

Circuit Court for Anne Arundel County
Case No. C-02-CV-16-002473

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1029

September Term, 2018

JFW TRUST

v.

YOLANDA TAGALA

Nazarian,
Leahy,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: November 18, 2019

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

This appeal arises from a Complaint for Declaratory Judgment filed in the Circuit Court for Anne Arundel County, seeking a declaration that appellant, JFW Trust, held title to property located at 1254 Holmespun Drive, Pasadena, Maryland free and clear of competing claims by appellee, Yolanda Tagala. Appellee filed a counter-complaint in which she sought to quiet title against appellant, alleging adverse possession of the property. Following a bench trial, the court held that appellee prevailed on her counter-claim for adverse possession, and thus held title to the property free and clear of any competing claims by appellant. This timely appeal followed, and appellant presents the following questions for our review:

1. Did the trial court err in selecting August 7, 1996 as the date on which the appellee's adverse possession claim began?
2. Did the trial court err in concluding that actions of the appellant and its predecessors in interest did not toll the appellee's adverse possession claim well prior to August 7, 2016?
3. Did the trial court err in concluding that the appellant failed to toll the appellee's adverse possession claim by filing the Complaint for Declaratory Judgment on August 5, 2016?

For reasons set forth below, we shall affirm.

BACKGROUND

In February 1998, appellee purchased 1254 Holmespun Drive located in Pasadena, Maryland. The purchase price was \$78,000, which appellee initially financed through Washington Mortgage Corporation.¹ The mortgage loan was evidenced by a recorded

¹ Throughout appellee's ownership of the property the mortgage was transferred several times. At the time of the trial the mortgage was serviced by Wells Fargo.

deed of trust. In 1996, appellee’s homeowner’s association (“HOA”), Stoneybrooke Village Association, initiated a foreclosure proceeding against her in the Circuit Court for Anne Arundel County for allegedly failing to pay her HOA fees. The foreclosure trustee held a public sale on May 29, 1996, during which John Williams’ bid of \$100 was accepted and the sale was ratified by the court.² On August 7, 1996, the trustee executed a deed (“1996 Deed”) conveying fee simple title to John Williams.³ The record reflects that following the foreclosure proceeding, appellee resolved and satisfied her outstanding debt and continued to make monthly mortgage payments on the property. Also, since purchasing the home in 1988, appellee has remained on the property and has paid roughly \$315,000 toward the mortgage.

On December 22, 1997, John Williams conveyed the 1996 Deed to appellant as grantee with Loren Williams, John Williams’ son, named as trustee. This transfer of the 1996 Deed was not recorded by appellant among the Land Records of Anne Arundel County until August 10, 2016. John Williams died on January 18, 1998.

On February 6, 2014, appellee filed a Complaint in the Circuit Court for Anne Arundel County seeking to quiet title against John Williams, *inter alia*. Loren Williams was present on behalf of John Williams, who was deceased at the time of this litigation. At a hearing held on February 27, 2015, the court dismissed Loren Williams’ counter-

² John Williams purchased an interest in the property “subject to any and all prior liens and encumbrances.”

³ The August 7, 1996 Deed was first recorded among the Land Records of Anne Arundel County on February 2, 2003.

complaint and disallowed him from defending any of the counts. The trial was continued to April 13, 2015, at which time, the case was dismissed without prejudice.

On August 5, 2016, appellant filed a Complaint for Declaratory Judgment seeking to establish that appellant held title to the property “free and clear of any competing claims by appellee.” Five days later, on August 10, 2016 appellant recorded the 1997 conveyance of the 1996 Deed. In response, appellee filed a counter-complaint to, *inter alia*, quiet title or in the alternative, for adverse possession. On April 17, 2017, appellant filed a Motion for Summary Judgment, to which appellee responded on April 24, 2017. Following a hearing held on July 11, 2017, the motion was denied.

A hearing on the Complaint for Declaratory Judgment and the counter-complaint to quiet title was held on April 13, 2018, during which the trial court issued an oral opinion in favor of appellee. In its opinion, the trial court noted appellant’s lack of “credibility” several times, stating “the [c]ourt does not find in this case as a factual matter that the [appellant] is credible . . .” In rendering its decision, the trial court stated:

In some ways, this case, to arrive at an objective determination, had to rely on the credibility of witnesses because the paperwork was very scant. In fact, the dearth of paperwork suggests that -- that there was perhaps some other motive afoot other than to simply arbitrarily file and record deeds when they were done, which was the general suggestion on this case.

As I said, no one ever produced a lease agreement or any other document that would be dispositive that would demonstrate that the parties had recognized that the home belonged to either Mr. John Williams or to the Trust at any point in time and, therefore, in order to meet its burden, the [c]ourt -- or, I'm sorry, Ms. Tagala had to compellingly and convincingly demonstrate to the [c]ourt that she had incontrovertible, objective facts that satisfied the seven prongs of adverse possession.

The trial court ultimately found:

Yolanda Tagala does have clear and absolute ownership and indefeasible title to 1254 Holmespun Drive in Pasadena, Maryland 21122 by virtue of adverse possession. This [c]ourt finds that her title began on August 8, 2016, and that JFW Trust cannot make any claim at law or otherwise relating to the use, the occupancy and the possession of the property.

Thereafter, on May 10, 2018, appellant filed a Motion to Alter or Amend Judgment. On May 24, 2018, appellee filed a response. The motion was denied, and this timely appeal followed.

STANDARD OF REVIEW

When an action is tried without a jury, this Court will review the case on both the law and evidence. Maryland Rule 8-131(c). We will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* Factual findings “cannot be held to be clearly erroneous” if “there is any competent evidence to support” them. *Middleton v. State*, 238 Md. App. 295, 304 (2018). “The deference shown to the trial court's factual findings under the clearly erroneous standard does not apply to legal conclusions, which are subject to a non-deferential review. *Id.* at 304–05

DISCUSSION

I. The trial court did not err in selecting August 7, 1996 as the date on which appellee’s adverse possession claim began.

Appellant challenges whether the twenty-year period commenced on August 7, 1996, which is the day the 1996 Deed was transferred to John Williams following the foreclosure proceeding. Specifically, appellant contends that the trial court erred in its selection of this date because appellee had no actual or constructive notice of the 1996

Deed until it was recorded by John Williams in February of 2003. Appellant argues, “[o]bviously, the [a]ppellee could not adversely possess property she believed she owned and had no basis to be on actual, constructive, or inquiry notice that it may belong to someone else.” Thus, appellant contends, “the court’s reliance on the date of the original Deed was misplaced” and “the count of 20 years did not begin for [a]ppellee until sometime in 2003.” Conversely, appellee argues the trial court correctly applied the 1996 date for adverse possession.

In a successful adverse possession claim, the claimant must prove that their possession of the disputed property has been “actual, open, notorious, exclusive, hostile, under claim of title of ownership, and continuous or uninterrupted” for the required twenty-year statutory period. *Senez v. Collins*, 182 Md. App. 300, 323–24 (2008) (citing *White v. Pines Cmty. Improvement Ass’n., Inc.*, 403 Md. 13, 36 (2008)). It is well established that “[a]dverse use means use without license or permission.” *Mavromoustakos v. Padussis*, 112 Md. App. 59, 65 (1996). The statutory period of adverse possession “begins to run when all the elements coalesce.” *Bratton v. Hitchens*, 43 Md. App. 348, 355 (1979).

In the case at bar, during direct examination appellee testified to the following:

[COUNSEL]: Back in 1996, what led to the issues that -- that caused the -- the deed transfer?

[APPELLEE]: I defaulted on the homeowner's association, which is from -- I think it was Six months and that lead to being sent to their lawyer. And by the time I get all the information, all the, you know, all the information and it was, like, a month to, like, 1,600, including the attorney's fee. So, I think from then it was sold. They said that they would foreclose on.

[COUNSEL]: Okay. And that was not a result of not making the mortgage payments, correct?

[APPELLEE]: No.

[COUNSEL]: It was solely the result of --

[APPELLEE]: It was to the homeowner's -- defaulting to the homeowner's association's fee.

The trial court in its findings stated:

There was a period of time in the mid-1990's when she was dealing with personal challenges and this [c]ourt found that her immediate family member was ill. And during that time, Ms. Tagala testified credibly that she was taking fewer shifts in her healthcare profession as a nurse and that was the catalyst or that event that led her to fall behind on her HOA fees or her homeowner's association fees, I should say, which I'll now going forward refer to as HOA.

But it's clear that the HOA not only liened against the property, but foreclosed against the property. And on August 7th, 1996, Mr. John Williams purchased the deed for \$100 and the attending liabilities that go with that, of course. That was at an HOA lien auction.

On this record, it is clear appellee had notice of the 1996 Deed because she testified that she was aware she defaulted on her HOA fees and that the HOA foreclosure occurred in 1996, when the property was sold. Appellee, therefore, knew she was no longer the rightful owner of the property. Her continued possession was thus adverse to the new owner's legal interest. She, nevertheless, continued to assert an interest in the property by paying the mortgage and remaining on the property. The court's finding that her testimony was credible was therefore based on competent evidence and was not erroneous nor was the court's finding that August 7, 1996 was the commencement date for her adverse possession claim.

Further, even if appellee did not have notice of the sale, August 7, 1996 would have been the appropriate date because “the fact that [adverse] possession is due to inadvertence, ignorance or mistake, is entirely immaterial.” *Miceli v. Foley*, 83 Md. App. 541, 555 (1990). *Miceli* noted that where a claim of ownership has existed for the statutory period, title will vest in the adverse possessor as long as there is evidence of unequivocal acts of ownership. *Id.* Under this modern view, it is immaterial that the adverse possessor supposed they had a valid claim of ownership. *Id.*

II. The trial court did not err in concluding that appellant and its predecessors in interest did not toll appellee’s adverse possession claim well prior to August 7, 2016.

Appellant asserts that “even if the ‘count [of] 20 years’ for the [a]ppellee began on August 7, 1996, the actions of the [a]ppellant and its representatives interrupted her adverse possession well before the claim matured.” In response, appellee asserts the trial court correctly concluded “appellant failed to take sufficient action to toll the adverse possession claim prior to appellee’s taking title on August 8, 2016.”

Generally, entry onto the land by the true owner, or another under his/her authority, will interrupt the running of the statute of limitations. *See Rosencrantz v. Shields, Inc.*, 28 Md. App. 379, 389 (1975). This Court further clarified the concept of tolling the statute of limitations in an adverse possession claim in *Miceli v. Foley*, stating:

The running of the statutory period may be interrupted by the owner's entry on the land. This entry must be made with a clearly demonstrated intention to repossess the land. Reentry onto the land must be made openly and under claim of right. [A]ll authorities agree that entry to have such effect [of interrupting adverse possession] must be an actual entry upon some part of the land within the period of limitations, and must evince that it is made with

the clear and unequivocal intent to invade and challenge the right of the holder of the adverse possession and to retake possession.

83 Md. App. 541, 556–57 (1990) (internal citations and quotations omitted).

Appellant claims that “several summary ejectment proceedings” were filed against appellee before her adverse possession claim matured. Specifically, appellant claims in 2003 Loren Williams and representatives of the Anne Arundel County Sheriff’s Office arrived at the property to execute an eviction order. However, because of unclear reasons, the sheriff never evicted appellee from the home. Appellant claims after appellee demonstrated that she was current on the mortgage payments, Loren Williams agreed to withdraw the eviction order. Next, appellant claims there was a landlord/tenant action filed against appellee and once resolved, “Loren Williams and the [a]ppellee discussed formalizing the ‘rent for mortgage payment’ arrangement by way of a formal written lease.” However, the trial judge did not find Loren Williams’ testimony regarding the alleged ejectment proceedings credible, stating:

But it is clear that at some point either Loren Williams Trust or some entity instituted some form of foreclosure proceedings because Ms. Tagala did testify that a sheriff did come to her house. But that she also testified credibly that she demonstrated to the sheriff that he -- that she had caught up on not only whatever shortcomings led to the lien against the home and that the sheriff was satisfied. That's what she essentially testified to and the [c]ourt is paraphrasing, of course.

But [appellant’s counsel] in his motion says, well, indeed it was his client or representative of his client, because his client is JFW Trust, but Mr. Loren Williams at some point in time indicated that he called off the Sheriff and decided to continue in some nebulous arrangement by which at least he testified that there was some lease, landlord/tenant agreement.

....

And according to Mr. Williams it was the hope and the possibility that at some point perhaps she would choose the option to buy back the property, but -- but it's clear that neither side has ever produced a document and/or -- or testified that a landlord/tenant lease agreement was established

Although entry onto land sufficient to interrupt an adverse possession claim need not be accomplished by the true owner, “[a]n agent’s entry must be characterized by a proper assertion of claim to the land.” *Miceli*, 83 Md. App. at 557. The agent “must assert his claim notoriously and openly, or perform some act which will reinstate him in possession.” *Id.* at 558. Here, the trial court found Loren Williams’ testimony that he initiated several ejectment proceedings against appellee was unclear and lacked credibility. He further produced no documents or court docket entries to support his testimony. We hold the court’s factual findings were fully supported by the record.

Finally, appellant claims that appellee’s complaint in the Circuit Court for Anne Arundel County on February 6, 2014, to quiet title against John Williams interrupted the statutory period. Appellant asserts this litigation resulted in a favorable ruling for appellant, stating, “The Estate defended the action which sought to divest Mr. Williams’ title to the property. On April 13, 2015, The Honorable Glenn L. Klavans ruled that the 1996 Deed was valid and had the effect of conveying title to the property to Mr. Williams.” The record, however, indicates there was no actual ruling as the complaint was dismissed without prejudice. In response to appellant’s claim that prior proceedings interrupted the statutory period, the trial court found “continuous, uninterrupted [was] a very easy prong for th[e] [c]ourt to arrive at.”

Further, even if his claims were filed timely, the mere initiation of a proceeding without a judgment in favor of the true owner or an agent thereof, is not in itself sufficient to interrupt adverse possession. *See Miceli*, 83 Md. App. at 562 (finding that “even if the court had determined that Miceli was the true owner of the right of way, his unsuccessful suit did not interrupt appellees’ adverse possession.”). The *Miceli* Court noted:

The bringing of an action by the true owner to recover possession, if followed by a judgment in his favor and the recovery of possession thereunder, interrupts the running of the statute, and such interruption occurs, it has been decided, at the time of bringing the action *The bringing of an action, however, which results unsuccessfully to plaintiff does not interrupt it.*

Id. (emphasis added). As is the case here, none of appellant’s alleged “several summary ejectment proceedings” resulted in a successful outcome for appellant. According to appellant, each of the proceedings was either dismissed or resulted in appellee retaining possession of the property. The quiet title action was also dismissed. Under these circumstances, the trial court did not err in determining that appellant or its representatives failed to interrupt appellee’s adverse possession before her claim matured.

III. The trial court did not err in concluding that appellant failed to toll appellee’s adverse possession claim by filing the Complaint for Declaratory Judgment on August 5, 2016.

Appellant contends that appellee did not adversely possess the property for the requisite statutory period because “the August 5, 2016 filing of the complaint by [a]ppellant interrupted the [a]ppellee’s adverse possession claim before it fully matured.” Conversely, appellee asserts, “[t]he deed relied on by [a]ppellant allegedly granting [a]ppellant’s interest in the property was not recorded until August 10, 2016, five days following the date the instant lawsuit was filed, and two days after [a]ppellee’s claims for Adverse

Possession became ripe.” Thus, appellee contends the August 5, 2016 complaint failed to toll appellee’s adverse possession claim because “[a]ppellant did not have a legal interest in the property because the deed was not recorded.”

Maryland Code, Real Property, § 3-101(a) provides “Except as otherwise provided in this section, no estate of inheritance or freehold, declaration or limitation of use, estate above seven years, or deed may pass or take effect unless the deed granting it is executed and recorded. Md. Code Ann., Real Prop. § 3-101(a). Further, for purposes of adverse possession, “[c]ontinuity of possession may not be interrupted by the filing of a suit of ejectment without any prior legal interest in the property.” *Miceli*, 83 Md. App. at 561.

With regard to this issue, the trial court found:

. . . the counter-plaintiff wins on this ground [sic] also on adverse possession. That is that when the claim is filed, JFW was the only named plaintiff, not the estate of John Williams, for example. Therefore, technically, they're a third party at the time of the lapsing of the 20 years, a third party without standing because they don't gain standing until the deed is filed per the statute.

. . . In other words, the continuity of possession is not interrupted by the filing by a suit of ejectment because the prior legal interest in the property has not yet engaged or taken place.

Appellant alleges that on December 22, 1997, John Williams transferred the property to appellant. However, appellant did not record the 1996 Deed until August 10, 2016—five days after the August 5, 2016 complaint was filed and two days after appellee’s title to the property vested. Pursuant to § 3-101(a), a deed “[does not] take effect unless the deed granting it is executed *and recorded*,” thus, appellant did not have a legal interest in the property when the August 5, 2016 complaint was filed. Further, even if appellant

had a legal interest in the property at the time the suit was filed, “his unsuccessful suit did not interrupt appellees’ adverse possession.” *See Miceli*, 83 Md. App. at 561 (noting “the bringing of an action, however, which results unsuccessfully to plaintiff does not interrupt [the running of the statute]”).

The trial court correctly determined that as of August 5, 2016, appellant had no legal interest in the property, and thus, the filing of the Complaint for Declaratory Judgment failed to toll appellee’s successful adverse possession claim.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**