RENDERED: JANUARY 4, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001885-MR

CHARLES E. INSKO — APPELLANT

v.

APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 03-CI-00011

JOHN RANSDELL; AND BETTY RANSDELL — APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

VANMETER, JUDGE: A purchaser of real estate has constructive notice of matters appearing of record. However, Kentucky case law has long recognized that a seller who makes misrepresentations of fact regarding the condition of title excuses the purchaser from making such record inquiry. The issue we must resolve in this case is whether the trial court erred by granting summary judgment for the seller on the basis that the seller's disclosure of an easement placed the purchaser on constructive notice of the terms of the

easement and imposed on the purchaser a duty to investigate further. As we hold that the trial court erred, we vacate the judgment of the Bourbon Circuit Court and remand this matter to that court for further proceedings.

In December 1999, Charles Insko approached John Ransdell about a 0.75 acre lot that Ransdell was offering for sale on Silas Road in Bourbon County, Kentucky. Approximately a month later, the parties verbally agreed on a purchase price of $12,000. According to his deposition testimony, Ransdell was aware that Insko's purpose in buying the lot was to construct a log cabin and a leather shop. According to Insko's deposition, Ransdell informed Insko that an electrical utility easement diagonally bisected the lot, but that it would not interfere with Insko's plans, and that the only restriction on the property was that Insko could not place a single-wide trailer on it. Over the course of the next year, Insko made periodic payments to Ransdell, fully paying by January 2001. At that time, Ransdell and his spouse executed and delivered to Insko a deed for the lot.
In due course, Insko learned that the easement was, in fact, 150 feet wide, and that due to setback and side zoning restrictions, essentially no building could occur on the lot. Jim Shaw, the local building inspector, told Insko that Ransdell was aware that nothing could be done with that piece of property. After Insko unsuccessfully attempted to negotiate for the purchase of additional property adjacent to the lot, he brought this action for rescission of the deed and refund of the purchase price.

The trial court set the matter for a bench trial in September 2006. Prior to the trial, the court granted Ransdell's motion for summary judgment on the basis that

Ransdell's disclosure of the easement placed Insko on constructive notice such that Insko had a duty to investigate further, and his failure to do so barred any remedy. The trial court also ruled that the equitable remedy of rescission was barred due to laches. Insko appeals.

I. Summary Judgment/Standard of Review

As an initial matter, we note that the purpose of "summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Roberson v. Lampton,* 516 S.W.2d 838, 840 (Ky. 1974). Summary judgment should only be granted "where the movant shows that the adverse party could not prevail under any circumstances." *Paintsville Hosp. Co. v. Rose,* 683 S.W.2d 255, 256 (Ky. 1985). "The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft,* 916 S.W.2d 779, 781 (Ky.App. 1996). In making this determination, "[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.,* 807 S.W.2d 476, 480 (Ky. 1991). Since the trial court granted summary judgment prior to holding a bench trial, no factual findings were made, *Scifres,* 916 S.W.2d at 781, and the decision therefore shall be reviewed *de novo. Revenue Cabinet v. Hubbard,* 37 S.W.3d 717, 719 (Ky. 2000).

II. Misrepresentation

Kentucky law has long recognized as regards real estate transactions that where a purchaser alleges the seller has made a fraudulent misrepresentation as to the condition of title, the seller cannot defend himself by arguing that the purchaser should have examined the public records to ascertain the correct information. *Stallard v. Adams*, 312 Ky. 532, 228 S.W.2d 430 (1950); *Sellars v. Adams*, 190 Ky. 723, 228 S.W. 424 (1921); *Young v. Hopkins*, 22 Ky. (6 T. B. Mon.) 18 (1827).[1] In other words, in the case of fraud, the victim is not required to have prevented the fraud by examining the public record to ascertain the truth of the representation.

The basis of the trial court's ruling was that since the easement was properly recorded and Ransdell brought the easement to Insko's attention, Insko had a duty to make further inquiries. In so holding, the trial court cited *Hutcherson v. Louisville & N. R. Co.*, 247 Ky. 317, 323, 57 S.W.2d 12, 15 (1933) (noting that "[w]hatever puts a party on inquiry amounts in law to notice, provided an inquiry becomes a duty, as in the case of a purchaser or a creditor, as would lead to a knowledge of the requisite facts by the exercise of ordinary intelligence and understanding"), and *Osborne v. Howard*, 195 Ky. 533, 536, 242 S.W. 852, 853 (1922) (buyer is not "entitled to rely upon a false representation made to him when he has evidence before him that clearly and plainly contradicts it").

[1] *See also Harris v. Brock*, 2002-CA-002287-MR, 2003 WL 22872319 (Ky.App., Feb. 27, 2004).

In reviewing these cases, however, we note that *Hutcherson* did not involve a seller's misrepresentations to a buyer. Rather, it was an action for damages alleged to have been suffered due to a railroad right of way relocation which was pending during the time the purchaser was buying the property. Similarly, *Osborne* is distinguishable in that the court characterized the seller's alleged misrepresentation[2] as "boosting talk" and as "a very remote and rather indefinite statement of the condition of the soil at which appellant was then looking." 195 Ky. at 536, 242 S.W. at 853. At about the same time as *Osborne* was decided, the court also decided *Sellars v. Adams*, *supra*, and specifically held that a purchaser has a right to maintain an action for fraud for a misrepresentation as to the condition of title, notwithstanding the purchaser's failure to examine public records. 190 Ky. at 727, 228 S.W. at 426-27. While such a distinction initially may be difficult to rationalize, it would appear that *Osborne* turned on the obvious and apparent condition of the land and/or the obvious "puffery" of the "misrepresentation," whereas in *Sellars*, by contrast, it was implicitly recognized that the condition or state of a title, by contrast, is not readily apparent to one who is unskilled in the examination of real estate records. In this case, while an overhead electric line may have been an apparent physical feature of the property, the scope and extent of any easement, and whether zoning regulations would permit the purchaser's intended use, were not obvious and apparent. Therefore, constructive notice and Insko's failure to examine the title do not bar his action for

[2] After looking at the farm in question, Osborne stated that the land "looked thin or poor," to which Howard replied that the farm was all right, having been rested 12 years and cultivated 2 years.

rescission.

Given that the record clearly shows the existence of a genuine issue of material fact as to whether Ransdell knew the extent of the easement and was aware of the lot's unsuitability for building,[3] the Bourbon Circuit Court erred when it granted summary judgment in favor of Ransdell.

III. Mutual Mistake

Insko did not move for summary judgment as to his claim of mutual mistake, and the trial court did not address the issue before granting summary judgment for Ransdell. Ransdell's deposition testimony, as well as his drawing of the location of the easement with possible building locations, very strongly suggests that, at a minimum, the basis for the parties' bargain was a mutually mistaken belief that Insko would be able to build on the property, and that the parties learned otherwise only after the transaction was consummated.

Case law is clear that mutual mistakes are actionable with the "usual remedies [being] recision [sic] of the transaction or reformation of the contract or deed." *Bradshaw v. Kinnaird*, 319 S.W.2d 475, 477 (Ky. 1958); *see Fields v. Cornett*, 254 Ky. 35, 70 S.W.2d 954, 957 (1934). In both *Bradshaw* and *Fields*, equity dictated relief, notwithstanding that resort to public records could have corrected the misunderstandings:

[3] As to the motion for summary judgment regarding the misrepresentation claim, the court was required to view in Insko's favor evidence including that Ransdell was aware of Insko's plans, told Insko of the easement, represented that the width of the easement would not interfere with Insko's plans while knowing that it would, and advised Insko that there was no need to have a title examination performed on the lot.

in *Bradshaw*, by inquiry to the government office in charge of tobacco bases, and in *Fields*, by a title examination.

In this case and as previously noted, the evidence clearly shows that, at a minimum, the basis of Insko's and Ransdell's bargain may have been a belief that, notwithstanding the easement, Insko would be able to build on the lot. We believe the trial court, as a court of equity, erred as a matter of law by summarily dismissing this matter since if fraud did not occur, but a mutual mistake did, Insko was entitled to rescission of the deed and restitution of the purchase price. *See Bradshaw*, 319 S.W.2d at 478; *Fields*, 254 Ky. at 42, 70 S.W.2d at 958.

IV. Laches

Finally, we address that portion of the trial court's judgment that held the equitable remedy of rescission was barred by the doctrine of laches. Such doctrine pertains to the "neglect or omission to assert one's rights within a reasonable period of time," thereby causing "prejudice, injury, disadvantage or a change of position to the other party[.]" *Wigginton v. Commonwealth*, 760 S.W.2d 885, 887 (Ky.App. 1988). Even if we assume, without deciding, that Insko delayed in filing this action, our review of the record fails to indicate that Ransdell has incurred any prejudice, injury, disadvantage, or change of position. Thus, the trial court erred in applying of the doctrine of laches to this case.

V. Conclusion

The Bourbon Circuit Court's summary judgment is vacated, and this matter is remanded to that court for further proceedings consistent with this Opinion. If following a hearing the trial court determines that a mutual mistake occurred, the court must order rescission of the deed and restitution to Insko of the purchase price paid under the deed, plus applicable interest. If following a hearing the trial court determines that Ransdell perpetrated fraud upon Insko, *i.e.*, by knowingly misrepresenting the extent of the easement and the unsuitability of the lot for building, then Insko shall be entitled to such other damages as are appropriate upon a finding of fraud.

ALL CONCUR.

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