary Decker to their son Leroy and his wife Katherine. While the conveyances for parcels one and two contained language to the effect that it was the **same property** Lloyd and Mary Decker had obtained by deed, the circuit court emphasized that the conveyance to Elroy and Katherine for parcel three specifically stated: “**Being a part of the same property** conveyed by Willie Sanders, unmarried, to Lloyd Decker and Mary Decker, his wife. . . .” As the trial court correctly observed, that language “should have set off bells and whistles to any potential purchase[r].” Despite the Haycrafts’ insistence that they were led to

believe the deed conveyed all 97.5 acres, an examination of the language within the four corners of the instrument makes clear it did not.

Relying upon the testimony of the expert hired by the parties, the circuit court determined that Mary Decker never conveyed the disputed tract to Elroy and thus it could not have been subsequently conveyed by the master commissioner or the bank because the identical language was contained in all the instruments. As the trial court emphasized, the “[b]eing a part of” language in the crucial deed from Lloyd and Mary Decker to Leroy and his wife Katherine should have put the Haycrafts on notice that there could be a problem. When parties to a deed put such language in the instrument, it is assumed that the parties intend that provision to have some effect from the very fact that those particular words were used. “The rule is well settled that words in a deed that are not technical must be construed as having their ordinary connotation.” *Id.* Despite the use of language which should have caused them to question the extent of the conveyance to Elroy, neither the bank nor the Haycrafts chose to have a survey of the property done. Clearly, they did so at their peril.

Evidence of substance supported each of the circuit court’s findings, and we perceive no error in its legal conclusions based upon those findings. Therefore, we affirm its declaration that the disputed tract is the property of the Estate of Mary Decker.

However, the Haycrafts also maintain that they acquired the disputed tract by adverse possession. Having reviewed the trial court's findings and conclusions in light of the record, we are persuaded that it properly determined that the Haycrafts failed to establish the necessary elements for application of the doctrine of adverse possession.

Although the Haycrafts allege that they gave Mary Decker permission to live on the property until her death in 2008, that assertion was supported only by Leroy Haycraft's testimony. There was no written document or acknowledgment from anyone in the Decker family that any arrangement of the sort existed. Although Leroy testified that he fenced the 37 acres, the evidence at trial demonstrated that he only fenced along a common boundary which was not in dispute. Leroy also testified that he raised crops on the property, yet he produced no records or sales receipts at trial showing any crop production or sales. In addition, when Leroy was shown pictures of buildings on the disputed property at trial, he was unable to identify them. The trial court specifically found that "Haycraft's testimony was not 'clear and convincing'" and that "his responses to questions were not clear and at times were self-contradictory."

Conversely, the administratrix of the estate provided proof at trial that Mary Decker or her heirs had continuously raised cattle on the farm and kept up the fences where the cattle were kept. They paid all taxes on the property,

utilized the homestead exemption, and used the property for recreational hunting and fishing. Finally, when Mary Decker died, her estate was billed and paid the taxes on the 37 acres.

To establish a claim of adverse possession, the Haycrafts must prove by clear and convincing evidence that they have satisfied the following elements: “1) [their] possession must be hostile and under a claim of right, 2) it must be actual, 3) it must be exclusive, 4) it must be continuous, and 5) it must be open and notorious.” *Moore v Stills*, 307 S.W.3d 71, 77 (Ky. 2010).

As the trial court correctly found, the Haycrafts failed to satisfy even one of these elements. First, the Haycrafts failed to prove hostile possession of the land. Up until her death, Mary Decker lived on the property, exerted control over the house and outbuildings, and claimed that she owned the property. Even after Mary Decker’s death, the Haycrafts failed to prove they had established possession hostile to her estate and heirs.

Second, the Haycrafts failed to prove actual possession of the property. In contrast to Mary Decker who continued to reside on and control the property until her death, the Haycrafts never lived on the 37 acres or asserted control over the property. Although Leroy claimed to have fenced the fields, he actually only erected a fence along an undisputed property line.

Third, the evidence showed the Haycrafts' possession was never exclusive. Mary Decker's living situation did not change after the Haycrafts received their deed from the bank and there was no evidence whatsoever that Mary Decker's possession of the property was ever anything other than by claim of right.

Fourth, the Haycrafts failed to prove that their possession was continuous for the statutory period. The Haycrafts failed to prove any possession of the property and thus could not have demonstrated continuous possession for 15 years.

And fifth, there was nothing open or notorious about the Haycrafts' alleged possession. It was Mary Decker who, until the time of her death, was in possession of the property; lived on and exerted absolute control over it; kept up the house and farm buildings; paid taxes on the property; allowed others to hunt and fish; and maintained the fencing and raised cattle on the property. Even after Mary Decker's death, her estate paid the taxes and her sons used the barn and grazed cattle on the property.

As a result, the Haycrafts failed to establish that they had any possession contrary to Mary Decker's; that they ever had actual possession or control over the property; that they exerted exclusive control over the property; or that the assertion of their alleged rights was either open or notorious. Thus, there is

no error in the trial court's conclusion that the Haycrafts failed to prove their claim of adverse possession by clear and convincing evidence. *Id.* at 77-78.

CONCLUSION

Based upon the foregoing, the judgment of the Grayson Circuit Court is in all respects affirmed.

ACREE, JUDGE, CONCURS.

KRAMER, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

Dwight Preston
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Ryan F. Quick
Elizabethtown, Kentucky