NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 08-642

Opinion Delivered February 25, 2009

LEYON BRATTON APPELLANT V. DOYLE WILSON and RUTH WILSON APPELLEES	APPEAL FROM THE VAN BUREN COUNTY CIRCUIT COURT, [NO. CV 2006-73] HONORABLE CHARLES E. CLAWSON, JR., JUDGE AFFIRMED

M. MICHAEL KINARD, Judge

Leyon Bratton appeals from the Van Buren County Circuit Court's order quieting title in appellees Doyle and Ruth Wilson. The property at issue in this case consists of 4.75 acres in Section 15, Township 10 North, Range 13 West, Van Buren County, Arkansas. Appellees filed a complaint to quiet title based on adverse possession. Following a bench trial, the circuit court issued a decision granting Doyle and Ruth Wilson's request to quiet title in their names. We affirm.

In August 1983, Billy and Charlotte Wilson, husband and wife, conveyed these 4.75 acres to Bobby and Leyon Bratton by warranty deed.[1] The deed was dated August 5, 1983, and was recorded on October 14, 1983. The validity of this deed is uncontested.

[1] Bobby Bratton died in 1992.

In August 1989, the State of Arkansas issued a redemption deed to Billy and Charlotte Wilson for these same 4.75 acres, which had been forfeited for nonpayment of taxes from 1982 to 1987. The redemption deed was recorded on August 26, 1989. Billy Wilson testified that he received notice from the State and believed that he had the right to redeem the property. After receiving the redemption deed, Billy Wilson had "the old house place dozered off, fenced it, [and] put cattle on it." He regularly put calves on the land in the spring and sold them in the fall. During this time, Billy Wilson paid taxes on the property. He testified that he did not see or hear from the Brattons, nor was he aware of them making any claim to the property.

Billy and Charlotte Wilson sold the property to Doyle and Ruth Wilson,[2] husband and wife, as evidenced by a warranty deed dated April 22, 1996. The deed was held in a "safe deposit box" at a bank while Doyle and Ruth paid off the purchase price of $5,000. They made a $1,000 down payment and paid the balance at a rate of $200 per month for twenty months. Doyle Wilson testified that he picked the deed up from the bank when the purchase price had been paid. The deed was recorded on May 19, 2003. Doyle Wilson testified that they bought the property for their son, Robert Snyder. Robert, Bobbie (his wife), and their child immediately moved into a trailer on the property. Over the next several years, they made the following improvements to the property: drilled a well, installed a septic tank, cleared land so as to have a view of the lake, built a concrete

[2] Doyle Wilson is Billy Wilson's brother.

porch, put down a concrete slab to be used for playing basketball and parking, and built a storage building.

Doyle and Ruth Wilson conveyed the property to Robert and Bobbie Snyder, who had paid back the purchase price for the property, by warranty deed on June 2, 2003. Robert and Bobbie Snyder filed for bankruptcy and then divorced in 2005. As part of the divorce settlement, Bobbie Snyder executed a quitclaim deed to Robert in March 2005. That year, Robert decided to sell the property. A title search was conducted, and the Brattons' 1983 deed was discovered. The last year Robert or Doyle paid taxes on the property was 2004. After the deed to the Brattons was discovered in 2005, Leyon Bratton paid the taxes in 2005 and 2006.

Robert Snyder executed a warranty deed to his parents, Doyle and Ruth Wilson, appellees in this case, on April 13, 2006. Doyle and Ruth Wilson filed their complaint to quiet title in Van Buren County Circuit Court on April 18, 2006. A trial was held in November 2007, and the trial court entered a decree quieting title in the Wilsons on February 20, 2008. The trial court found that "the Plaintiffs and their predecessors in title have owned, occupied, paid taxes, made improvements and used the subject property for a period well in excess of seven (7) years. All of these facts coupled with color of title establish adverse possession of the subject property by the Plaintiffs and their predecessors in title." Leyon Bratton timely filed a notice of appeal.

Appellant contends that the trial court erred in applying the law and should be reversed. Specifically, appellant argues that appellees' claim of adverse possession fails

because they do not possess color of title, a requisite for claiming title by adverse possession since the passage of Act 776 of 1995. Quiet title actions have traditionally been reviewed de novo as equity actions. *Price v. Rylwell, LLC*, 95 Ark. App. 228, 229, 235 S.W.3d 908, 910 (2006). However, findings of fact will not be reversed unless they are clearly erroneous. *Id.*

The requirements for claiming ownership of land by adverse possession are set forth in Act 776 of 1995, which is codified at Ark. Code Ann. section 18-11-106 (Supp. 2007). In addition to fulfilling common-law requirements,[3] the party asserting adverse possession must show that he has held color of title to the real property for a period of at least seven (7) years and during that time paid ad valorem taxes on the real property. Ark. Code Ann. § 18-11-106. In this case, appellant's primary challenge on appeal is to the circuit court's findings regarding the color-of-title requirement. Color of title has been defined as

> [a]ny instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title.

Black's Law Dictionary 266 (6th ed.1990). Additionally,

> [c]olor of title is not, in law, title at all. It is a void paper, having the semblance of a muniment of title, to which, for certain purposes, the law attributes certain qualities of title. Its chief office or purpose is to define the limits of the claim

[3]To prove the common-law elements of adverse possession, a claimant must show that he has been in possession of the property continuously for more than seven years and that his possession has been visible, notorious, distinct, exclusive, hostile, and with the intent to hold against the true owner. *Trice v. Trice*, 91 Ark. App. 309, 210 S.W.3d 147 (2005).

> under it. Nevertheless, it must purport to pass title. In form, it must be a deed, a will, or some other paper or instrument by which title usually and ordinarily passes. Such qualities as are imputed to it by the law, for limited purposes, are purely fictitious and are accorded to it only to work out just results. Fictions are never used in procedure or law for any other purpose.

Weast v. Hereinafter Described Lands, 33 Ark. App. 157, 803 S.W.2d 565 (1991) (citations omitted) (quoting *Bailey v. Jarvis*, 212 Ark. 675, 208 S.W.2d 13 (1948)).

On appeal, appellant argues that the redemption deed was void, that void deeds cannot establish color of title, and that even if the redemption deed were valid, redemption deeds do not constitute color of title under Arkansas law. We need not address the validity of the redemption deed in order to decide this case. The trial court found that the subsequent warranty deed from Billy and Charlotte Wilson to Doyle and Ruth Wilson in 1996 gave Doyle and Ruth color of title under the circumstances of this case.[4] While it is certainly true, as appellant asserts, that a grantor cannot convey any greater interest in property than he himself has, appellees did not need to prove that they acquired actual title to the property. Since appellees made their claim under an adverse possession theory, they needed only color of title, which by definition is not actual title. The warranty deed they received from Billy and Charlotte Wilson, for which valuable consideration was paid, gave appellees color of title to the property at issue. Appellees or

[4]We recognize that it was questionable whether the deed to Doyle and Ruth Wilson was delivered when it was executed on April 22, 1996, or twenty months later, when they finished paying the purchase price and obtained the deed from the bank. Because the record would adequately support either finding, we defer to the fact-finder. *See Rymor Builders, Inc. v. Tanglewood Plumbing Co., Inc.*, 100 Ark. App. 141, 265 S.W.3d 151 (2007). According to the decree, appellees held the property under color of title beginning April 22, 1996, the date of the warranty deed.

their son[5] held the property under color of title and paid taxes on it from the time the warranty deed was obtained in January 1996 until 2005, when appellant paid the property taxes, a period in excess of seven (7) years. Therefore, the statutory requirements for adverse possession were met by appellees.

Appellant also contends that appellees could not have acquired title from Billy Wilson until the warranty deed was filed in May 2003. Appellant cites no authority for this contention. In her reply brief, it appears that appellant asserts that a deed must be recorded in order to constitute color of title, and she cites *Halbrook v. Lewis*, 204 Ark. 579, 163 S.W.2d 171 (1942), for the proposition that unrecorded deeds do not constitute notice to anyone except the parties actually involved in the transaction. Appellant's reliance is misplaced. In this adverse possession case, the actual possession of her property by the Wilson and Snyder families put appellant on notice that someone was claiming it adversely to her interest. *See Welder v. Wiggs*, 31 Ark. App. 163, 168, 790 S.W.2d 913, 916 (1990).

The issue of fabrication was also raised in the parties' briefs. One cannot fabricate color of title by forging deeds or wills where the parties have knowledge of their lack of title for the express purpose of founding a claim of color of title. *Weast v. Hereinafter Described Lands*, 33 Ark. App. 157, 803 S.W.2d 565 (1991). However, there is no evidence of fabrication here. Appellees paid $5,000 for the property, which indicates that

[5]It is well settled that a claimant may "tack on" the adverse-possession time of an immediate predecessor in title. *White River Levee Dist. v. Reidhar*, 76 Ark. App. 225, 229, 61 S.W.3d 235, 237 (2001).

they believed Billy Wilson and his wife owned the property. Doyle Wilson testified that the first time he learned that appellant claimed an interest in the property was in 2005 when Robert tried to sell it. *Bailey v. Jarvis*, 212 Ark. 675, 208 S.W.2d 13 (1948), which appellant cites for the proposition that deeds from one family member to another are insufficient to create color of title where it did not exist in the first instance, is readily distinguishable from the case at hand. In *Bailey*, the grantors of the deeds in question knew they were conveying more than they owned, as did the grantee. Here, there was testimony from both Billy Wilson and Doyle Wilson that they acted under the belief that Billy Wilson was the owner of the property. It is well established that determinations of witness credibility are within the province of the fact-finder. *Chavers v. Epsco, Inc.*, 352 Ark. 65, 98 S.W.3d 421 (2003).

Under these facts, we cannot say that the circuit court clearly erred in finding that appellees established that they held the property in question under color of title. This finding, together with the other elements present, established title by adverse possession in appellees.

Affirmed.

GLOVER and MARSHALL, JJ., agree.