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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Appellant Case No. 2021-000762
Lower Court Case No. 2018-CP-42-03639

Patricia Miller……Respondent,

v.

David Meeks……Appellant.

FINAL BRIEF OF RESPONDENT

Jason Imhoff (S.C. Bar # 69355)
Kenison, Dudley & Crawford, LLC
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
(864) 242-4844 (fax)
Imhoff@conlaw.com

Attorneys for Respondent

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STATEMENT OF THE CASE

This case was originally filed by Respondent Patricia Miller (hereinafter referred to as "Seller" or "Respondent") on October 16, 2018, alleging trespass, nuisance, intentional interference with contract and recovery of possession of real property-ejectment against Appellant David Meeks (hereinafter referred to as "Buyer" or "Appellant"). (ROA pp. 26-31). In response, Appellant filed an Answer and Counterclaim on November 12, 2018, seeking reformation of the Deed conveying property from Respondent to Appellant in 2010 and specific performance. (ROA pp. 32-38). On December 12, 2018, Respondent filed her Answer to Counterclaim. (ROA pp. 47-53).

On May 13, 2019, Respondent filed a Motion for Summary Judgment. (ROA pp. 279-280). On August 20, 2019, Appellant filed a Motion for Reference to the Master-in-Equity and for Partial Summary Judgment. (ROA pp. 281-282). On October 1, 2019, the parties appeared before the Honorable Grace Gilchrist Knie for a hearing on the cross-motions for summary judgment. On November 6, 2019, the Court denied both Motions for Summary Judgment and entered an Order Regarding Plaintiff's Motion for Summary Judgment; Defendant's Motion for Partial Summary Judgment and Reference to the Master in Equity ("Circuit Court Order"). (ROA p. 15)

On December 13, 2019, the Circuit Court entered an Order of Reference and referred this matter to the Master-in-Equity. (ROA p. 24). The Order of Reference provided that "any appeal from the order of judgment issued by the Master-in-Equity shall be to the Supreme Court of the Court of Appeals as provided by the South Carolina Appellate Court Rules." (ROA p. 24).

On February 12, 2020, Appellant filed a Motion for Summary Judgment with the Master-in-Equity. (ROA pp. 312-314). On April 26, 2021, the parties appeared before the Master-in-

Equity on Appellant's Motion for Summary Judgment and made lengthy arguments and submitted evidence. The Master-in-Equity filed an Order on May 24, 2021. (ROA pp. 1-9) As noted by the Master-in-Equity:

> After much discussion both parties consented to this Court issuing a ruling as to the entire matter of Reformation of the Deed based upon the parties' arguments and submissions in preparation for and at the hearing on [Appellant's] motion for summary judgment. Both [Respondent] and [Appellant] agreed to submit the matter to the Court for a final ruling on the issue of boundaries and ownership of the property at issue of the case. Both parties also stipulated that the evidence and submissions to the Court for the hearing on the [Appellant's] Motion for Summary Judgment would be admitted into the record for the court's review and ruling.

(ROA p. 3).

The Master, among other things, found that (1) there was insufficient evidence to find a mutual mistake, (2) the Deed should not be reformed or modified and (3) the property lines and ownership of property were properly reflected in the Title to Real Estate and the corresponding plat prepared by South Land Surveying dated June 30, 2010. (ROA p. 3).

On June 2, 2021, Appellant filed a Motion to Reconsider which was denied on June 22, 2021. (ROA pp. 363-370; ROA pp. 12-14). Appellant filed this appeal on July 7, 2021.

STATEMENT OF FACTS

In May of 2010, Respondent agreed to sell three (3) acres to Appellant. (2020 Agreement to Sell and Buy) (ROA p. 10) (ROA pp. 94, 119 (Deposition of Patricia Miller at pp. 8, 33)). Appellant wrote the sales contract, commissioned a survey, and paid for the closing. Appellant hired Souther Land Surveying ("Souther") to conduct the survey. (ROA p. 190 (Souther Deposition at pp. 69-70)). On the date of the survey, Appellant cut a line through the brush and hung flags where he wanted the property line. (ROA pp. 183, 188 (Souther Deposition at pp. 40, 60-62)). Souther, following Appellant's direction including brush cuts, lines and flags, created a plat placing the property line where Appellant directed it. (ROA pp. 190, 195 (Souther Deposition at pp. 69, 88, 91)). Respondent was given a copy of the 2010 survey and did not object to it. (ROA p. 187 (Souther Deposition at p. 59)). In fact, Appellant shared it with Respondent and used it to define the property to be transferred by attaching it to the Deed and title at closing. The Title to Real Estate (hereinafter referred to as the "Deed") expressly referenced and incorporated the 2010 Survey and conveyed 4.47 acres designated in the 2010 Survey. (ROA pp. 134-135 (Defendant's Exhibit No. 2 to Respondent's Deposition)). Following the closing of the property, Appellant fenced some property and added livestock. The property Appellant fenced in included a parcel of land still owned by Respondent that was located between what had been conveyed to Appellant and Respondent's son, Frank Clyde Miller, Jr. That property was owned by Respondent according to the Spartanburg County Register of Deeds and Respondent continued to pay taxes on it. Respondent believed that Appellant only fenced in the land that had been conveyed to him. (ROA pp.104-105 (Patricia Miller Deposition at pp. 18-19)).

Approximately eight years later, Respondent entered into an Intent to Buy a separate parcel of property owned by her to her immediate neighbor, Tillman Gibson (ROA p. 11). Upon information and belief, Appellant learned of this sale from Mr. Gibson and immediately, within three (3) days, erected an 8-foot post and wire fence on the property owned by Respondent to be purchased by Mr. Gibson. Thereafter, Appellant placed goats and dogs onto the newly fenced area. There is no evidence or record at all that Appellant owned or claimed this second piece of property. Respondent demanded that Appellant remove his fence, goats, and dogs and reimburse her by letter of June 29, 2018. (ROA pp. 268-270). Appellant refused and continues to do so. The new property line where Appellant installed an 8-foot fence was not the property line that was surveyed in 2010 by Souther, nor near it. (ROA pp. 188-189 (Souther Deposition at pp. 63-64)). Moreover, according to Souther, this new property was not conveyed to Appellant in 2010 and Appellant never claimed ownership of this property to Souther. (ROA pp. 184, 189 (Souther Deposition at pp. 46, 65)).

Appellant continues to claim that a contract he wrote in 2010 for the sale of a different parcel of property was incorrect and should give him ownership of an additional 3-4 acres of property in dispute in 2018. Appellant never fenced, used, claimed, or even walked upon the second parcel of land which he is now claiming. Nevertheless, he continues to claim that the transaction in 2010 was an error in his favor and he should be awarded additional properties in 2018. He has no legal, equitable, or other legitimate claim of ownership of that property. Appellant's own surveyor Souther stands by the 2010 survey. (ROA pp. 189-190 (Souther Deposition at pp. 67-69)). According to Souther, the only error in the survey concerns the placement of property that adjoins the subject property. (Id.) Moreover, as noted above, Appellant instructed Souther where to place the property line. (ROA pp. 190, 195 (Souther

Deposition at pp. 69, 88, 91)). From 2010 until the present, Respondent has paid taxes on the disputed property. (ROA pp. 106, 128-129 (Patricia Miller Deposition at pp. 20, 42-43)).

STANDARD OF REVIEW

"A boundary dispute is an action at law and the location of a disputed boundary line is a question of fact." Jordan v. Judy, 413 S.C. 341, 347-348, 776 S.E.2d 96, 100 (Ct. App. 2015) (quoting Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 544, 455 S.E.2d 194, 197 (Ct. App. 1995). In an appeal of an action at law tried without a jury, the Court "will not disturb the trial court's findings of fact ***unless no evidence reasonably supports the findings***." Id. (citing Townes Assocs. V. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (emphasis added). The appellate court "must construe the evidence presented to the [trial court] so as to support [its] decision whenever reasonably possible." Jordan at 348 (quoting Sheek v. Crimestoppers Alarm Sys., 297 S.C. 375, 377, 377 S.E.2d 132, 133 (Ct. App. 1989). Thus, the Court "must look at the evidence in the light most favorable to the respondents and eliminate from consideration all evidence to the contrary." Id. However, "the appellate court will correct any error of law[.]" Linda Mc Co. v. Shore, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010).

ARGUMENT

1. Whether The Master-In-Equity Ignored The Law Of The Case By Finding That There Was No Mistake In The 2010 Survey And Resulting Deed.

The Circuit Court Order of Reference cited by Appellant as the Law of the Case was simply a procedural referral to the Master, not the determination of the parties' ultimate rights. The Master-in-Equity neither ignored the arguments of the parties, nor any law of the case. The Master-in-Equity correctly determined that the Circuit Court's Order of reference did not set the "law of the case" but rather solely referred the case to the Master with procedural basis. The ultimate issues concerning the disputed property lines, the Souther plat, and the outcome of the litigation was not, and could not be determined by the Circuit Court while referring those same issues to the Master-in-Equity.

Appellant argues that because the Circuit Court found that the parties "agreed that the plat upon which the disputed property was deeded is incorrect," the Master-in-Equity erred in finding that the survey and Deed were correct and refused to reform the Deed. Appellant contends that the Master-in-Equity's decision "ignore[es] the law of the case and ma[de] findings of fact and conclusions of law inconsistent with the law of the case." (Appellant's Brief at p. 11).

The parties, as well as the surveyor, agree that the location of Appellant's fence is incorrect in the 2010 Survey. (ROA pp. 189-190 (Souther Depo. at pp. 67-69)). However, the parties do not agree that the 2010 Survey and related Deed were incorrect with regard to the land that was intended to be conveyed to Appellant. Thus, the master did not ignore the law of the case in ruling that the Deed and 2010 Survey correctly depicted the boundary lines of the property conveyed to Appellant.

Appellant further alleges that the scope of the Master-in-Equity exceeded his scope or made rulings not requested. This is patently false and discredited by the Master's Order which documents all parties agreed to the court's scope and process in making a ruling.

The information, arguments, submissions, and evidence presented to the Master-in-Equity included that Appellant attempted to purchase three (3) acres of land from an elderly neighbor, presently 79 years old, while her husband was in a nursing home. Thereafter, Appellant prepared the contract, had the land surveyed at his direction, selected a closing attorney, and presented a plat for 4.47 acres to Respondent as a surprise at closing. The underlying intent of Appellant's arguments, barely concealed here, is to add additional acreage to his 2010 purchase because he and his agents made a mistake. Appellant does not seriously argue Respondent made a mistake in 2010 – just that she did not realize or sue him the first time he tried to take property from her in 2010 apart from the 4.47 acres, which is not in dispute. Appellant does not argue Respondent made another mistake in 2018 when he attempted to take additional acreage in 2018. He simply ignores it.

The agreement, per Respondent in her admittedly contradictory and confused deposition testimony, was for three (3) acres in 2010. When she was presented with a plat for 4.47 acres at the closing, she was angered but proceeded to close based upon the plat outlining the transfer presented to her by Appellant and his attorney. This litigation does not dispute the transfer of the 4.47 acres. Instead, it only involves disputes over two pieces of property outside of the 4.47 acres Appellant did not buy or pay for.

Now, years later, she is litigating to enforce the sale defined by the plat she was given and relied upon in 2010 and which, in a bizarre contortion of law, Appellant argues should no

longer define the property she sold. If that is not enough, she is litigating to eject Appellant from a second parcel of land Appellant has no legitimate claim to.

There facts were shared with the Master-in-Equity, of which he could not be immune or ignore. Appellant has attempted twice to take property from Respondent, even arguing that his own documents should be labeled a mistake, not held against him, and ultimately used to dispossess Respondent of even more of her land.

The Master-in-Equity was correct in his approved roll in the litigation and in his decision. Appellant was solely responsible for and assumed the duty to have the correct information, boundaries, and information included in the transfer of property. Appellant should not be rewarded by his errors with even more property at the expense of Respondent.

2. Whether The Master-In-Equity Erred In Applying The Doctrine Of Merger When The Master Found That Appellant Failed To Meet His High Burden To Show Merger Was Not Intended And That The Deed Was The Result Of Mutual Mistake.

The Appellant failed to meet his burden to overcome the merger by deed doctrine. The merger by deed doctrine provides that "a deed made in full execution of a contract of sale of land merges the provisions of the contract therein[.]" Charleston & W. Carolina Ry. Co. v. Joyce, 231 S.C. 493, 99 S.E.2d 187, 193 (1957). The doctrine "extends to and includes all prior negotiations and agreements leading up to the execution of the deed." Id. "The execution, delivery, and acceptance of a deed varying from the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed." Wilson v. Landstrom, 315 S.E.2d 130, 132-33 (Ct. App. 1984) (quoting Joyce at 193). Once the parties execute the deed, "the written or oral agreement to convey is merged in the deed, the agreement to convey is discharged. . ., the deed regulates the rights and

liabilities of the parties, and evidence of contemporaneous or antecedent agreements between the parties is inadmissible to vary or contradict the terms of the deed." Joyce at 193. Appellant attempts to add an element – further agreements – to the doctrine of merger which is not required with South Carolina law. Moreover, Appellant "has the burden of proving by clear and convincing evidence that merger was not intended." Shoney's, Inc. v. Cooke, 291 S.C. 307 (Ct. App. 1986) (citing Hughes v. Greenville Country Club, 283 S.C. 448, 451, 322 S.E.2d 827, 828 (Ct. App. 1984)).

Under South Carolina law, "the description of land conveyed in a deed can be reformed and the boundaries of the realty redrawn ***only where*** there is a latent or patent ambiguity in the description of the land conveyed or if ***there is a showing of mutual mistake***, fraud or coercion." Bellamy v. Bellamy, 355 S.E.2d 1, 292 S.C. 107 (Ct. App. 1987) (citing Sims v. Tyler, 276 S.C. 640, 281 S.E.2d 229 (1981); Gowdy v. Kelley, 185 S.C. 415, 194 S.E. 156 (1937); Scates v. Henderson, 44 S.C. 548, 22 S.E. 724 (1895); Blanton v. Blanton, 284 S.C. 250, 325 S.E.2d 340 (Ct. App. 1985)) (Emphasis added). "[T]o justify reformation on th[e] ground [of mutual mistake], it was incumbent upon appellants to show by clear and convincing evidence that the parties intended that the deed should convey certain property and by mistake in the drafting of same, the conveyance did not represent such intention." Ives v. Ives, 223 S.C. 461, 76 S.E.2d 471 (S.C. 1953) (quoting Gowdy v. Kelley, 185 S.C. 415, 194 S.E.2d 156). *See also* Commercial Union Assurance Co. v. Castile, 283 S.C. 1, 320 S.E.2d 488, 490 (Ct. App. 1984); Timms v. Timms, 290 S.C. 133, 137, 348 S.E.2d 386, 389 (Ct. App. 1986).

In Ives, cited to by Appellant, the circuit court found that the description of the property for the deed was furnished by plaintiffs, who were the grantors. Because the information concerning the description of the subject property was furnished by the plaintiffs, the trial court

found that was no mistake. Ives at 472. On appeal, the Supreme Court of South Carolina held that the circuit court's findings were not against the preponderance of the evidence and affirmed the prior decision. Ives at 493. Similarly, in the present matter, the only evidence is that Appellant furnished all of the information concerning the boundary lines and assisted with the 2010 Survey that was used for the Deed. Further, Respondent testified in her testimony that Appellate was not to obtain additional property over the 4.47 included in the Southern plat.

Appellant also points to the case of Timms v. Timms, 290 S.C. 133, 348 S.E.2d 386 (Ct. App. 1986) in support of his position that the Deed should be reformed. In Timms, two brothers owned a tract of land as tenants in common. Based on an incorrect survey, the brothers believed that the tract of land contained 243 acres. The brothers decided to divide the tract into two parcels each containing 121 ½ acres. It was subsequently determined that the original tract only contained 208 acres rather than the 243 shown on the prior survey. As a result, one brother received 121 acres and the other brother received 87 acres. The Court found that based on the prior plat and the Deeds exchanged between the brothers which each conveyed 121 ½ acres, there was a mutual mistake or the brother who received more acreage intended to defraud the other brother. There is no such evidence of mutual mistake in this case.

Appellant failed to show by clear and convincing evidence that there was a mutual mistake and that both parties intended for the 2010 Survey and the Deed to convey an additional three to four acres of land to Appellant.

3. Whether The Master-In-Equity Erred In Refusing To Reform The Deed To Include The Additional Property Fenced In By Appellant Following The Closing Based On The Doctrine Of Boundary By Acquiescence.

Appellant argues that even if the Master-in-Equity did not err in reforming the Deed to include all of the disputed property, including the property Appellant did not claim ownership of

until 2018, the Master-in-Equity should have reformed the Deed to include Respondent's land that Appellant fenced in following the closing in 2010 even though its more than the 4.47 acres transferred at the closing. Specifically, Appellant contends that Respondent should be estopped from asserting title to the portion of the disputed property over the 4.47 acres based on the theory of acquiescence However, Appellant failed to meet the elements of boundary by acquiesce. Accordingly, the Master-in-Equity did not err in reforming the Deed under such a theory.

As noted by Appellant, "[a] disputed boundary line can be established by acquiescence of the parties." Coker v. Cummings, 671 S.E.2d 383, 387 (quoting Kirkland v. Gross, 286 S.C. 193, 197, 332 S.E.2d 546, 548-49 (Ct. App. 1985). "Acquiescence is a question of fact determined by the intent of the parties." Id. Moreover, "for a new boundary to be established by acquiescence, both parties must recognize a particular line constituted the true property line." Jordan v. Judy, 413 S.C. 341, 349 776 S.E.2d 96 (Ct. App. 2015) (citing Croft v. Sanders, 283 S.C. 507, 510, 323 S.E.2d 791, 793 (Act. App. 1984)). "One of the elements of equitable estoppel is 'lack of knowledge or lack of the means of knowledge of the truth as to the facts in question." Brown v. Clemens, 287 S.C. 238, 332, 338 S.E.2d 338 (S.C. 1985) (quoting Murphy v. Hagan, 275 S.C. 334, 271 S.E.2d 311 (1980)).

In Brown, the appellant argued that the respondent was estopped from asserting title to the disputed property because appellant's predecessor had built a chicken coop on the respondent's land and a garage partially encroaching on the respondent's property.[1] The Supreme Court of South Carolina rejected this argument finding that the "[appellant] or her predecessors in title had the 'means of knowledge' to determine the boundary location before

[1] In support of this position, one of the cases the appellant cited to was McClintic v. Davis, 228 S.C. 378, 90 S.E.2d 364 (1955). Appellant likewise relies on McClintic.

building the encroachments." Brown at 332. In the present case, Appellant had the means of knowledge to determine the boundary line between the properties prior to erecting the first fence. Further, there is evidence in this case that Appellant had actual knowledge of the boundary line as he instructed the surveyor where the property line was to be placed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court to affirm the Order of the Master-in-Equity.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff
Jason Imhoff (S.C. Bar # 69355)
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
(864) 242-4844 (fax)
Imhoff@conlaw.com

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CERTIFICATE OF COUNSEL

I certify that the Final Brief of Respondent complies with Appellate Court Rule 21(b).

Respectfully submitted,

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar # 69355)
Kenison, Dudley & Crawford, LLC
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
(864) 242-4844 (fax)
Imhoff@conlaw.com

Attorneys for Respondent Miller

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