

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002758-MR

RALPH CLARK, IRENE CLARK
AND CRAIG CLARK

APPELLANTS

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 95-CI-248

SYLVIA LOIS SPARKS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GARDNER, GUIDUGLI AND KNOX, JUDGES.

GARDNER, JUDGE: Appellants, Ralph, Irene and Craig Clark (the Clarks), appeal from a judgment of the Rockcastle Circuit Court for the appellee, Sylvia Lois Sparks (Sparks), in this property dispute. The Clarks maintain that the circuit court incorrectly ruled that Sparks and her predecessors acquired title to the tract in question by adverse possession. This Court has carefully reviewed the record below and affirms the circuit court's judgment.

The tract in dispute in this case is a wooded area that borders the properties of the Clarks and Sparks. In 1944, Ester Thomas (Ester), Sparks's father, acquired fifty acres of land

near the Old State Road in Rockcastle County. Part of this property included a three acre tract on the east side of the road. This tract is the land in dispute. In 1946, Ester conveyed this three acre tract to his brother, Oscar Thomas (Oscar).¹ Oscar owned the tract until 1972, when he reconveyed the land to Ester. In 1993, Ester conveyed the tract to Sparks.² Sparks had a survey of the property completed in 1993. The Clarks maintained that the 1993 survey and deed resulted in an encroachment upon their property. In 1995, the Clarks also hired a surveyor, and after the survey was completed, they bulldozed part of the fence surrounding the wooded property in dispute. The parties both contend that the fence was put up by them or their predecessors.

In 1995, after removal of the fence, Sparks brought an action to quiet title and sought damages. The Clarks answered and counterclaimed. The court held a bench trial. Both sides presented differing evidence regarding the existence of a fence bordering the property in question. The court in its judgment concluded that neither side traced the title to the property to the Commonwealth or to a common grantor. The court ruled that Sparks proved quiet and peaceable possession of the 3.17 acre tract by herself and her predecessor in title from 1946 until 1995 under adverse possession. The Clarks moved to alter, amend or vacate the judgment. This motion was denied by the trial court. The Clarks subsequently filed this appeal.

¹The Clarks purchased their property in 1963.

²Sparks did not record this deed until 1995.

The Clarks argue that the evidence presented before the trial court was insufficient to sustain a finding by the trial court that Sparks and her predecessors obtained title to the property in question by adverse possession. They contend that the trial court failed to state how Sparks and her predecessors obtained title regarding each element of adverse possession. This Court has found no error.

A party may obtain title to real property by adverse possession when he or she claims the property for the statutory fifteen year period. Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Ky., 824 S.W.2d 878, 879-80 (1992); see Kentucky Revised Statute (KRS) 413.010; Kentucky Women's Christian Temperance Union v. Thomas, Ky., 412 S.W.2d 869 (1967). A party must show five elements to establish adverse possession: (1) 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. Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., 824 S.W.2d at 880. "Notoriety, exclusiveness, and continuity of possession are often evidenced by the erection of physical improvements on the property, such as fences, houses or other structures." Kentucky Women's Christian Temperance Union v. Thomas, 412 S.W.2d at 870. In order to make an adverse claim definite, the adverse possessor must have some color of title showing the extent of the claim, or there must be a definite boundary. Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., 824 S.W.2d at 880.

In the instant case, Sparks presented ample evidence to prove title to the property by adverse possession. Conflicting evidence was presented regarding the property in question and specifically, the existence of a fence bordering it. Sparks and a number of witnesses called on her behalf testified that they remembered a fence around the property dating back at least to the 1940's or 1950's. Sparks testified that she could remember a page fence, bordering the property along the lane going back to the 1950's. Lillie Thomas, Ester's widow, testified that there was a low page wire fence along the property going back to around 1945. Sparks's siblings testified that they also remembered a fence going back to the 1950's. Witnesses for Sparks testified that the fence remained intact until 1979, when a water line was laid. Following this, Ester replaced the fence that had to be removed for the water line, with a barbed wire fence. Sparks presented testimony that the fence then remained in tact until the Clarks bulldozed part of it out in 1995. The Clarks on the other hand, testified that the fence belonged to them and that they put it up to keep their cattle from going into the woods. They claimed that they took it down in 1995, because it was no longer needed.

While conflicting evidence existed regarding the fence, ample evidence was presented to show that Sparks and her predecessors used the original fence and the replacement fence to claim title to the property in question. They also claimed the property pursuant to deeds dating back to 1945. It is not our role to second guess the trial court's findings regarding such

matters. See Reichle v. Reichle, Ky., 719 S.W.2d 442 (1986); Kentucky Rule of Civil Procedure (CR) 52.01. This Court has uncovered no clear error by the trial court. Additionally, the trial court concluded that Sparks had presented evidence meeting the elements of adverse possession. The evidence presented before the trial court by Sparks clearly showed that the possession by her and her predecessors was hostile and under a claim of right, actual, exclusive, continuous, and open and notorious. This Court declines to disturb the trial's ruling.

For the foregoing reasons, the Rockcastle Circuit Court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James L. Cox
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BRIEF FOR APPELLEE:

Carl R. Clontz
Mt. Vernon, Kentucky