



WHITE v. CRESTWOOD AT THE RIVER

2024 OK CIV APP 28

Case Number: 121992

Decided: 05/09/2024

Mandate Issued: 12/31/2024

DIVISION I

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION I



Cite as: 2024 OK CIV APP 28, ___ P.3d ___

MARK and GAY WHITE, Plaintiffs/Appellants,

v.

CRESTWOOD AT THE RIVER, LLC, Defendant/Appellee.

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE DOUG DRUMMOND, JUDGE

REVERSED AND REMANDED

D. Aaron Bruner, Whiting & Bruner, PLLC, Tulsa, Oklahoma, for Plaintiffs/Appellants,

C. Michael Copeland, Jones Gotcher & Bogan, P.C., Tulsa, Oklahoma, for Defendant/Appellee.

ROBERT D. BELL, VICE-CHIEF JUDGE:

¶1 Plaintiffs/Appellants, Mark and Gay White, appeal from the trial court's orders dismissing Plaintiffs' petition to quiet title and Plaintiffs' subsequent motion to reconsider. Defendant/Appellee, Crestwood at the River, LLC, argues that Plaintiffs do not have standing to quiet title the property. For the reasons set forth below, we reverse the trial court's judgment.

¶2 Plaintiffs filed a petition to quiet title on June 28, 2023. The petition claimed that Defendant fraudulently filed a "caveat lien" against Plaintiffs' property in Tulsa County which prevented Plaintiffs from closing a sale of the property. Further, Plaintiffs claim that when Defendant filed the lien, it slandered the title to Plaintiffs' property with the intent of interfering with Plaintiffs' closing of a sale on the property. In the original petition, Plaintiffs claimed that the filing of the lien stopped the closing of the sale of their property and caused them to suffer damages. Plaintiffs later filed an amended petition that disclosed the sale closed less than a month after they filed the initial petition.

¶3 Plaintiffs argue that they are entitled to an order determining that the buyer, the CMS 2016 Trust, is the owner of fee simple title to and in possession of the property. Defendant filed their motion to dismiss in August 2023 on the basis that Plaintiffs do not have standing for the suit as they are no longer in possession of the property at issue, nor do they own an interest in the property.

¶4 The district court sustained Defendant's motion to dismiss and subsequently denied the Plaintiffs' motion to reconsider. In a later filing, Plaintiffs included an affidavit that stated Plaintiffs had no business dealings with Defendant and that Defendant had no interest in their property.

¶5 Defendant noted in their motion to dismiss that Plaintiffs did not allege that they were in possession of the property or that they retained a legal or equitable interest in the property. Further, per their amended petition, Plaintiffs delivered a General Warranty Deed to the CMS 2016 Trust which transferred possession of the property to the trust without a provision in the Deed to reserve an interest for Plaintiffs.

¶6 Oklahoma statutes govern an action to quiet title by providing:

An action may be brought by any person in possession, by himself or tenant, of real property against any person who claims an estate or any interest therein adverse to the person bringing the action for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession. The person or persons bringing such action shall not be required to allege the particular estate or interest claimed adversely by the person or persons against whom the action is brought, but may allege that the defendants' claim is adverse to that of the plaintiffs.

12 O.S. 2021 §1141(A).

¶7 Standing is a question of which party is the appropriate party to adjudicate the case. In the present case, Plaintiffs maintained ownership and possession of the property at the time the lien was filed on the land and the alleged slander of title occurred. The buyer of the property neither owned nor possessed the property when the lien was filed. Moreover, the buyer does not hold title insurance on that tract of land per the provisions of the sale of the subject property. Consequently, the question remains whether Plaintiffs have a strong enough interest in the issue to maintain standing as they were the ones in possession of the property when the lien was filed, damages were sustained and this action commenced.

¶8 This matter is submitted for accelerated appellate review without submission of appellate briefs in support pursuant to Rule 4(m), *Rules for District Courts*, 12 O.S. 2021, Ch. 2, App., and Rule 1.36, *Oklahoma Supreme Court Rules*, 12 O.S. 2021, Ch. 15, App. 1. This action presents review of a motion to dismiss which is reviewed *de novo*. *Basler v. Material Serv. of Okla., Inc.*, 2019 OK CIV APP 4, ¶5, 433 P.3d 360. Under this standard, this Court exercises "plenary, independent and nondeferential authority to determine whether the trial court erred in its legal ruling." *Id.* at ¶5, *citing Fanning v. Brown*, 2004 OK 7, ¶8, 85 P.3d 841.

¶9 For purposes of standing, §1141(A) states the individual bringing a quiet title action must be in possession of the contested property. In *Hale v. Hall*, 383 P.3d 653, 1963 OK 161, the issue involved a vendor's lien, a request to quiet title, and an allegation from the plaintiff that the defendant attempted to deprive the plaintiff of the property. *Hale* is analogous to the present issue as it involves a quiet title action with a lien and the further allegation of a scheme to deprive property rights. In deciding *Hale*, the Court noted that a prior decision, *Murray v. Link Oil Co.*, 352 P.2d 1111, 1960 OK 166, established that actions for quiet title will not be granted unless combined with an action to recover property. That is not present in this case as Plaintiffs have admitted that they do not retain possession of the property because they sold it.

¶10 Plaintiffs noted in their response to defendant's motion to dismiss that the sale was only completed because the buyers agreed to accept a title insurance policy that excluded the caveat lien from insurance coverage. This was premised on the assurance from Plaintiffs that they would complete the present action and get the lien released subsequent to closing. Plaintiffs also noted that in their research they could not find any reference to a "caveat lien" in Oklahoma statutes or case history. Therefore, they allege that Defendant made up the term to purposefully obtain land from them without their consent or to receive payment in the amount of \$15,000 to obtain a lien release. Plaintiffs emphasized that at the time the slander took place, they were owners and had possession of the subject property. Additionally, Plaintiffs held possession and ownership of the property when the action was initially filed.

¶11 To maintain a slander of title claim, Oklahoma statutes provide:

No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land and, in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and, in addition, shall decree that the defendant asserting such claim shall pay to plaintiff three times the damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

¶12 This Court has long held the elements of slander of title require:

- 1) publication; 2) a false statement in the publication; 3) malice in the publication; 4) special damage resulting from the publication; and 5) *ownership or possession of the property that is the subject of the publication* (emphasis added).

Oak Tree Partners, LLC v. Williams, 458 P.3d 626, ¶67, 2020 OK CIV APP 5, citing *Grasz v. Discover Bank ex rel. SA Discover Fin. Servs., Inc.*, 2013 OK CIV APP 113, ¶10, 315 P.3d 406; see also *Morford v. Eberly & Meade, Inc.*, 1994 OK CIV APP 92, ¶4, 879 P.2d 841, and *Borison v. Bank Leumi Tr. Co. of New York*, 1998 OK CIV APP 196, ¶15, 972 P.2d 1188.

¶13 It is undisputed that Plaintiffs held title to and were in possession of the subject property when the alleged slander occurred and when the action was initially filed. Plaintiffs admitted in their amended petition that the land had been sold and later included details of how the sale occurred, including the stipulation that Plaintiffs would free the land of the contested lien. Defendant argues that Plaintiffs no longer have standing to bring this claim because they sold the land and no longer possess an interest in the property. Section 1141 states that an action may be brought by a person who owns or possesses interest in the land. This statute simply mentions an individual bringing an action, not litigating the action.

¶14 In considering Plaintiffs' standing we can look to *Application of SW. Bell Tel., L.P.*, 2007 OK 55, ¶5, 164 P.3d 150, which held that standing is a person's legal right to seek relief in a judicial forum and that standing should not be used simply to bar an individual from redress in a courthouse. The Oklahoma Supreme Court has set forth a test for determining if an individual possesses standing:

[N]ormally, aggrieved status is limited to those persons whose pecuniary interest in the subject matter is directly and injuriously affected or one whose rights in property is either established or divested by the decision appealed. The adverse effect must be direct, substantial and immediate, rather than contingent on some possible remote consequence or possibility of some unknown future eventuality.

Toxic Waste Impact Group, Inc. v. Leavitt, 1994 OK 148, ¶9, 890 P.2d 906 (citation omitted).

¶15 When considering these elements and the nature of this case, it is clear that Plaintiffs have suffered injury to a legally protected interest. Plaintiffs were in the process of selling their property when, at the last moment, Defendant filed a caveat lien. Plaintiffs claim to have no prior business relationship with Defendant nor does Defendant have a right in the property according to Plaintiffs' record of title. The filing of this lien delayed the sale of Plaintiffs' property. The sale in question was only completed on the premise that Plaintiffs clear the property of this lien and that the buyer would not take insurance out on that portion of the property. *Plaintiffs are contractually obligated to pursue this cause of action and failure to do so will result in a breach of contract. Per Toxic Waste Impact Group*, "the adverse effect must be direct, substantial and immediate, rather than contingent on some possible remote consequence." *Toxic Waste Impact Group*, 1994 OK 148, at ¶9. We hold that Plaintiffs have standing to pursue this action because breaching their contract is a "direct, substantial and immediate" consequence of the dismissal of this action as they will not have a remedy for releasing the lien.

¶16 *Marshall v. Ward*, 1934 OK 32, ¶1, 28 P.2d 1091, addressed the issue of an individual having standing for a quiet title suit when they are not in possession of the property. In *Marshall*, the issue presented included that of a life estate that was to be divested after the passing of the owner wherein the party seeking quiet title was not in possession of the land at the time of suit and did not claim to be. *Id.* This is distinguishable from the case at hand given that Plaintiffs were in possession of the property at the commencement of suit but then lost possession due to the sale of the land. *Marshall* establishes that an exception to the quiet title rule requiring possession allows a party to maintain their suit "if he shows some special equity, that is some impediment to the assertion of his rights at law." *Id.* at ¶7. Although, Plaintiffs may not possess the property, the lack of possession should not impede upon the "assertion of [their] rights at law," given that Plaintiffs were the owners at the time that the lien occurred, the lien disrupted the sale of Plaintiffs' property, and now Plaintiffs are contractually obligated to remedy the lien. *Id.* at ¶7.

¶17 The general rule requires that an individual own or possess property to bring an action for quiet title. However, *Marshall* sets forth a narrow exception that applies when an individual commences a quiet title action for a property that they do not hold possession of but retain a legal right to an equitable remedy. Accordingly, Plaintiffs maintain standing for their quiet title and slander of title claim because they had possession of the property when the suit commenced, and they retain a legal right to an equitable remedy that is attached to the lien on the property. Therefore, the order of the district court is reversed and this matter is remanded for further proceedings consistent with this Opinion.

¶18 REVERSED AND REMANDED.

SWINTON, P.J., concurs and PRINCE, J., concurs in part and dissents in part.

PRINCE, J., concurring in part and dissenting in part:

¶1 I concur in part and dissent in part. I concur in the reversal of the trial court's order that dismissed the slander of title claim. I dissent, however, in the reversal of the quiet title suit. My view is that, because the Plaintiffs sold the land during the course of the action, they do not possess standing to maintain a quiet title claim. See 12 O.S. § 1141. The Majority Opinion relies on the holding in *Marshall v. Ward*, 1934 OK 32, 28 P.2d 1091. I do not believe, however, that the equitable principles upon which the *Marshall* Court relied are applicable here because, in my view, the facts of *Marshall* are distinguishable from this case.

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name	Level
Oklahoma Court of Civil Appeals Cases	
Cite	Name
<u>1994 OK CIV APP 92, 879 P.2d 841, 65 OBJ 2734,</u>	<u>Morford v. Eberly & Meade, Inc.</u>
	Discussed
<u>2013 OK CIV APP 113, 315 P.3d 406,</u>	<u>GRASZ v. DISCOVER BANK</u>
	Discussed
<u>2019 OK CIV APP 4, 433 P.3d 360,</u>	<u>BASLER v. MATERIAL SERVICE OF OKLAHOMA, INC.</u>
	Discussed
<u>2020 OK CIV APP 5, 458 P.3d 626,</u>	<u>OAK TREE PARTNERS, LLC v. WILLIAMS</u>
	Discussed
<u>1998 OK CIV APP 196, 972 P.2d 1188, 70 OBJ 253,</u>	<u>Borison v. Bank Leumi Trust Company of New York</u>
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<u>1994 OK 148, 890 P.2d 906, 65 OBJ 4214,</u>	<u>Toxic Waste Impact Group, Inc. v. Leavitt</u>
	Discussed at Length
<u>1960 OK 166, 353 P.2d 1111,</u>	<u>MURRAY v. LINK OIL COMPANY</u>
	Cited
<u>1934 OK 32, 28 P.2d 1091, 167 Okla. 183,</u>	<u>MARSHALL v. WARD</u>
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<u>1963 OK 161, 383 P.2d 653,</u>	<u>HALE v. HALL</u>
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<u>2004 OK 7, 85 P.3d 841,</u>	<u>FANNING v. BROWN</u>
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<u>2007 OK 55, 164 P.3d 150,</u>	<u>COX OKLAHOMA TELECOM, LLC v. STATE ex rel. OKLAHOMA CORPORATION</u>
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Title 12. Civil Procedure	
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<u>12 O.S. 1141,</u>	<u>Action to Quiet Title - Joinder with Action for Possession - Adverse Interests</u>
	Discussed
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16 O.S. 79,

Slenderous Notices of Claims - Penalties for Filing,

Cited