

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002139-MR

BUDDIE RAY SLONE

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 03-CI-00153

RANDY JOHNSON

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

COMBS, CHIEF JUDGE: Buddie Ray Slone appeals from an order of the Pike Circuit Court granting summary judgment to Randy Johnson in Slone's action to set aside a deed on the basis of fraud. We reverse and remand for further proceedings.

On April 4, 2003, Slone signed a deed transferring his interest in a 0.4 acre parcel of real property to Johnson. In January 2004, Slone brought this action to set aside the deed, alleging that the conveyance had been procured entirely through

Johnson's fraud, deceit, and misrepresentation; he also contended that the transfer had not been supported by consideration. Johnson denied the fraud in his answer. Following a lengthy evidentiary hearing, the trial court granted summary judgment in Johnson's favor. Slone's motion to alter, amend, or vacate was denied, and this appeal followed.

Slone contends that the trial court erred by granting summary judgment because material issues of fact remain to be decided and because Johnson failed to show that he was entitled to judgment as a matter of law. We agree.

On March 30, 2003, Slone was arrested by local police. He called Johnson, who agreed to post his bond. According to Slone's testimony, Johnson approached him later and insisted that Slone participate with him in recording a lien against his (Slone's) property. Although Slone is legally blind and has great difficulty reading, he executed what he believed was a lien document. Johnson had threatened to have his bond revoked if he refused, and Johnson assured him that the lien would be released once the bond money was returned. Slone and Johnson went together to record the document.

Slone and his girlfriend had been living in the house on the property, but Johnson had them evicted following the recording of the "lien" document. Slone testified that this eviction was the first notice he had that Johnson was claiming

anything more than a lien on the real property. He testified that he never paid rent to Johnson and did not remember signing any lease agreement. When confronted with the deed, Slone persisted in contending that he had not intended to convey the property to Johnson and that the deed had been procured by fraud.

Johnson denied that he had fraudulently obtained the deed from Slone. Johnson testified that he had paid Slone \$6,500.00 for the property and that the deed had been properly executed and notarized in the offices of a local title company. Johnson contended that shortly after the deed was recorded, the parties entered into a rental agreement and that Slone had lived on the property until he could no longer afford the rent. Johnson emphasized that Slone sought to set aside the transaction only after he had been evicted.

CR 56.03 (Kentucky Rules of Civil Procedure) provides that summary judgment

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The record must be viewed in the light most favorable to the party opposing the summary judgment motion, and any doubts are

to be resolved in favor of the nonmoving party. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).

The extensive record presented to the trial court and summarized here does not support the conclusion that Johnson was entitled to judgment as a matter of law. On the contrary, it reveals the existence of a genuine issue of material fact: whether the deed was procured by fraud as Slone contends.

Johnson agrees that Slone is prohibited from introducing his parol testimony to show what transpired before the deed was executed since such evidence is not competent to construe or contradict the terms of the instrument. However, Slone's testimony is not offered for that purpose; it is offered to show that a fraud was perpetrated upon him in order to induce him to execute the deed. Where the issue charges the procurement of a deed or contract by fraud, the parol evidence rule does not apply. Stallard v. Adams, 228 S.W.2d 430 (Ky. 1950).

In order to prevail in an action for fraud, the party claiming injury must establish six separate elements by clear and convincing evidence: 1) the existence of a material misrepresentation; 2) which is false; 3) which is known to be false or made recklessly; 4) which is made with inducement to be acted upon; 5) which is acted in reliance thereon; and 6) which caused harm. United Parcel Service Co. v. Rickert, 996 S.W.2d

464, 468 (Ky. 1999), citing Wahba v. Don Corlett Motors, Inc.,
573 S.W.2d 357 (Ky.App. 1978). Viewing the record in a light
most favorable to Slone as we must under our standard of review,
we conclude that he presented sufficient evidence of fraud to
overcome the motion for summary judgment.

Accordingly, the judgment of the Pike Circuit Court is
reversed, and this case is remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

James L. Hamilton
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Kathryn Burke
Pikeville, Kentucky