KORY v. LESS.

Opinion delivered April 6, 1931.

1. JUDGMENT—AUTHORITY TO CORRECT.—Every court of record has control over its own judgments and decrees, and has power during or after the term to correct clerical mistakes so as to cause them to speak the truth.
2. JUDGMENT—CORRECTION AFTER LAPSE OF TIME.—Mere lapse of time does not render it inequitable to amend a decree where the rights of no third persons have intervened.
3. JUDGMENT—CORRECTION—EVIDENCE.—Parol or other satisfactory evidence is sufficient to authorize a *nunc pro tunc* order or judgment.
4. JUDGMENT—CORRECTION.—On demurrer admitting the description of land in a decree was not in accordance with the decree rendered, the chancery court rightly corrected the original decree to contain the correct description.

Appeal from Lawrence Chancery Court, Eastern District; *A. S. Irby,* Chancellor; affirmed.

STATEMENT OF FACTS.

Appellees brought this suit in equity to amend, so as to speak the truth, a decree which was entered of record at the spring term 1917 of the Lawrence Chancery Court, whereby dower was allotted to appellant in certain lands owned by her deceased husband, who died intestate in said county, leaving appellees as his sole heirs at law.

His estate comprised 2,000 acres, and among the lands described in the complaint to which appellant claimed dower was an undivided one-half interest in the northeast quarter of section 6, township 17 north, range 2 east, in Lawrence County, Arkansas. An appeal was taken from the decree in that case, which was affirmed by this court in an opinion delivered November 26, 1917, under the style of *Less* v. *Less,* 131 Ark. 232, 199 S. W. 185. Reference to the transcript in that case shows that the commissioners appointed to allot dower assigned to appellant, as part of her dower, the east one-third Snow farm in the northeast quarter of section 6, township 17 north, range 2 east; and the final decree approves in all respects the allotment of dower to appellant.

In the complaint in the present case, appellees allege that in the original decree the land was erroneously described as the east one-third Snow farm, northeast quarter of section 6, township 17 north, range 2 east, when the correct description of the same should have been the east one-third of lots 1, 2, 3 and 4, northeast quarter of section 6, township 17 north, range 2 east. The complaint further alleges that since the death of Mary Snow, who owned a life estate in said land, they have made a partition of their interests in said land with the persons with whom they own the land as tenants in common. Appellant filed a demurrer to the complaint on the ground that it did not state facts sufficient to constitute a cause of action.

The chancery court overruled the demurrer to the complaint.

Appellant duly excepted to the ruling of the court and refused to plead further. It was then decreed that the prayer of the complaint should be granted, and the original decree allotting dower to appellant, which was rendered in 1917, was amended so as to speak the truth as alleged in the complaint herein. The case is here on appeal.

W. E. Beloate and *W. E. Beloate, Jr.*, for appellant.

E. H. Tharp, W. P. Smith and *O. C. Blackford*, for appellee.

HART, C. J., (after stating the facts). It is well settled here as elsewhere that every court of record has control over its own judgments and decrees, and has power, as well after the term is ended as while it lasts, to correct clerical mistakes and to cause them to speak the truth. The reason is that the entry in the record should correspond with the judgment or decree which was actually rendered, and the court has the power, and it is its duty, even at a subsequent term, to make such changes in the entry as will make it conform to the truth. Of course, under the guise of an amendment, there is no authority to correct a judicial mistake, but the authority of the court to amend its record in whatever way may be

necessary to make the record speak the truth, whenever the ends of justice require such amendment, has been recognized from the beginning of this court, notwithstanding the lapse of the term. The authority of the court is to amend its record so as to make it speak the truth, but not to make it speak what it did not speak but ought to have spoken. *King & Houston* v. *State Bank,* 9 Ark. 185, 47 Am. Dec. 739; *Arrington* v. *Conrey,* 17 Ark. 100; *Bobo* v. *State,* 40 Ark. 224; *Ward* v. *Magness,* 75 Ark. 12, 86 S. W. 822; *Liddell* v. *Bodenheimer,* 78 Ark. 364, 95 S. W. 475, 115 Am. St. Rep. 42; *St. Louis & N. A. Rd. Co.* v. *Bratton,* 93 Ark. 234, 124 S. W. 752, and cases cited; *Melton* v. *St. L. I. M. & S. Ry. Co.,* 99 Ark. 433, 139 S. W. 289; *United Drug Co.* v. *Bedell,* 164 Ark. 527, 262 S. W. 316, and cases cited; and *Evans* v. *United States Anthracite Coal Co.,* 180 Ark. 578, 21 S. W. (2d) 952, and cases cited.

Whenever the question has arisen, the court has held that mere lapse of time, where the rights of third persons have not intervened, does not render it inequitable to amend the decree. In *Liddell* v. *Bodenheimer,* 78 Ark. 364, 95 S. W. 475, 115 Am. St. Rep. 42, it was held that there is no limitation within which an order omitted from the record may be recorded. Again, in *Melton* v. *St. L. I. M. & S. Ry. Co.,* 99 Ark. 433, 139 S. W. 289, it was held that when the record of a judgment is amended by the court by a *nunc pro tunc* order, the amendment related back to the time when the original entry was made, and, except as to the right of innocent third parties, the effect is the same as if it had been entered upon the date when it was actually made. See also *Foohs* v. *Bilby,* 95 Ark. 302, 129 S. W. 1104.

In a case-note to 10 A. L. R. at page 568, it is said that the view now generally accepted is that all merely clerical errors or misprisions in judgments or decrees may and should be corrected by the court which rendered or made them in proper proceedings upon adequate evidence by appropriate *nunc pro tunc* amend-

ments, notwithstanding the lapse of the term and at later and subsequent ones. Many cases from courts of last resort are cited in support of the rule.

This court is also committed to the rule that parol or other satisfactory evidence is sufficient to authorize a *nunc pro tunc* order or judgment. All that is necessary is that the evidence should be satisfactory, clear and convincing. *Bobo* v. *State,* 40 Ark. 224; *Ward* v. *Magness,* 75 Ark. 12, 86 S. W. 822; *Liddell* v. *Bodenheimer,* 78 Ark. 364, 95 S. W. 475, 115 Am. St. Rep. 42; *Goddard* v. *State,* 78 Ark. 226, 95 S. W. 476; *Bowman* v. *State,* 93 Ark. 168, 129 S. W. 80; *Sutton* v. *State,* 163 Ark. 562, 260 S. W. 409; and note to 67 L. R. A. at 848.

Other cases adhering to the doctrine that courts of record have the power to amend *nunc pro tunc* their own judgments and decrees at subsequent terms to make them speak the truth and to correct clerical mistakes upon any clear, competent, and convincing evidence in point, either in or out of the record, and whether documentary or oral, official or unofficial, may be found in a case-note to 10 A. L. R. 641. Among the cases cited is *Murphy* v. *Stewart,* 2 How. (U. S.) 263.

In the case at bar, appellant alleges that the land allotted as dower to appellant was erroneously described in the decree. Treating the entry as a mistake of the clerk, as it should be treated, the case falls within the principles above announced that whatever limitation there may be upon the power of the court after the term of court to correct its judicial errors, there is nothing in the way of correcting clerical mistakes or misprisions so that the judgment may conform to what the court intended it should do. It has been well said that if courts did not have this power, they would be very inefficient agencies for the administration of justice. *McClure* v. *Bruck,* 43 Minn. 305, 45 N. W. 438.

The demurrer of appellant admits that the erroneous description of the land was not in accordance with the decree allotting dower to appellant. Hence there is nothing requiring proof to be made as a prerequisite of

the rights of appellees to have the judgment amended so as to speak the truth. *McNeese* v. *Raines*, 182 Ark. 109, 34 S. W. (2d) 225. There is no suggestion in the record that appellant or any third person will be injured by making the correction. On the contrary, the complaint alleges the facts to be that the person holding the land as tenant in common with appellees recognizes that the description in the original decree is a mistake, and that it should be corrected. There is nothing to show that appellant, relying on the original decree as written, has placed herself in such a position that, to correct the mistake, will operate to defraud her. Therefore, the chancery court rightly corrected its original decree so that the entry may contain a correct description of the land which was assigned to appellant as dower, as described in the complaint, and that the entry may conform to what the chancery court intended in the original decree. It follows that the decree will be affirmed.