IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 19, 2023 Session

LORETTA HARTMAN v. TINA MASSENGILL

Appeal from the Circuit Court for Washington County
No. 40248 James E. Lauderback, Judge

No. E2022-01769-COA-R3-CV

This appeal concerns the ownership of property used by the defendant but owned by her father and stepmother. The plaintiff stepmother secured a writ of possession from the general sessions court once her husband passed away. The defendant appealed to the circuit court, which ruled that the property at issue belonged to the plaintiff. We affirm.

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

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II and KRISTI M. DAVIS, JJ., joined.

Mark D. Edmonds, Jonesborough, Tennessee, for the appellant, Tina Massengill.

Mark S. Dessauer, Kingsport, Tennessee, for the appellee, Loretta Hartman.

OPINION

I. BACKGROUND

Loretta Hartman ("Plaintiff") married Roger Hartman ("Decedent") in 1982. At the time of the marriage, Decedent owned two tracts of property on Hartmantown Road in Jonesborough, a 2.1-acre tract ("Massengill Tract") and a 0.97-acre tract ("Hartman Tract"). In 1997, Decedent's daughter, Tina Massengill ("Daughter"), placed a mobile home on the property and lived there with her spouse.

In 2002, Decedent deeded both parcels to himself and Plaintiff, creating a tenancy by the entirety. In 2007, Daughter and a new spouse replaced the single-wide mobile home with a double-wide, which required financing through use of the land. Decedent and

Plaintiff transferred the Massengill Tract to Daughter and her husband by deed, dated May 29, 2007. Thereafter, Daughter and her husband built a storage shed on the Hartman Tract.

Decedent passed away on August 8, 2016. Approximately three months later, on November 18, 2016, Plaintiff filed a detainer action in the Washington County General Sessions Court after Daughter refused to remove her horse from the Hartman Tract. There, Plaintiff won a writ of possession for the Hartman Tract.

Daughter appealed to the Circuit Court ("trial court"). The trial court heard the matter de novo on March 31, 2022. Plaintiff agreed that she and Decedent deeded the Massengill Tract to Daughter but maintained that they retained ownership of the smaller Hartman Tract. She asserted that they paid the taxes on the Hartman tract and provided evidence of the same for the tax years 2007 through 2021. She denied ever receiving a reimbursement for the payment of taxes from Daughter and asserted that Daughter never claimed ownership of the property until after Decedent passed away.

Plaintiff explained that after Decedent's passing, she attempted to survey the Hartman Tract. She was advised to remove the horse from the tract to allow the surveyor to place markers on the property. Plaintiff claimed that she attempted to speak with Daughter, who ordered her off the property. The next month, Plaintiff's attorney sent a demand letter, requesting removal of the horse from the Hartman Tract.

Plaintiff admitted that Daughter improved the property throughout her tenure there as evidenced by her removal of a barn from the property at issue, completion of some grading work, and filling in a pond; however, she asserted that she and Decedent paved the driveway and built a storage shed, with some monetary help from Daughter for materials. She asserted that Daughter utilized the property as pasturage but never gained express permission to use the property.

Daughter testified that she contributed approximately $25 per month for the property taxes on both tracts. She confirmed that the original mobile home was placed on the Massengill tract but stated that they built the driveway, installed a septic system and power pole, built a fence, and made other improvements. She asserted that she continually maintained both tracts since 1997, that her horse has been on the Hartman Tract since 1998, and that she and Decedent built the storage shed on the Hartman Tract. She claimed that a quitclaim deed was drafted for the Hartman Tract for her to receive title personally but that the deed was "in the back of the folder" and did not get signed when the Massengill Tract was transferred.

Following the bench trial, the court found that Daughter's use of the Hartman Tract was open and obvious and by permission. The trial court further found that the deed to the Massengill Tract made it clear that such tract was all that Daughter was given. The trial court found that the proof was not sufficient to establish that Decedent gifted the Hartman

Tract to her. The trial court incorporated its oral findings in an order entered May 16, 2022, wherein the court ordered Daughter to remove her horse from the Hartman Tract. This appeal followed the denial of post-trial motions.

II. ISSUES

We restate the issues raised on appeal as follows:

A. Whether the trial court erred in finding that Daughter's use of the Hartman Tract was by permission, rather than a parol gift of the property.

B. Whether the trial court erred in finding that Tennessee Code Annotated section 28-2-103 did not apply to bar Wife's action.

III. STANDARD OF REVIEW

We review a non-jury case de novo upon the record with a presumption of correctness as to the findings of fact unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). "In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect." *Wood v. Starks*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). We review questions of law de novo with no presumption of correctness. *Bowden*, 27 S.W.3d at 916 (citing *Myint v. Allstate Ins. Co.*, 970 S.W.3d 920, 924 (Tenn. 1998)); *see also In re Estate of Haskins*, 224 S.W.3d 675, 678 (Tenn. Ct. App. 2006).

IV. DISCUSSION

A. & B.

Daughter claims that Decedent gifted the Hartman tract to her as evidenced by his love and affection for her and her sole use of the property since 1997.[1] "[T]he burden of proving that a gift was made is upon the donee or the party asserting the gift." *Dunlap v. Dunlap*, 996 S.W.2d 803, 814 (Tenn. Ct. App. 1998) (citation omitted). To establish such a gift, the donee must show "(1) the intention by the donor to make a present gift and (2) the delivery of the subject gift by which complete dominion and control of the property [was] surrendered by the donor." *Trezevant v. Trezevant*, 568 S.W.3d 595, 615 (Tenn. Ct.

[1] Plaintiff asserts that Daughter waived review of her argument for failure to raise the issue before the trial court. We disagree. The court specifically ruled on this issue, finding no evidence of a parol gift.

App. 2018) (internal citations and quotations omitted). While we do not doubt Decedent's love and affection for Daughter, Decedent specifically gifted the Massengill tract by deed in 2007. The Hartman Tract was not included in the transfer. Decedent also paid taxes on the Hartman Tract throughout Daughter's tenure on the property. Further, Daughter showed no donative intent on the part of Plaintiff, also a title holder to the property at issue.

Next, Daughter argues that the trial court erred in affirming Plaintiff's action in violation of Tennessee Code Annotated section 28-2-103(a), which bars ejectment of an adverse possessor after seven years of exclusive, actual, adverse, continuous, open, and notorious use. *See Wilson v. Price*, 195 S.W.3d 661, 666–67 (Tenn. Ct. App. 2005) ("providing that the character of the possessory acts that are sufficient to place the title holder on notice of an adverse claim are the same under the statute as under the common law of adverse possession"). Section 28-2-103 provides as follows:

> No person or anyone claiming under such person shall have any action, either at law or in equity, for the recovery of any lands, tenements or hereditaments, but within seven (7) years after the right of action accrued.

Daughter reasons that Plaintiff's failure to eject her from the property must now bar her action. We disagree. While Plaintiff never expressed any donative intent to gift the property, she, along with Decedent, continued to pay taxes on the property, observed and approved of the improvements made to the property, and even contributed to said improvements through Decedent's labor. Daughter's use of the property was simply not adverse. Accordingly, we agree with the trial court that Daughter's possession of the property was by permission and that Plaintiff is entitled to the property as the title holder.

V. CONCLUSION

For the reasons stated above, we affirm the decision of the trial court. The case is remanded for such further proceedings as may be necessary. Costs of the appeal are taxed to the appellant, Tina Massengill.

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JOHN W. MCCLARTY, JUDGE