

DA 21-0537

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 82

FRANK L. HART and OPAL A. HART,

Plaintiffs and Appellees,

v.

GEORGE W. HALE aka GEORGE WILLIAM HALE, individually and as Personal Representative of the Estate of Cecil Elmer Hal, Personal Representative of the Estate of Volney Hale, and Co-Trustee of the Hale Family Trust Dated 3/13/2019; HEIRS OF JACK E. HALE, DECEASED; HEIRS OF STEVE M. HALE, DECEASED, DAVID E. HALE; WINONA M. HALE; and DEEANN HALE, Trustee of the Hale Family Trust Dated 3/13/2019; HEIRS OF JACK E. HALE, DECEASED, HEIRS OF STEVE M. HALE, DECEASED; DAVID E. HALE; WINONA M. HALE; AND DEEANN HALE, Trustee of the Hale Family Trust dated 3/13/2019; UNKNOWN HEIRS OF CECIL HALE; UNKNOWN HEIRS OF VOLNEY HALE; AND ALL OTHER PERSONS, UNKNOWN, CLAIMING OR WHO MIGHT CLAIM ANY RIGHT, TITLE, ESTATE OR INTEREST IN OR LIEN OR ENCUMBRANCE UPON THE REAL PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO THE PLAINTIFF'S OWNERSHIP OR ANY CLOUD UPON PLAINTIFFS' TITLE THERETO, WHETHER SUCH CLAIM OR POSSIBLE CLAIM BE PRESENT OR CONTINGENT,

Defendants.

GEORGE W. HALE aka GEORGE WILLIAM HALE, individually and as Personal Representative of the Estate of Cecil Elmer Hal, Personal Representative of the Estate of Volney Hale, and Co-Trustee of the Hale Family Trust Dated 3/13/2019; and DEEANN HALE, Trustee of the Hale Family Trust Dated 3/13/19,

Counterclaimants and Appellants,

FRANK L. HART and OPAL A. HART; MONTANA DEPARTMENT OF REVENUE; and ALL OTHER PERSONS UNKNOWN, CLAIMING OR WHO MIGHT CLAIM ANY RIGHT, TITLE, ESTATE OR INTEREST IN OR LIEN OR ENCUMBRANCE UPON THE REAL PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO THE PLAINTIFF'S OWNERSHIP OR ANY CLOUD UPON PLAINTIFFS' TITLE THERETO, WHETHER SUCH CLAIM OR POSSIBLE CLAIM BE PRESENT OR CONTINGENT,

Counter-Defendants.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DV-19-1105A
Honorable Peter b. Ohman, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

George W. Hale, DeeAnn Hale, Self-Represented, Hilger, Montana

For Appellees Frank Hart and Opal Hart:

Ron A. Nelson, Rachel A. Taylor, Church, Harris, Johnson & Williams,
P.C., Great Falls, Montana

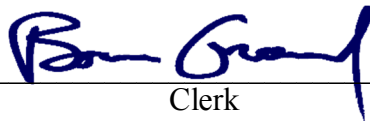
For Montana Department of Revenue:

Teresa G. Whitney, Kristina K. Warren, Montana Department of Revenue,
Helena, Montana

Submitted on Briefs: March 23, 2022

Decided: April 26, 2022

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 George and DeeAnn Hale appeal a September 27, 2021 order from the Eighteenth Judicial District Court in Gallatin County, which granted summary judgment on a quiet title action and related counterclaims to Frank and Opal Hart.

¶2 We restate the issues on appeal as follows:

Issue One: Did the District Court err in finding that the Harts gained ownership of the disputed property through adverse possession?

Issue Two: Did the District Court err in granting summary judgment to the Harts on the Hales' fraud claim?

¶3 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 This case concerns an approximately 30-acre property in Three Forks, Montana, adjacent to Missouri Headwaters State Park. The Harts have lived on the property since 1984, when they began leasing it from Donald and Eileen Beebe with an option to purchase. The Harts executed the purchase option in 1989 and paid off the contract price in 2009, at which time they recorded a deed describing their receipt of title from the Beebes.

¶5 The chain of title demonstrating how the property came into the hands of the Beebes is complex. The entire property was owned by K.W. Hale beginning in 1925 and thereafter passed to combinations of Hales and Beebes with part ownership. By the end of 1974, Donald and Eileen Beebe shared the property with Volney Hale. That year, Volney transferred his part-interest to himself and Donald and Eileen Beebe as joint tenants with the right of survivorship. Donald also acquired the remainder of the property after the

death of his mother, Thelma Beebe, who had held a one-third interest in a section of the property as a tenant in common. However, because an additional 1974 document appears to grant a portion of the joint Hale-Beebe interest back to Volney Hale exclusively, there is some ambiguity about whether the Beebes were tenants in common with Volney Hale or whether they were joint tenants with a right of survivorship. After Volney Hale died in 1981, the Beebes proceeded as if they were sole owners of the entire property having taken Volney's interest through right of survivorship.

¶6 Appellant George Hale is Volney's grandson. When George's brother died, George acquired a family bible that had come from Volney's estate. In 2013, George discovered in the pages of the bible a 1958 deed transferring Volney's interest in the property to Cecil Hale, Volney's son and George's father. Cecil died in 1962, and the purported conveyance remained obscured in the bible until George discovered it decades later. George recorded the 1958 deed in 2018, and he subsequently recorded other conveyances purporting to transfer the property from the Volney Hale estate to himself and then to himself and appellant DeeAnn Hale as trustees of the Hale Family Trust. The Hales view themselves as now possessing an interest in the property as tenants in common with the Harts, either through Cecil Hale's estate or through any Volney Hale interest that may have remained as a tenancy in common with the Beebes and passed through his estate.

¶7 When the Harts learned of George's record filings asserting the Hales' interest in the property, they hired an attorney and brought a quiet title action in the District Court in Gallatin County. George and DeeAnn Hale appeared as defendants pro se. The Hales asserted a counterclaim against the Harts for constructive fraud, and they also named the

Montana Department of Revenue as a defendant, citing its role in processing an application to determine inheritance tax filed by the Beebes after Volney Hale’s death in 1981. The Harts and the Department of Revenue moved for summary judgment.

¶8 The District Court granted summary judgment to the Harts. The District Court found that the Hales’ fraud claim was too nonspecific and conclusory to survive summary judgment, and the court noted that the unclear claim against the Department of Revenue also failed accordingly. The District Court held that because the Harts met the criteria for adverse possession after they occupied the property for so many years, they had acquired legal ownership regardless of any effect the stray deed from 1958 might have on the nature of the Beebes’ interest prior to their sale to the Harts. The Hales appeal.

STANDARD OF REVIEW

¶9 We review summary judgment rulings de novo, taking up the district court’s task anew and applying the same criteria. *Lucas v. Stevenson*, 2013 MT 15, ¶ 12, 368 Mont. 269, 294 P.3d 377. For summary judgment to be appropriate, there must be no genuine issues of material fact in dispute, and one party must be entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3).

DISCUSSION

¶10 *Issue One: Did the District Court err in finding that the Harts gained ownership of the disputed property through adverse possession?*

¶11 Under Montana law, a person can acquire ownership of a property that someone else holds title to by occupying the property “adversely to such legal title” for at least five

years. Section 70-19-404, MCA; *see also* §§ 70-19-401 through -414, MCA. The claimant seeking title by adverse possession must meet several criteria.

¶12 First, they either need to have claimed the property under “color of title” or by “actual, visible, exclusive, hostile, and continuous” possession throughout the five-year period. *Nelson v. Davis*, 2018 MT 113, ¶ 14, 391 Mont. 280, 417 P.3d 333. “Color of title” rules are defined at § 70-19-407, MCA, and require that a claim rest on “a written instrument” purporting to convey the property to the claimant, followed by five years of occupation. *See Fitschen Bros. Commercial Co. v. Noyes’ Estate*, 76 Mont. 175, 196-97, 246 P. 773, 779 (1926). The Harts have such an instrument here with the 2009 deed they recorded conveying title from the Beebes to the Harts. This instrument is further supported by evidence such as the sale contract from 1989 and a title insurance policy the Harts acquired at the time. The Hales have not raised any evidence to put these facts in dispute. The documents demonstrate that the Harts and the Beebes acted based on a good-faith understanding that the Beebes were capable of conveying the entire property. Thus, because the Harts continuously occupied the property for five years following 2009 (and have done so from 1984 to the present), they satisfy the “color of title” criteria.

¶13 A second requirement is that a party claiming adverse possession must pay taxes on the property throughout the five-year period. Section 70-19-411, MCA; *Nelson*, ¶ 14. Here, the Hales reference some years during the 1980s in which George Hale paid the property tax, but they raise no factual dispute about the Harts paying the property taxes since 2009. For the purposes of adverse possession, all that matters is the payment of taxes

during the five-year statutory period following acquisition under color of title. The Harts have satisfied this rule.

¶14 Under circumstances where exclusive title to the property is disputed among strangers, these facts would settle the matter and confirm the Harts' ownership by adverse possession. However, this case contains another complication. The conveyance to Cecil Hale that George Hale discovered tucked into the family bible regarded only a partial interest in the property under a tenancy in common. The same is true of any purported interest Volney Hale's heirs should have received at his death. Whatever Volney may have retained in a conveyance back from the Beebes would have been as a tenant in common. Tenants in common share possession of a property, and they are presumed under the law to act consistently with the title they hold—one's possession is not inherently hostile or adverse to another's. *Fitschen Bros.*, 76 Mont. at 197, 246 P. at 779; *Nelson*, ¶ 15. Thus, the Hales' theory of the case is that all the Harts ever received from the Beebes was an interest as tenants in common and that despite the nature of their residence there for nearly 40 years, they have only continued to share the property with the Hales.

¶15 However, Montana law allows that one cotenant may acquire an entire property by adverse possession against another cotenant. In such situations, the law requires a "higher standard than adverse possession against a stranger." *YA Bar Livestock Co. v. Harkness*, 269 Mont. 239, 244, 887 P.2d 1211, 1214 (1994). In addition to meeting the typical criteria such as through color of title, the claimant must also "oust" the cotenant. *YA Bar*, 269 Mont. at 244, 887 P.2d at 1214; *Nelson*, ¶¶ 15-16. "Ouster" carries elements similar to the "exclusive" and "hostile" considerations applied to adverse possession without color of

title. It does not necessarily require that one tenant at some point physically eject the other from the property, but the party seeking adverse possession must claim “exclusive ownership” and act in a way that “denies the right of others to any interest in the property.” *Fitschen Bros.*, 76 Mont. at 198, 246 P. at 779-80; *Nelson*, ¶ 15. The ousting party must essentially provide notice to the other sufficient to make it known they are claiming exclusive ownership. *YA Bar*, 269 Mont. at 245-46, 887 P.2d at 1214-15.

¶16 One way to provide this notice is by recording a deed that purports to convey the entire property; such a public record charges the other tenant with knowledge of the “hostile” possession. *Nelson*, ¶ 15. This circles back to the analysis regarding color of title. The Harts recorded a deed to the entire property in 2009, and the Hales did not contest it until they recorded their contradictory interest in 2018, more than five years later. The Hales argue that their silence during those years amounts to little more than “permission to the Harts” to share the property, but this argument is belied by the facts of the chain of title record. The Harts asserted their exclusive ownership in 2009, and this record—which did not describe a tenancy in common—is what the Hales acquiesced to with their silence prior to 2018.

¶17 The Hales’ framing is also belied by the facts on the ground. Another way to provide notice of “ouster” to a cotenant is through “possession so visibly hostile, notorious, and adverse[] as to justify an inference of knowledge” on the part of the ousted tenant. *LeVasseur v. Roullman*, 93 Mont. 552, 558, 20 P.2d 250, 252 (1933); *YA Bar*, 269 Mont. at 245-46, 887 P.2d at 1214-15. Here, the undisputed facts show that the Harts built themselves a house on the property, obtained and paid off a mortgage, and paid taxes on

the property. They constructed, moved, or took control of other structures throughout the property; erected fences around the property; lived there full-time; and utilized the land for livestock, milling lumber, fishing, hunting, and maintaining their livelihoods. The Harts viewed and treated the property as exclusively their own. They attested that they have not seen or been interacting with the Hales there as cotenants and that they would not have permitted the Hales to use the property had they tried. The Hales assert that they have “walked onto the property over the years”—but this fact alone is not sufficient to demonstrate they conducted themselves as cotenants, especially given the apparent absence of any communicative relationship between the Harts and the Hales. Furthermore, the Harts only recall seeing George Hale on the property once or twice in the early 1980s, before they built their house, and the Hales present no evidence to dispute the facts showing the Harts’ visibly exclusive possession in the relevant years following 2009. The Hales admitted that they avoided the Harts’ house and driveway because they did not see them as their own. The Hales have recent photographs of the property, which they reference as evidence of their presence there, but the photographs do not depict the Hales themselves and appear to be taken from the vantage of a public road on the edge of the property.

¶18 The District Court did not err in concluding that the undisputed facts in the record demonstrate the Harts’ ownership of the property as a matter of law. Having taken possession of the entire property under color of title from the Beebes, publicly recorded that conveyance, and conducted themselves in an open and notorious fashion as the exclusive owners for at least five years thereafter, the Harts acquired title by adverse possession under Title 70, chapter 19, part 4, MCA. To any extent that an interest in the

property might have passed to the Hales as cotenants, this interest was extinguished by the Harts' successful ouster of any such interest-holders during the statutory period.

¶19 *Issue Two: Did the District Court err in granting summary judgment to the Harts on the Hales' fraud claim?*

¶20 The Hales asserted a counterclaim of constructive fraud in response to the Harts' quiet title action. They have also attempted to articulate a claim against the Department of Revenue. The general thrust of the Hales' argument is that the Harts acquired the property from the Beebes in a conscious deceit and that the Harts claim adverse possession in bad faith. The Hales rope in the Department of Revenue for its role in processing an inheritance tax application the Beebes filed after Volney Hale's death, which depicted an understanding from the title records that Volney's interest had passed to the Beebes through right of survivorship.

¶21 Constructive fraud consists of a breach of duty that, by misleading another person, gains someone a prejudicial advantage over them. Section 28-2-406, MCA. Pleadings that allege fraud require "particularity" in the facts. M. R. Civ. P. 9(b). And fraud claims are subject to a two-year statute of limitations. Section 27-2-203, MCA. The Hales' vague and conclusory assertions in this proceeding lack the particularity to sustain a fraud claim or to create genuine issues of material fact. *See Sprunk v. First Bank Sys.*, 252 Mont. 463, 466-67, 830 P.2d 103, 105 (1992). They largely depend on speculative inferences about documents from the 1970s and 1980s—things like a 1984 check on which Opal Hart named the "Hale-Beebe property" and the use of the phrase "unmarried" on Volney Hale's 1974 deed, when he was in fact "widowed." The Hales argue that these items create a material

dispute about the Harts' truthfulness, but the facts themselves do not amount to evidence of misrepresentations without the aid of the Hales' speculative assertions about their interpretation.

¶22 The most charitable construction of the Hales' framing here is that the matters they raise are somehow indicative of the Harts' bad faith in claiming adverse possession. Such bad faith could potentially undercut the Harts' acquisition under color of title. *See YA Bar*, 269 Mont. at 248, 887 P.2d at 1216 (citing *Joseph Russell Realty Co. v. Kenneally*, 185 Mont. 496, 605 P.2d 1107 (1980)). However, the Hales did not present with any particularity that the Harts, through this action, breached a duty to them as cotenants or made specific misrepresentations that led to their ouster. All the Hales point to is decades-old documents from the Beebes—not the Harts—and Opal Hart's naming of the "Hale-Beebe" property on a 1984 check, just a few years after Volney Hale died. This evidence is not sufficient to demonstrate fraudulent conduct in the Harts' receipt of title from the Beebes decades later or in their activity in response to the Hales' record filings in 2018.

¶23 The Hales' vague fraud allegations against the Department of Revenue also lack any factual basis. A 1984 document from the Department shows that it calculated the taxes due on the property after referencing the title records that showed the Beebes would take it from Volney Hale through right of survivorship. The Hales insinuate that this was part of a plot to fraudulently bootstrap the Beebes' title into existence, but this document was not an adjudication of ownership and did not act as a conveyance. Moreover, any allegations of the Department's fraud in processing it must have been raised prior to the two-year statute of limitations on such claims. Section 27-2-203, MCA.

¶24 The undisputed facts present nothing that would substantiate the Hales' fraud claim. The District Court was correct to grant summary judgment to the Harts, and this resolution of the counterclaim against the Harts necessarily renders moot the Hales' related but less clearly articulated claim against the Department of Revenue.

CONCLUSION

¶25 We affirm the District Court's September 27, 2021 order granting the Harts' summary judgment motion on all claims.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE