

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000437-MR

RICKY MARSHALL AND JUDY MARSHALL

APPELLANTS

v. APPEAL FROM MAGOFFIN CIRCUIT COURT
HONORABLE KIM C. CHILDERS, JUDGE
ACTION NO. 15-CI-00217

PETRO-WRIGHT PRODUCTIONS, LLC

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

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

THOMPSON, L., JUDGE: Ricky Marshall and Judy Marshall (“Appellants”) appeal from findings of fact, conclusions of law and judgment rendered by the Magoffin Circuit Court in this action to quiet title. Appellants argue that the court erred in overruling their motion to add indispensable party and in failing to grant a summary judgment in their favor. For the reasons addressed below, we affirm.

This matter involves the disputed ownership of a parcel of real property situated on Litteral Fork in Magoffin County, Kentucky. The parcel was once owned by Ruie Caudill, who devised the parcel to his children Ruth May and Harold Caudill. May and Caudill divided the parcel in 1987, with May receiving a tract on the “left” side of Litteral Branch, and Caudill receiving another tract on the “right” side of the branch. The disputed parcel is the tract formerly owned by Harold Caudill and his wife, Pauline Caudill.

On April 23, 1993, Ricky Marshall purchased a portion of the Caudill tract by way of general warranty deed. The deed was recorded in the Magoffin County Clerk’s office. The deed had a hand-drawn map purporting to depict the parcel being transferred.

On October 20, 2015, Petro-Wright Productions, LLC (“Appellee”) obtained a deed to a parcel adjoining the Marshall property. This parcel derives from the prior May tract. Appellee’s deed was also recorded. The record describes Appellee as owning the parcel to the “left” of Litteral Branch, with Appellants owning the parcel to the “right.” Both deeds refer to an iron stake near the branch as establishing the property line.

About one week after obtaining its interest in the parcel, Appellee filed the instant action seeking to quiet title as to a portion of the property

possessed by Appellants. Appellants counterclaimed title by virtue of the deed, and by way of adverse possession.

The matter proceeded in Magoffin Circuit Court, whereupon Appellants filed a motion to dismiss on the ground that Pauline Caudill and the heirs of Harold Caudill were indispensable parties because they owned some or all the disputed property. Appellee argued against the motion on the belief that Pauline Caudill and the heirs of Harold Caudill did not own any interest in the disputed parcel. On December 19, 2016, the circuit court entered an order purporting to deny the motion.

Thereafter, Appellee asserted that upon further discovery by its surveyor, it believed that Pauline Caudill and the heirs of her late husband Harold Caudill did in fact have a claim to the disputed property. Based on this information, Appellee obtained a deed from Pauline Caudill and her surviving son and grandchildren. Appellee asserts the surveyors for both parties have testified that this deed does cover the disputed property.

The matter proceeded to trial, where the testimony of several witnesses was heard. On February 14, 2018, the court entered a judgment in favor of Appellee. In support of the judgment, the court determined that the 1993 deed from Harold and Pauline Caudill to Appellant Ricky Marshall does not include the

disputed property. It also found that the deed from Pauline Caudill to Appellee does convey title to the disputed parcel. This appeal followed.

Having closely examined the record and the law, we must dismiss this appeal for a number of reasons. First, Appellants argue that the Circuit Court erred in denying their motion to add indispensable party. Appellants have cited to no such motion in the record, however, and our search of the record has uncovered no such motion. See Kentucky Rules of Civil Procedure 76.12(4)(c)(v). There is simply nothing for us to review on this issue.

Second, Appellants argue that the circuit court erred in failing to grant summary judgment in their favor. This motion was denied based on factual issues being in dispute. “Appellate review of a summary judgment involves only *legal* questions and a determination of whether a disputed material issue of fact exists.” *Shelton v. Kentucky Easter Seals Soc., Inc.*, 413 S.W.3d 901, 905 (Ky. 2013) (Emphasis added).

And finally, Appellants broadly assert that the Magoffin Circuit Court’s judgment is defective. This argument was not preserved via a post-judgment motion which would have allowed the circuit court to correct its purported error. “It goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court.” *Skaggs v. Assad, by and through Assad*, 712 S.W.2d 947, 950 (Ky. 1986). A new theory of

error may not be raised for the first time on appeal. *Jones v. Livesay*, 551 S.W.3d 47, 52 (Ky. App. 2018).

For these reasons, the instant appeal is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

James P. Pruitt, Jr.
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Gordon B. Long
Salyersville, Kentucky