

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002196-MR

BETTY TUGGLE AND DARRELL
TUGGLE, HER HUSBAND; JAMES R.
JONES AND JUNE JONES, HIS WIFE;
AND BETTY TUGGLE, EXECUTRIX OF
THE ESTATE OF PAULINE COX

APPELLANTS

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 98-CI-00215

WAYNE COX, AN INDIVIDUAL

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

McANULTY, JUDGE: Appellants Betty Tuggle, individually and as executrix of the estate of Pauline Cox, Darrell Tuggle, James R. Jones and June Jones (hereinafter appellants), bring this appeal from the court's grant of summary judgment to appellee Wayne Cox. The issue was two tracts of land conveyed to appellants by

deed under a power of attorney signed by Rufus Cox and naming Pauline Cox as attorney.

In his complaint below, Rufus Cox, by and through Wayne Cox as his attorney in fact, alleged that he was "mentally ill, mentally defective and in such a state of mind to not be competent" at the time that he signed the power of attorney. He further alleged that the appellants were aware of his condition and that the act of signing was void. He alleged that the transfers of real estate from Pauline Cox to appellants pursuant to the power of attorney were fraudulent and a breach of fiduciary duty. He asserted that the consideration recited in the deeds was never paid or tendered to him. Rufus Cox asked for rescission of the deeds in question.

The case originally was tried before the court on June 27, 2000, but a mistrial was declared following the avowal testimony of Patsy Tilley, the notary public. On January 22, 2003, the Pulaski Circuit Court entered an order reversing and setting aside the mistrial and stated that the testimony of Patsy Tilley previously taken by avowal would be considered by the court. The court entered an order granting summary judgment to the Plaintiff on September 22, 2004. The court cited the testimony from the notary to the alleged signature that she did not witness Rufus Cox's signature nor did he acknowledge his signature to her. Next, the court noted that:

Further, the Deeds were allegedly signed in 1984 and 1985 with recording in 1997. That delay is further evidence of record that tends to corroborate the claims of the Plaintiff, as well as the testimony against interest made by the Notary. There is nothing of record that shows the Plaintiff intended to make the conveyances that were made, utilizing the Power of Attorney.

The court concluded there were no genuine issues of material fact and set aside the conveyances. This appeal followed.

Appellants argue on appeal that the court erred in granting the summary judgment because, even though a power of attorney may be set aside, a deed made to a good faith purchaser without notice of that defect does not have to be set aside. In the case appellants cite, however, Parton v. Robinson, 574 S.W.2d 679, 682 (Ky. App. 1978), nothing in the record established that the purchasers had reason to question the power of attorney or the competency of the person executing it. Appellants argue it was not shown that they had knowledge of the defect in the power of attorney. We disagree. The court specifically found that the flaw in the power of attorney was demonstrated by the delay in recording the deeds. This delay implicates appellants in the knowledge of the defects in the transactions, and so they cannot take advantage of the protection afforded good faith purchasers without knowledge. We find no error in the grant of summary judgment.

For the foregoing reasons, we affirm the judgment of
the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bruce W. Singleton
Somerset, Kentucky

BRIEF FOR APPELLEE:

John S. Gillum
Gillum & Gillum
Somerset, Kentucky