[Cite as *Harris v. Harris*, 2015-Ohio-1000.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RONALD WOODSON HARRIS	:	JUDGES:
	:	
	:	Hon. John W. Wise, P.J.
Plaintiff - Appellant	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	
ANGELA L. HARRIS, ET AL.,	:	Case No. 2014CA00107
	:	
	:	
Defendants - Appellees	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2012CV02555
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	March 16, 2015

APPEARANCES:

For Plaintiff-Appellant	For Defendants-Appellees
SUZANNE BRETZ BLUM BRIAN D. HESKAMP Thacker Martinsek LPA 2330 One Cleveland Center 1375 East 9th Street Cleveland, OH 44114	DONALD P. WILEY ANTHONY E BROWN Baker, Dublikar, Beck, Wiley & Mathews 400 S. Main Street North Canton, OH 44720

Baldwin, J.

{¶1} Appellant Ronald Woodson Harris appeals a judgment of the Stark County Common Pleas Court finding in favor of appellee Angela L. Harris, Executrix of the Estate of Willie Harris, on his claims for declaratory judgment, breach of contract, constructive trust, and quantum meruit.

STATEMENT OF FACTS AND CASE

{¶2} Appellant is the son of Willie Harris (hereinafter "WH"), who is deceased. Appellee is the surviving spouse of WH and the sole beneficiary of the estate according to the terms of the will.

{¶3} In April of 1992, Guy Mack and appellant became interested in purchasing property located at 11325 Lawndell Ave. SW, Navarre, Ohio, at a sheriff's sale. Mack purchased the property using two loans from appellant: one in the amount of $17,000.00 and one in the amount of $15,000.00, as well as a loan from the Navarre Deposit Bank in the amount of $130,000.00.

{¶4} Mack began having financial problems in 1993. Appellant, who was living on the property and paying the mortgage in lieu of paying rent to Mack, was interested in purchasing the property. Appellant was in Florida, and asked WH to purchase the property from Mack on his behalf. On April 15, 1993, WH wrote a check in the amount of $149,767.24 to pay Mack's loan at the Navarre Deposit Bank. The transfer deed was prepared by Hyatt Legal Services. The first deed, recorded April 16, 1993, lists Mack as the grantor and WH as the grantee. A second deed, recorded April 19, 1993, lists WH and appellant as the grantees and the new title owners of the property. The second deed notes, "Re-recorded to add additional name in grantee clause."

{¶5} On August 5, 1993, B&S Transport paid $150,000.00 to Putman Investors to reimburse WH for the loan he took out to pay Mack for the property. At the time of the purchase of the property, WH and appellant each owned 50 shares of B&S stock.

Appellant was president of the company, and WH was vice president and a salaried employee.

{¶6} WH never resided on the property, and appellant did not pay rent to WH. Appellant paid for maintenance and improvements on the property.

{¶7} On October 15, 1998, WH entered into an antenuptial agreement with appellee in which he indicated that he owned one-half interest in the property. On the same day, he executed a will in which he left his interest in the property to appellant. A quit claim deed was filed regarding the property's mineral rights on November 12, 1998, naming the owners of the property as WH and appellant.

{¶8} WH sued appellant in 2005 over their business interests, including B&S Transport. The litigation was resolved on September 7, 2005. A transcript from that case reflects a discussion concerning the property. WH asked, "The farm belongs to me and you?" WH's attorney advised him that the property was titled in their names. Counsel for appellant stated, "Well, right now on the record it's showing it in your names," and "if you guys want to do something with that down the road that's a whole other issue. Right now you both own it and you're both on the deed."

{¶9} WH also changed his will in 2005, leaving all of his property to appellee.

{¶10} After WH's death, appellant brought the instant action seeking a declaratory judgment that he is the sole owner of the property, and also bringing claims for breach of contract, constructive trust, and quantum meruit. Appellant testified at trial that he was the sole owner of the property, and the parties intended for WH to take his name off of the deed, which was never accomplished. Appellant previously had a successful career as a boxer, and WH was his trainer during that time. In the interest of maintaining family peace, appellant allowed his father to remain on the deed, although he was fully aware from 1993 to his father's death in 2012 that WH's name was on the deed. Appellant had a final conversation with WH about taking his name off the deed in

2008, but took a "wait and see" approach because of the love he had for his father and his family.

{¶11} After a bench trial, the court found that appellant had failed to prove that he was the sole owner of the property under any theory of the case, and found that appellant's claims were barred by the doctrine of laches. The court found that partition of the property was appropriate, but did not order partition at this time, allowing the parties an opportunity to resolve ownership of the property between them before involving the court.

{¶12} Appellant assigns the following errors:

{¶13} "I. THE TRIAL COURT ERRED IN DETERMINING THAT RONALD WOODSON HARRIS WAS NOT ENTITLED TO A DECLARATORY JUDGMENT THAT HE OWNED A 100% INTEREST IN THE PROPERTY AT ISSUE.

{¶14} "II. THE TRIAL COURT ERRED WHEN IT FAILED TO IMPOSE A CONSTRUCTIVE TRUST AND AWARD A 100% OWNERSHIP INTEREST TO HARRIS.

{¶15} "III. THE TRIAL COURT ERRED IN DETERMINING THAT THE APPELLEE WAS ENTITLED TO PARTITION THE PROPERTY.

{¶16} "IV. THE TRIAL COURT ERRED WHEN, AFTER FINDING THAT THE PARTIES WERE CO-OWNERS, IT FAILED TO AWARD HARRIS MONEY DAMAGES ON HIS QUANTUM MERUIT CLAIM.

{¶17} "V. THE TRIAL COURT ERRED IN DETERMINING THAT APPELLANT'S CLAIMS WERE BARRED BY THE DOCTRINE OF LACHES.

{¶18} "VI. THE TRIAL COURT'S JUDGMENT SHOULD BE VACATED AND DISMISSED FOR LACK OF JURISDICTION."

V.

{¶19} We address appellant's fifth assignment of error first, as it is dispositive of

several of his other arguments. Appellant argues that the court erred in finding his claims barred by laches. He argues that the court's finding is against the weight of the evidence, and that the defense of laches did not apply because he was in "peaceable possession" of the property.

{¶20} Appellant cites several cases in support of his argument that laches is not a defense to his action because he was in peaceable possession of the property. In *Klar v. Hoopingarner*, 62 Ohio App. 102, 23 N.E.2d 326 (5th Dist. 1939), this Court held that the defense of laches is not available against a grantee in possession of land who is seeking to quiet title against a subsequent grantee of the common grantor. "A party in possession of land who resorts to a court of equity to settle a question of title is not chargeable with laches, no matter how long his delay. Such a party is at liberty to wait until his title is attacked before he is obliged to act." *Id*. at 106, 23 N.E.2d 328.

{¶21} In the instant case, while appellant was physically in possession of land, by his own admission he knew there was a claim on his title from the time it was purchased forward. He testified at trial that he was aware his father's name was on the deed in 1993, he was aware that his father claimed a one-half interest in the property in 2005, and he did not take action to remove his father from the deed until 2012. Appellant was therefore not legally in "peaceable possession" of the property as he was continuously aware that there was another claim on his title. Therefore, the court did not err in finding laches was available as a defense.

{¶22} Laches has been defined by the Ohio Supreme Court as "an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party." *Connin v. Bailey*, 15 Ohio St.3d 34, 35, 472 N.E.2d 328 (1984), quoting *Smith v. Smith*, 168 Ohio St. 447, 156 N.E.2d 113 (1959). Issues of waiver, laches, and estoppel are "fact-driven." *Riley v. Riley,* 5th Dist. Knox No.2005–CA–27, 2006–Ohio–3572, ¶ 27, citing *Dodley v. Jackson,* 10th Dist. Franklin No.

05AP11, 2005–Ohio–5490. The four elements of laches are "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *State ex rel. Craig v. Scioto Cty. Bd. of Elections*, 117 Ohio St.3d 158, 882 N.E.2d 435, 2008–Ohio–706, ¶ 11, quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).

{¶23} The decision of a trial court concerning the application of the equitable doctrine of laches will not be reversed on appeal in the absence of an abuse of discretion. *Payne v. Cartee*, 111 Ohio App.3d 580, 590, 676 N.E.2d 946, 952–953 (1996). An abuse of discretion is more than just an error in judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028, 1030–1031 (1989).

{¶24} The trial court concluded that appellant's claims were barred by laches, finding:

> There is no question that WH was severely prejudiced by the delay of over twenty years to litigate these issues. It is impossible for WH to properly defend these claims from his grave. His testimony is critical to this case, especially his explanation regarding the original purchase, his relationship with Plaintiff, his relationship with B & S Transport, and any delay to cure the proposed defect in the deed.

{¶25} Appellant argues that the court erred in finding there was no excuse for delay. Appellant argues that WH never interfered with his possession of the property, and WH represented that he would remove his name from the title. He argues that therefore he was excused from asserting his claim to sole title to the property earlier.

{¶26} The trial court found that the relationship between the parties complicated

the instant case:

> In addition, the reasons for which WH was placed on the deed and remained on it for over twenty years are unclear. Plaintiff and WH had a very unique relationship which reflects both love for one another and turbulent moments; WH was a father, trainer, fight manager, business officer, shareholder, salaried employee, and opponent in court litigation. Throughout the trial, Plaintiff professed his love for his father and desire to take care of him. (T at 254-255). Plaintiff is a good man with a big heart, but may not have understood the importance of properly documenting his business transactions.

{¶27} The trial court did not abuse its discretion in finding an absence of an excuse for appellant's delay in bringing his claims. As noted by the court, the record is not completely clear as to why WH's name remained on the deed for over twenty years if indeed this was a mistake. Further, while his desire to maintain family harmony by taking a "wait and see" approach to the deed may be understandable, the trial court did not abuse its discretion in finding that this did not rise to the level of a legal excuse for the delay.

{¶28} The fifth assignment of error is overruled.

I, II

{¶29} Appellant's first and second assignments of error are rendered moot by our decision on his fifth assignment of error that the court did not err in finding the claims barred by laches.

{¶30} The first and second assignments of error are overruled.

III

{¶31} In his third assignment of error, appellant argues that the court erred in finding appellee was entitled to partition the property.

{¶32} Appellant's claim relies for its validity on his arguments in his first, second, and fifth assignments of error that the court erred in finding he was not the sole owner of the property. Because we have overruled appellant's first, second and fifth assignments of error, the third assignment of error is overruled.

IV

{¶33} Appellant argues that having found appellant and appellee were co-owners of the property, the court erred in failing to grant him damages for quantum meruit for improvements and maintenance to the property.

{¶34} Quantum meruit is generally awarded when one party confers a benefit upon another without receiving just compensation for the value of the services rendered. *Aultman Hospital Association v. Community Mutual Insurance Company*, 46 Ohio St.3d 51, 544 N.E.2d 920 (1989). However, a co-tenant is not ordinarily entitled to compensation for services rendered in managing, operating, or taking care of the common property in the absence of an express or implied agreement. *Gregg v. Billiter,* 4th Dist. Scioto No. CA-1589, 1986 WL 13423 (November 24, 1986).

{¶35} The court found that appellant had not met his burden that appellee had been unjustly enriched. The court found that while appellant calculated that he has spent $798,126.53 in taxes, expenses, and improvements for the property, he had the opportunity to live at the residence since 1992 and enjoy these benefits. In addition, the evidence reflects that a "good portion" of the upkeep, real estate taxes, insurance and building improvements were paid for by B&S Transports. Tr. 119-120. Although appellant testified that WH did not contribute to B&S Transports, the evidence demonstrates that WH was a 50% shareholder at least from 1993 through 2003, and

was a salaried officer of the company. Based on the evidence and the court's finding that appellant and WH are co-tenants, the trial court did not err in failing to award damages to appellant on his quantum meruit claim.

VI

{¶36} Appellant argues that the trial court lacked subject matter jurisdiction because appellee was not the real party in interest. He argues that title to the property passed to appellee Angela Harris individually when the will was probated, and because she was sued and she counterclaimed in her capacity as executrix, the court lacked subject matter jurisdiction over the case.

{¶37} In *Wells Fargo Bank v. Elliott,* 5th Dist. Delaware No. 13CAE030012, 2013-Ohio-3690, ¶11, we distinguished between standing and subject matter jurisdiction:

> There is a clear distinction between the requirements of subject matter jurisdiction and standing. Standing focuses on injury, causation, and redressability between a plaintiff and defendant in a case, while subject matter jurisdiction focuses on the court's power and ability to hear and decide a case. A lack of standing argument challenges the capacity of a party to bring an action, not the court's statutory or constitutional power to adjudicate the case and thus is distinguishable from a lack of subject matter jurisdiction argument. *PNC Bank, N.A. v. Botts,* 10th Dist. No. 12AP256, 2012–Ohio–5383 (stating standing and capacity to sue do not challenge the subject matter jurisdiction of a court); See also *Country Club Townhouses–North Condominimim Unit Assn v. Slates,* 9th Dist. No. 17299, 1996 WL 28003 (stating

> lack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court); *Wells Fargo Bank, N.A. v. Brandle,* 2d Dist. No.2012–CA–0002, 2012–Ohio–3492 (finding lack of standing does not deprive a court of subject matter jurisdiction).

{¶38} Therefore, the court did not lack subject matter jurisdiction even if appellee lacked standing. In his reply brief, appellant changed his argument to one of standing, arguing that pursuant to *Bank of America, N.A. v. Kuchta,* 141 Ohio St.3d 75, 21 N.E.3d 1040, 2014-Ohio-4275, this Court should reverse the judgment of the trial court and remand for a further determination of standing, with instructions to proceed from the point at which the error occurred.

{¶39} Pursuant to App. R. 16(C), reply briefs are to be used only to rebut arguments raised in the appellee's brief; an appellant may not use a reply brief to raise new issues or assignments of error. *Durham v. Pike Cty. Joint Vocational School,* 150 Ohio App.3d 148, 779 N.E.2d 1051, 2002-Ohio-6300, ¶12. Appellant therefore cannot change his assignment of error for the first time in his reply brief.

{¶40} The sixth assignment of error is overruled.

{¶41} The judgment of the Stark County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Wise, P.J. and

Delaney, J. concur.