[Cite as *Carson v. Second Baptist Church*, 2011-Ohio-1025.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Clifford Carson et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 09AP-922 (C.P.C. No. 03CVH-08-9120)
Second Baptist Church,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 8, 2011

Gary Carson, pro se.

Plank & Brahm, and *Aaron M. Glasgow*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Plaintiff-appellant, Gary Carson[1] ("appellant"), appeals from a judgment entered in the Franklin County Court of Common Pleas granting summary judgment in favor of defendant-appellee, Second Baptist Church ("appellee" or "the church"), on appellant's quiet title action. For the following reasons, we affirm the judgment of the trial court.

[1] Under the original complaint filed in the trial court, Gary Carson and his four siblings – Clifford Carson, Kenneth Carson, Lawrence Carson, and Wanda Carson Cathcart – were all plaintiffs involved in prosecuting the complaint. In this court, Gary Carson was the only sibling to file a notice of appeal, which was filed pro se. However, all of the siblings were listed within the briefs and one of the siblings, Kenneth Carson, also co-signed the pro se briefs and was permitted to present arguments at oral argument, due to his then-uncertain status. Having now carefully reviewed the notice of appeal post-oral argument, we definitively find only Gary Carson signed the pro se notice of appeal, and thus we shall consider only Gary Carson to be the appellant in this matter.

{¶2} Appellant and his four siblings claim they own the real property located at 189 North 17th Street in Columbus, Ohio (hereinafter "the property"). The church also claims an interest in said property, which they have used as a parking lot for many years.

{¶3} Appellant and his siblings are the children of S. Robert Carson ("Robert Carson"), who is now deceased. Robert Carson was the nephew of Rennetta Morgan ("Ms. Morgan"), who is also deceased. Ms. Morgan died testate in 1955. In her will, she transferred a life estate in the subject property to her husband, Jesse Morgan. She also transmitted the remainder interest to her two nieces, Gwendolyn Carson Cylar and Geneva Carson, and her two nephews, Elmer Carson and Robert Carson (the father of appellant). These nieces and nephews (collectively, "the elder Carsons") are all siblings of one another. All of these interests in the property were transferred to each of the five individuals by a Certificate of Title recorded with the Franklin County Recorder on July 26, 1956.

{¶4} On April 29, 1974, Jesse Morgan transferred his life estate interest in the property to the church by quitclaim deed. Within a week, each of the four elder Carsons also executed quitclaim deeds transferring their remainder interests in the property to the church. All five quitclaim deeds were recorded at the office of the Franklin County Recorder on May 17, 1974. Jesse Morgan later died in 1982.

{¶5} Appellant filed his action for quiet title in the common pleas court on August 19, 2003, seeking a declaration from the trial court that he and his siblings owned the property at issue. Appellant and his siblings also sought damages for a structure on the property that had been removed by the church in 1976. Appellee filed an answer and counterclaim for adverse possession.

{¶6} The church moved for summary judgment on May 21, 2004, arguing it had established the elements of adverse possession and was entitled to judgment in its favor. Appellant and his siblings opposed the motion and also filed a cross-motion for summary judgment, claiming they were entitled to judgment for recovery of their property and damages.

{¶7} At the time of the filing of these motions, neither party had made the trial court aware of the existence of the four quitclaim deeds filed in 1974 by the elder Carsons which devised their interests in the property to the church. Thus, at the time the trial court considered the summary judgment motions, it was only aware of the existence of the quitclaim deed executed by Jesse Morgan, which granted his life estate interest to the church.

{¶8} On August 8, 2005, the trial court issued a decision denying appellee's motion and granting summary judgment in favor of appellant and his siblings, finding the church had not met all of the elements of adverse possession. Specifically, the trial court found the statute of limitations did not commence at the time Jesse Morgan conveyed his life estate to the church, but instead commenced when the elder Carsons actually took possession of the property after Jesse Morgan's death. As a result, the court determined the church had not yet adversely possessed the property for the requisite period and the elder Carsons, by way of their remainder interests, held the property in fee simple. On January 12, 2006, a judgment entry was filed reflecting this decision. However, the judgment entry which was prepared by counsel for appellant, did not dispose of the damages issue. Nevertheless, the case was terminated.

{¶9} On August 7, 2007, appellant and his siblings filed a motion to reopen the action and/or to reconsider its earlier order to include an award of damages. The trial

court denied the motion, as well as a subsequent motion filed by appellant and his siblings requesting reconsideration. However, several weeks after the denial of the motion for reconsideration, the trial court sua sponte reactivated the case and scheduled a status conference to establish a case management schedule.

{¶10} On June 5, 2009, the church filed a motion for the trial court to reconsider its August 8, 2005 decision granting summary judgment in favor of appellant and his siblings on the grounds that new evidence had been discovered. The new evidence was the existence of the four quitclaim deeds filed by the elder Carson remaindermen, which demonstrated that they had devised their remainder interests to the church in 1974. Based upon this new evidence, the trial court eventually granted summary judgment in favor of the church and filed a judgment entry quieting title on October 14, 2009, finding the church to be the fee simple owner of the property at issue. It is from this judgment entry that appellant filed his appeal and asserts the following five assignments of error:

> I. APPELLANTS THINK IT IS NOT WITHIN THE P[U]RVIEW OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONS[T]ITUTION OF THE UNITED STATES TO ALLOW THE INTENT OF TESTARIX RENNETTA MONMOUTH MORGAN IN HER LAST WILL AND TESTAMENTARY DEVISE TO BE DEFEATED BY THE EXECUTION OF CERTAIN QUITCLAIM DEEDS WHICH DO NOT APPEAR TO PROVIDE FOR THE FAIR AND EQUITABLE RECOGNITION OF SECOND GENERATION REMAINDERMEN IN A MANNER AS PROVIDED FOR BY LAW, THEY THEREFORE ASK THE COURT TO AGREE WITH THEM.
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> II. APPELLANTS BELIEVE IT IS NOT WITHIN THE P[U]RVIEW OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND *HART V. GREGG*, 32 OHIO St. 502 AND/OR *KINSMANS LEESSEE V. LOMIS*, 11 OHIO 475 FOR THE TRIAL COURT TO APPROVE OF THE OPERATION OF TRANSFER OF TITLE TO THEIR REAL PROPERTY TO APPELLEE SECOND BAPTIST CHURCH, CONTRARY TO

> THE INTENT OF THE LAST WILL AND TESTAMENTARY DEVISE OF TESTATRIX RENNETTA MONMOUTH MORGAN AGAINST THE INTEREST OF APPELLANTS CONSEQUENTLY, THEY ASK THE COURT TO AGREE WITH THEM AND OVERRULE APPELLEES.
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> III. APPELLANTS HOLD AND MAINTAIN THAT IT IS NOT WITHIN THE PURVIEW OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *McCARTHY V. LIPPITT*, 2004 Ohio 5367 FOR THE APPELLANTS TO BE DEPRIVED OF THEIR PROPERTY INTEREST IN 189 NORTH SEVENTEENTH STREET, COLUMBUS, OHIO WITHOUT SUFFICIENT PRIOR ACTUAL NOTICE AND AN OPPORTUNITY TO BE HEARD AS TO DEFEND SAID PROPERTY INTEREST AGAINST APPELLEES AND THEY ASK THE COURT TO CONCUR WITH THEM AND OVERRULE APPELLEES.
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> IV. APPELLANTS POSIT THAT IT IS NOT WITHIN THE PURVIEW OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION IN LIGHT OF THE SUPREME COURT OF THE UNITED STATES RULING IN *HANSBERRY V. LEE*, 311 U.S. 32 HN 2, TO ALLOW APPELLANTS TO BE DEPRIVED OF THEIR APPARENT PROPERTY INTEREST IN 189 NORTH SEVENTEENTH STREET, COLUMBUS, OHIO WITHOUT BEING MADE PARTIES TO TRANSACTING CERTAIN PURPORTED QUITCALIM DEEDS AS PRESENTED BY APPELLEES OFFERED IN SUPPORT OF THEIR CLAIM.
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> V. WHETHER IT AMOUNTS TO A BREACH OF APPELLANTS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR THE TRIAL COURT IN RENDERING THE SUMMARY JUDGMENT DECISION NOT TO TAKE THE NON-MOVANTS EVIDENCE AS TRUE AND TO DRAW ALL JUSTIFIABLE INFERENCES IN FAVOR OF THAT PARTY.

{¶11} As a preliminary matter, we first address appellant's request for leave of court to supplement the record, which was filed after oral arguments. Included within this motion is a request to add a copy of the answer and counterclaim of appellee, as well as a copy of the death certificate of Jesse Morgan. Because these items are already a part

of the record, we overrule this request. However, we shall allow the additional supplemental authority submitted by appellant, which includes copies of two cases, as well as a copy of Civ.R. 12. Therefore, appellant's request for leave is granted to that limited extent.

{¶12} We now turn to appellant's five assignments of error. Considering his first, second, third, and fourth assignments of error collectively, appellant appears to assert that as a possible heir (through his father, Robert Carson), he has an interest in the subject property as well as certain due process and equal protection rights which were violated because: (1) he and his siblings were not made parties to the transaction in which appellant's father and his father's siblings (the elder Carsons) transferred the subject property to the church in 1974; (2) he and his siblings were not given actual notice of the transaction and were not given an opportunity to be heard; and (3) the trial court's decision fails to consider the intent of Ms. Morgan, as demonstrated by her will, which was to provide for her remaindermen (her nieces and nephews) and their heirs (appellant and his siblings), and specifically deprives the "second generation remaindermen," of their property rights.

{¶13} Within these same assignments of error, appellant also argues that the conveyance of the property using quitclaim deeds, rather than a guaranty of title or warrant of covenant, is not sufficient to convey title to the church. Additionally, appellant contends that Robert Carson and the other remaindermen did not have an interest in the property which could be conveyed in 1974 because they did not possess the right to immediate possession of the property at that time, since the owner of the life estate (Jesse Morgan) was still living. Therefore, appellant contends the deeds were ineffective to convey title.

{¶14} "The burden of proof in a quiet title action rests with the complainant as to all issues which arise upon essential allegations of his complaint. He must prove title in himself if the answer denies his title or if the defendant claims title adversely." *Scarberry v. Lawless*, 4th Dist. No. 09CA18, 2010-Ohio-3395, ¶19, citing *Duramax, Inc. v. Geauga Cty. Bd. of Commrs*. (1995), 106 Ohio App.3d 795, 798.

{¶15} In the instant case, appellant's complaint requested a declaration that he and his siblings own the property at issue. In order to prevail, appellant was required to establish that he and his siblings have title to the property which is superior to that of the church. In order to accomplish this, appellant must produce a written instrument establishing title. However, he has failed to do so. The church, on the other hand, has not only denied appellant's right to title, but has produced five quitclaim deeds demonstrating that Jesse Morgan conveyed his life estate to the church in 1974, and that all four nieces and nephews of Ms. Morgan, who were to take possession of the property after Jesse Morgan's death, also transferred their remainder interests to the church in 1974, thereby establishing title in the church.

{¶16} The Statute of Frauds, codified at R.C. 1335.05, requires that all transfers of an interest in real property must be in writing in order to be valid. *Nicolozakes v. Tangeman Irrevocable Trust* (Dec. 26, 2000), 10th Dist. No. 00AP-7. While appellant claims to have a fee simple interest in the property, he has failed to produce a written document demonstrating title to the property was transferred to him and his siblings. At best, appellant has established that his father, Robert Carson, and Robert Carson's siblings inherited an interest in the property through the will of Ms. Morgan, and that the elder Carsons took title to the property via the Certificate of Transfer in 1956. However, appellant has not produced a written instrument showing that the remainder interests of

the elder Carsons were actually conveyed to appellant and his siblings. Instead, the quitclaim deeds referenced above demonstrate that the elder Carsons transferred their remainder interests to the church, and thus could not then transfer, upon their deaths, these same interests to appellant and his siblings.

{¶17} In his first four assignments of error, appellant contends that because he and his siblings were possible heirs of the four remaindermen named in Ms. Morgan's will, they had a vested interest in the property and a due process and equal protection right to be parties to the 1974 transfer, and also to receive notice and an opportunity to be heard regarding that transfer. Because he did not receive notice and was not made a party, appellant asserts the transfer to the church was invalid. However, appellant has produced absolutely no authority to support his position that there is a legal requirement mandating that he be given this type of notice and opportunity, and we are unaware of any authority in Ohio which would support such a position. Thus, we find these arguments to be without merit. See also *In re Estate of Millward* (1956), 102 Ohio App. 469, 472 ("mere expectancies or possibilities of inheritance are not vested rights in the estate of an ancestor prior to the death of the ancestor.").

{¶18} Next, we address appellant's argument that the quitclaim deeds were insufficient to transfer title to the church because these deeds did not include a guaranty of title or warrant of covenant. We reject this argument.

{¶19} "It is definitely established by the decisions of the courts of Ohio that a quitclaim deed passes the grantor's title as effectually as a deed of warranty containing full covenants." *Dietsch v. Long* (1942), 72 Ohio App. 349, 368. The only significance of a conveyance by quitclaim deed is the degree of risk to the grantee with respect to possible encumbrances to title of the property, but the fact that the transfer here was

initiated via quitclaim deed does not bear on its effectiveness, as appellant and his siblings have failed to produce any instrument of title supporting their superior title claim or demonstrating any possible encumbrance which would interfere with the church's title.

{¶20} Appellant also argues that the 1974 transfer by the remaindermen was invalid because the remaindermen did not possess a conveyable interest in the property at that time, due to the fact that the owner of the life estate was still in possession of the property. Contrary to this assertion, a future remainder interest in property is a basic property right and like other property rights, it is assignable and subject to transfer. *First Natl. Bank of Cincinnati v. Tenney* (1956), 165 Ohio St. 513, 519. "The law favors the vesting of estates at the earliest possible moment, and it is well settled in Ohio that a testamentary remainder after a life estate vests in the remainderman at the death of the testator unless the intention to postpone the vesting to some future time is clearly expressed." Id. at 517, citing *Bolton's Trustees v. Ohio Natl. Bank* (1893), 50 Ohio St. 290.

{¶21} " 'A vested remainder is an actual estate and, by the rules of the common law, is susceptible of a sale and transfer of title. Title will pass by sale or conveyance, devise, or inheritance.' " *Tenney* at 519, quoting 33 American Jurisprudence, 614, Section 149. See also *Millison v. Drake* (1931), 123 Ohio St. 249, 253 (where the widowed spouse was given a life estate, and upon her death, the estate was to pass equally to the children, there was a vested remainder in the children, subject to being divested, which is alienable, meaning it can be transferred or conveyed); *Eastman v. Sohl* (1940), 66 Ohio App. 383, paragraph one of the syllabus ("Where a life estate is devised to testator's wife 'so long as she remains my widow,' and the remainder is left equally to

testator's two children, the children take vested remainders in fee, subject to the interest of the widow, which remainders may be alienated or mortgaged.").

{¶22} Additionally, pursuant to R.C. 2131.04, "[r]emainders, whether vested or contingent, executory interests, and other expectant estates are descendable, devisable and alienable in the same manner as estates in possession."

{¶23} Here, the four elder Carsons received a vested remainder in the property in 1956. They were free to convey those remainder interests prior to the death of Jesse Morgan. Those interests allowed for possession of the property after Jesse Morgan's death, but also allowed the elder Carsons to pass on the same interest that they possessed at that time – a future interest, which consisted of a present ownership interest in the property, but without the ability to take possession until after the death of Jesse Morgan. Thus, the elder Carsons were free to transfer their remainder interests to the church.

{¶24} Based upon the foregoing, we overrule appellant's first, second, third, and fourth assignments of error.

{¶25} In his fifth assignment of error, appellant asserts the trial court failed to apply the appropriate summary judgment standard or to cite to appropriate authority and contends that it was error to grant summary judgment in favor of the church. Appellant submits that the trial court failed to resolve doubts and construe evidence most strongly in his favor.

{¶26} Appellate courts review decisions on summary judgment motions de novo. *Helton v. Scioto Cty. Bd. of Commrs*. (1997), 123 Ohio App.3d 158, 162. "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Mergenthal*

v. Star Banc Corp. (1997), 122 Ohio App.3d 100, 103. We must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support it, even if the trial court failed to consider those grounds. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶27} Summary judgment is proper only when the party moving for summary judgment demonstrates that (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in that party's favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181, 183. Additionally, a moving party cannot discharge its burden under Civ.R. 56 by simply making a conclusory allegation that the non-moving party has no evidence to prove its case. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that the nonmoving party has no evidence to support its claims. Id.

{¶28} In the instant case, summary judgment is only appropriate where the evidence is such that no reasonable jury could return a verdict in favor of appellant. Thus, the church, as the moving party, was required to demonstrate that no genuine issues of material fact remained to be resolved. In determining whether the church was entitled to summary judgment, the trial court was required to resolve all controversies in favor of appellant, take appellant's evidence as true, and draw all justifiable inferences in favor of appellant. We find the trial court properly did all of this and reviewed the case under the applicable summary judgment standard.

{¶29} Based upon the evidence of the quitclaim deeds, it was established that the property at issue is titled to the church. Appellant and his siblings failed to produce any evidence demonstrating otherwise and thus there were no evidentiary conflicts which the trial court was required to resolve in favor of appellant. Appellant presented no *evidence* to prove his claims, and mere statements, without further proof, are not sufficient to demonstrate that he and his siblings are entitled to ownership.

{¶30} Accordingly, we overrule appellant's fifth assignment of error challenging the trial court's decision to grant summary judgment in favor of the church.

{¶31} In conclusion, we grant appellant's motion for leave to supplement the record with respect to the additional supplemental authority only, and we overrule appellant's first, second, third, fourth, and fifth assignments of error. The judgment of the Franklin County Court of Common Pleas is affirmed.

Motion for leave to supplement the record granted in part and denied in part; Judgment affirmed.

BRYANT, P.J., and KLATT, J., concur.