IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 13, 2003 Session

BOBBY G. HELTON, ET AL. v. JAMES EARL CURETON, ET AL.

Appeal from the Chancery Court for Cocke County
No. 01-010 Telford E. Forgety, Jr., Chancellor

FILED JUNE 4, 2003

No. E-2002-02685-COA-R3-CV

Bobby G. Helton and Linda Helton ("Plaintiffs") sold land and a house to James Earl Cureton and Cynthia Diane Cureton ("Defendants") for $47,000. The parties signed a Contract for Sale of Land ("Contract"). The Contract required monthly payments to be made over a twenty-one year period and was made subject to Plaintiffs' existing mortgage on the property with Merchants and Planters Bank. The Contract also required Defendants to obtain fire insurance, even though Plaintiffs maintained fire insurance on the property as required by their existing mortgage. Defendants did not have fire insurance when the house later was destroyed by fire. Plaintiffs' insurance company paid a total of $41,970, of which $12,664.73 was paid directly to Merchants and Planters Bank in satisfaction of Plaintiffs' mortgage. Plaintiffs sued for the remaining balance owed on the Contract after Defendants stopped making the monthly payments. The Trial Court held that Defendants were entitled to a credit against the purchase price for the insurance proceeds of $41,970, and entered judgment accordingly. Plaintiffs appeal, claiming Defendants were not entitled to a credit for the $12,664.73 paid in satisfaction of their mortgage. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded.

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

Fletcher L. Ervin, Newport, Tennessee, for the Appellants Bobby G. Helton and Linda Helton.

Terry E. Hurst, Newport, Tennessee, for the Appellees James Earl Cureton and Cynthia Diane Cureton.

OPINION

Background

On January 25, 1995, Plaintiffs sold two adjoining tracts of land to Defendants for a total sale price of $47,000. The Contract required Defendants to make an initial down payment of $4,000, monthly payments of $502.02 for the first seven months, and $402.02 for the next 245 months. The Contract was subject to Plaintiffs' mortgage with Merchants and Planters Bank. Plaintiffs were to continue making payments on their mortgage, which would be paid off by the time Defendants completed making payments under the Contract. Plaintiffs would then convey title to the property to Defendants. The Contract required Defendants to maintain fire insurance on the house.

On July 27, 1999, the house located on the property was destroyed by a fire. Plaintiffs claim Defendants failed to carry fire insurance as required by the Contract. Fortunately, Plaintiffs had fire insurance on the property because they were required to do so by their mortgage with Merchants and Planters Bank. Plaintiffs alleged that Defendants stopped making the monthly payments after the fire occurred. Plaintiffs claimed they were entitled to a judgment for the outstanding balance of the Contract.

Defendants admitted the house was destroyed by fire and that they did not have fire insurance when this occurred. Defendants claimed they had obtained a fire insurance policy, but it had lapsed before the fire occurred. When Defendants tried to obtain a new policy, Farm Bureau refused to issue them a policy because the property already was insured against fire through Plaintiffs' policy. According to Defendants, when they informed Plaintiffs that Farm Bureau would not issue them a fire insurance policy, the parties agreed Defendants would reimburse Plaintiffs their cost for maintaining a policy. Finally, Defendants admitted to not having made a monthly payment pursuant to the Contract for "some time." Defendants filed a counterclaim, alleging they were entitled to an offset against the Contract purchase price in an amount equal to the insurance proceeds received by Plaintiffs.

In their response to the counterclaim, Plaintiffs denied Defendants were entitled to any offset. Plaintiffs acknowledged receiving a total of $41,970 from Farm Bureau pursuant to their fire insurance policy. Of this amount, Farm Bureau paid $29,305.27 directly to Plaintiffs, and $12,664.73 directly to Merchants and Planters Bank in satisfaction of Plaintiffs' mortgage. In short, Plaintiffs claimed they were entitled to retain the proceeds of the insurance policy because they paid for the policy, the proceeds were from a policy which preexisted the Contract, and because Defendants were required to maintain fire insurance on the property and did not do so.

The relevant portion of the Contract between Plaintiffs and Defendants regarding fire insurance on the property is as follows:

> Purchasers shall maintain fire and extended insurance on said premises in an amount of not less than $50,000.00 with an insurance company acceptable to Sellers which shall protect the Sellers interest in said property, and which shall show the Sellers as insureds. In the event of the failure of Purchasers to purchase or maintain such insurance the Sellers shall have the right to purchase such insurance to protect their interest herein and add the cost of same to the debt owed to Sellers by Purchasers created herein.

The trial occurred on August 7, 2002. At trial, the parties stipulated to the testimony of Mr. Tom Inman ("Inman"), an insurance agent with Farm Bureau. According to Inman, approximately two years prior to the fire, he was contacted by one of the Defendants who inquired about purchasing fire insurance on the property. Inman stated Farm Bureau already insured the property against fire through Plaintiffs' policy and would not insure the same property twice.

At trial, Plaintiff Bobby Helton ("Helton") testified he never had a conversation with Defendants prior to the fire about whether Defendants had obtained fire insurance. He assumed Defendants had obtained fire insurance as required by the Contract. Helton first learned Defendants had no fire insurance on the day of the fire. Helton acknowledged he has maintained fire insurance on the property since 1985, because he was required to do so pursuant to his mortgage with Merchants and Planters Bank. At no time since entering into the Contract have Defendants reimbursed him for any of his fire insurance premiums. Helton admitted there was a point in time when Defendants did have fire insurance on the property. According to Helton, Defendants told him in January of 1997, that they had fire insurance. Helton admitted that while Defendants often were late on their monthly payments, they were caught up in July of 1999 when the house was destroyed by fire. The last monthly payment made by Defendants was for August of 1999. Helton denied telling Plaintiffs he would rebuild the house if they continued to make monthly payments.

Defendant Cynthia Cureton ("Cureton") testified she maintained fire insurance on the house until 1997, when the insurance agent from whom she purchased the insurance either moved out of town or closed his business. Cureton never heard anything further from the insurance agent or the insurance company. Cureton then attempted to obtain fire insurance from Farm Bureau, and was told by Inman that Farm Bureau would not insure the property a second time. Cureton claims she then called Helton and informed him of the situation. Helton allegedly told her "he already had insurance, so he would charge me for the insurance and put it on the contract." As a result of this conversation, Cureton made no further attempts to obtain fire insurance. Cureton claims Helton told her after the fire that if she continued to make monthly payments, he would rebuild the house once he received the insurance proceeds. However, Cureton testified that when Helton received the proceeds, he stated he was not going to do anything. According to Cureton, Helton asked her after the fire if she had fire insurance, to which she responded by reminding Helton they had an agreement that he was going to charge her for the insurance he was required to maintain. Cureton claims Helton stated he did not remember making such an agreement.

During rebuttal, Helton denied ever representing to Defendants that he had fire insurance. He also denied telling Cureton that he would maintain fire insurance and she could reimburse him his cost. Helton stated Cureton has never reimbursed him for any of the cost of the fire insurance. According to Helton, the balance owed by Defendants on the Contract as of August 1999, including interest, was $42,418.37.

Based on the above evidence, the Trial Court noted the Contract specifically stated that if Defendants did not obtain fire insurance, which they did not, Plaintiffs could obtain the insurance and charge the cost to Defendants. According to the Trial Court, to allow Plaintiffs to retain the insurance proceeds *and* require Defendants to pay the full contract price would "allow the seller to be paid twice for the same asset." Plaintiffs were entitled to receive what they bargained for in the Contract, which was the full $47,000 sale price. Once Plaintiffs receive that, they "got everything" they bargained for. After reaching these conclusions, the Trial Court held that Defendants were entitled to a credit on the contract purchase price for the full $41,970 paid by the insurance company, less any interest which accrued after Defendants stopped making payments up until the time Plaintiffs received the insurance proceeds. In accordance with the terms of the Contract, the Trial Court also determined Plaintiffs were entitled to reimbursement for the amount they paid for fire insurance since the inception of the Contract. As pertinent to this appeal, the Trial Court's final judgment awarded Plaintiffs $502.03, representing the balance due on the Contract by Defendants after they were given credit for the insurance proceeds. Plaintiffs also were awarded $794, representing the amount of insurance premiums they paid since the inception of the Contract, and $200 for money Plaintiffs spent to clean up the property. Under the Trial Court's judgment, Defendants owe Plaintiffs the total sum of $1,496.03. The judgment also provides that upon payment by Defendants of this $1,496.03, "the Defendants are awarded the real property . . . ."

Plaintiffs appeal, raising the following issue, which we quote:

> The Court erred in holding that under principles of equity the [Defendants] were entitled to credit against the purchase price of the property due [Plaintiffs] in the amount paid by the [Plaintiffs'] fire insurance to [Plaintiffs'] lender, as debt payment, resulting from the fire loss to the property, when [Defendants] not only didn't pay for fire insurance but breached their affirmative duty to pay for such insurance.

During oral argument before this Court, Plaintiffs' attorney announced that Plaintiffs were challenging only Defendants' entitlement to a credit for the $12,664.73 paid by Farm Bureau to Merchants and Planters Bank in satisfaction of Plaintiffs' mortgage. Plaintiffs now do not contest Defendants' entitlement to a credit for the $29,305.27 which Plaintiffs received directly from Farm Bureau.

Discussion

The factual findings of a trial court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan,* 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

This Court was confronted with somewhat similar facts in *Martin v. Coleman,* No. M1999-02238-COA-R3-CV, 2001 Tenn. App. LEXIS 437 (Tenn. Ct. App. June 18, 2001), *no appl. perm. appeal filed.* In that case, Mary Lynn Coleman ("Coleman") purchased property after borrowing $11,000 from a credit union to finance the purchase. Shortly thereafter, she sold the property to Donna Martin ("Martin") for $15,500, and the parties signed an installment sales contract. *Martin*, 2001 Tenn. App. LEXIS 437, at * 2. The sales contract required Martin to purchase fire insurance and pay property taxes. When Martin expressed concern over being able to purchase fire insurance since the property was not legally titled in her name, Coleman agreed Martin could reimburse her for this cost since she was required by the credit union to have fire insurance. *Id*. at ** 4, 5. The building on the property later was destroyed by fire and Coleman collected $11,000 pursuant to her insurance policy. At the time of the fire, Martin still owed $6,175.16 on the installment contract and was $810 in arrears on property taxes. Coleman spent $2,500 to have the debris cleaned up after the fire. *Martin*, 2001 Tenn. App. LEXIS 437, at * *6, 28. The litigation centered around who was entitled to the proceeds of the insurance as well as title to the property. The trial court determined that out of the $11,000 in insurance proceeds, Coleman was entitled to the outstanding balance on the installment contract, the $810 Martin was in arrears on property taxes, and the $2,500 expended in cleaning up after the fire. The trial court concluded Martin was entitled to the remaining insurance proceeds as well as title to the property. *Id*. at ** 7, 8.

On appeal, this Court relied in large part on *Hillard v. Franklin,* 41 S.W.3d 106 (Tenn. Ct. App. 2000) to resolve the various issues. In *Hillard,* we stated:

> In general ... where the insured vendor has sold the property and the vendee has gone into possession and paid a portion of the purchase price, but title is still held by the insured, as between the insured and the insurer the insured is the owner of both the legal and equitable titles to the property and entitled to recover the full amount of the policy. *However, as between the vendor and the vendee, the insured takes the proceeds of insurance which exceed the amount owed to the vendor, as trustee for the vendee.*

Hillard, 41 S.W.3d at 114 (quoting Parker v. Tennessee Farmers Mutual Ins. Co., No. 141, 1988 Tenn. App. LEXIS 865, at ** 3, 4 (Tenn. Ct. App. Dec. 30, 1988)(emphasis added)). The *Martin* Court went on to explain that Tennessee follows the equitable rule that "where the building which was the subject of conveyance is destroyed or damaged, the vendor must apply the proceeds upon the purchase price and account for the balance to the purchaser." *Martin,* 2001 Tenn. App. LEXIS

437, at ** 12, 13 (citations omitted). We then concluded the trial court correctly applied these principles when it: (1) rendered a judgment to Martin for the remaining insurance proceeds after making the appropriate deductions on Coleman's behalf; and (2) awarded Martin title to the property.[1] *Id.* at * 14.

On appeal, Plaintiffs attempt to distinguish *Martin* and cases relied upon by the *Martin* Court, arguing these cases are inapposite to the present facts since Plaintiffs actually purchased the fire insurance and Defendants did not abide by their contractual obligation to do so. In essence, Plaintiffs claim Defendants breached their contractual obligation, and if they receive the benefits of the insurance policy they will be receiving a benefit for which they did not pay.

Initially, we note that in *Martin*, it was the seller who maintained the fire insurance and the parties in that case agreed the buyer would reimburse the seller for this cost. This is exactly what happened in the present case if Cureton's version of the facts are true. The Trial Court, however, did not explicitly make a credibility determination with regard to whether or not it believed Cureton's testimony about her conversation with Helton after she was told by Inman that Farm Bureau would not insure the property twice. The Trial Court instead based its decision on the clear language of the Contract which states: "In the event of the failure of Purchasers to purchase or maintain such insurance the Sellers shall have the right to purchase such insurance to protect their interest herein and add the cost of same to the debt owed to Sellers by Purchasers created herein."

It is undisputed in the present case that at the time of the fire, Defendants had no fire insurance policy in force, but Plaintiffs did. This was Plaintiffs' express right under the contract and, in return, Defendants were contractually obligated to reimburse Plaintiffs for that cost. Plaintiffs claim they were unaware that Defendants had no insurance. We take this to mean that the insurance which Plaintiffs purchased was not purchased because Defendants were uninsured. In other words, Plaintiffs appear to argue this portion of the Contract never came into play. Even assuming the Trial Court believed Helton's testimony over Cureton's, this does not change the fact that Defendants did not have fire insurance, Plaintiffs did, and pursuant to the Contract, Plaintiffs' remedy was reimbursement for this additional cost. These facts are not changed even if Plaintiffs did not know Defendants were uninsured.

Plaintiffs also argue Defendants are not entitled to a credit for the amount paid by Farm Bureau directly to Merchants and Planters Bank because that payment involved a contractual obligation between Plaintiffs and the Bank for which Defendants were not third party beneficiaries. To be sure, Plaintiffs were entitled to have their debt to Merchants and Planters Bank paid out of the insurance proceeds, and it was. The fact that $12,664.73 was paid by Farm Bureau to Merchants and Planters Bank in satisfaction of Plaintiffs' mortgage rather than to Plaintiffs is immaterial. Plaintiffs received the full benefit of this payment just as surely as if the $12,664.73 had been paid directly to them as it was Plaintiffs' debt of $12,664.73 that was satisfied by this payment. We see no valid

[1] The judgment of the trial court was modified simply to reflect the correct amount Martin owed on the installment contract.

distinction between the money paid directly to Plaintiffs and that paid to Merchants and Planters Bank in satisfaction of Plaintiffs' mortgage. Further, we do not believe Plaintiffs' underlying obligation to Merchants and Planters Bank in any way alters the fact that Plaintiffs were trustees of the insurance proceeds, as between them and Defendants, as set forth in applicable law. *See Hillard*, 41 S.W.3d at 114. Plaintiffs fully extinguished their debt to Merchants and Planters Bank. We, therefore, find Plaintiffs' argument to be unpersuasive.

The Trial Court expressly observed that with its judgment, Plaintiffs received absolutely everything they had bargained for, i.e., payment of $47,000 for the land and house. Plaintiffs also received reimbursement for the fire insurance premiums Defendants were obligated to pay under the Contract. The Trial Court's judgment undoubtedly made Plaintiffs whole. Defendants did not receive "something for nothing" because the Trial Court entered a judgment against them for the insurance premiums paid by Plaintiffs. Thus, while the Trial Court gave Defendants the full benefits of the insurance, it also made them pay the full price for that benefit. As noted by the Trial Court, to hold otherwise would allow Plaintiffs to be paid twice for the same property despite the clear language of the Contract. The Trial Court was unwilling to do this, and we are unwilling to disturb its judgment on appeal. We find no reversible error in the Trial Court's judgment.

Conclusion

The judgment of the Chancery Court is affirmed, and this cause is remanded to the Chancery Court for such further proceedings as may be required, if any, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed against the Appellants Bobby G. Helton and Linda Helton, and their surety.

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D. MICHAEL SWINEY, JUDGE