

RENDERED: JANUARY 6, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002338-MR

CHARLIE CORNETT; GEORGETTA CORNETT;
J. PHIL SMITH, INDIVIDUALLY AND AS
TRUSTEE FOR THE H.H. SMITH HEIRS
APPELLANTS

APPEAL FROM KNOTT CIRCUIT COURT
v. HONORABLE JOSEPH F. BAMBERGER, SPECIAL JUDGE
ACTION NO. 02-CI-00074

SAM EVERAGE AND JEWELL EVERAGE
APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON, McANULTY, AND TAYLOR, JUDGES.

McANULTY, JUDGE: Charlie Cornett, Georgetta Cornett and J. Phil Smith, individually and as trustee for the H. H. Smith Heirs (the Cornetts), leased several mineral tracts of coal located in Knott County, Kentucky, to Knott Floyd Land Company, Inc. (Knott Floyd). At around the same time, Knott Floyd also had a surface lease with Sam and Jewell Everage (the Everages), which lease was later amended to include the minerals. The amended lease with the Everages granted Knott Floyd the right to mine all

seams of coal on their property. At some point in Knott Floyd's mining operations on a certain piece of property, both the Cornetts and the Everages claimed the coal royalties from that property, and it appeared to Knott Floyd that the boundaries of the mineral properties overlapped one another. So Knott Floyd filed an interpleader action to determine ownership of the property in dispute and the right to receive royalty payments under the coal leases. There was also a dispute between the Everages and another party -- not the Cornetts -- over the ownership of the surface property, but the trial court resolved that dispute in favor of the Everages earlier on in the litigation. After a bench trial, the trial court found that the Everages were also the rightful owners of the mineral property. Because we conclude that the trial court's findings of fact are supported by substantial evidence, we affirm.

When Knott Floyd filed the interpleader action, it filed a map of the property in dispute (the disputed area) between the Cornetts and the Everages. Neither the Cornetts nor the Everages contest the location of the disputed area as plotted by Knott Floyd on its map.

The trial court conducted a bench trial on August 27, 2004. At trial, Charlie Cornett testified on behalf of the Cornetts, and through Charlie Cornett, several certified deeds were introduced which purported to establish the Cornett's chain

of title to the minerals on the disputed property. In addition, the Cornetts called Eddie Childers (Childers), a licensed land surveyor, who testified that he had been employed to plot several deeds provided to him by the Cornetts, one of which was the property conveyed by deed dated February 18, 1913, from William Everidge and his wife to the Eastern Kentucky Realty Company, which deed was recorded in Deed Book 30, Page 601 in the Knott County Clerk's office.

Sam Everage testified as to his chain of title to the disputed area, both surface and mineral. Sam Everage provided certified copies of all the deeds comprising his chain of title.

One week after the bench trial, the trial court rendered its findings of fact, conclusions of law and judgment adjudging the Everages the rightful owners of the mineral property. The Cornetts appeal from this judgment.

On appeal, the trial court's factual findings "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01. Findings of fact are not clearly erroneous if supported by substantial evidence. See Black Motor Co. v. Greene, 385 S.W.2d 954, 956 (Ky. 1965).

Sam Everage submitted a certified chain of title from Lewis Everidge to Sam and Jewell Everage. Lewis Everidge acquired the property in a conveyance by William Everidge and

Amilia Everidge on February 8, 1908 (the 1908 deed). The 1908 deed is recorded in Deed Book 22, Page 608. William Everidge bought the property from Milton Walker by deed dated June 16, 1894. Certified copies of the 1908 deed and the 1894 deed were submitted in evidence. The deeds comprising Sam and Jewell Everidge's chain of title are substantial evidence of their ownership of the mineral property. Thus, the trial court's findings are not clearly erroneous.

In the underlying proceedings, the Cornetts presented two different arguments in support of their claim to the mineral rights on the disputed property. Their arguments seem consistent in this appeal.

The first argument is that on February 18, 1913, William Everidge conveyed 475.33 acres of property to Eastern Kentucky Realty Company, the Cornett's predecessor in title. One of the tracts of land comprising the 475.33 acres was the Milton Walker tract. But the trial court concluded that as to the Milton Walker tract, this was not a valid conveyance because William Everidge had conveyed the property to Lewis Everidge in 1908.

The second argument advanced by the Cornetts was that Lewis Everidge had conveyed the Milton Walker property to Jack Combs in 1911, which conveyance is recorded in Deed Book 28, Page 96. The Cornetts argue that Childers testified at trial

that the property conveyed in the 1908 deed is the same property conveyed by Lewis Everidge to Jack Combs, and this property is located some distance away from the disputed property. We have reviewed Childers' trial testimony, and he did not testify to this at trial. The substance of his trial testimony was that he was asked by the Cornetts to plot the property conveyed by deed dated February 18, 1913, from William Everidge and his wife to the Eastern Kentucky Realty Company.

Throughout the underlying proceedings, the Cornetts did not dispute that the Everages owned the surface. The Everages chain of title for the minerals is the same chain of title for the surface. The Cornetts have produced no probative evidence to challenge the Everage's chain of title or establish that the two estates were ever severed.

For the foregoing reasons, the judgment of the Knott Circuit Court is affirmed.

JOHNSON, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANTS:

James Bates
Hindman, Kentucky

BRIEF FOR APPELLEES:

Jerry W. Wicker
Hindman, Kentucky