

11-0589

IN THE CIRCUIT COURT OF SUMMERS COUNTY, WEST VIRGINIA

VIVIAN P. CROWE, et al.,  
Petitioners,

v.

CIVIL ACTION NO: 08-C-34

THE UNKNOWN HEIRS OF  
THOMAS NEIGHBORS.  
GEORGE T. CROWE, et al.,  
Respondents.

ORDER-RENDERING VERDICT AND GRANTING MOTION FOR PARTIAL  
SUMMARY JUDGMENT

On October 26, 2009 and November 20, 2009, the Petitioners, Vivian P. Crowe, et al., appeared in person and by counsel Anna R. Ziegler of Ziegler and Ziegler, LC, and the Respondent, George T. Crowe, appeared in person and by counsel, Paul Detch, for a hearing on the Petitioners' Motion for Declaratory Judgment Regarding the Will of Thomas Neighbors and Partial Summary Judgment as to the Respondent's Adverse Possession Claim. The Court has studied the motions, reviewed the supporting documents, listened to the arguments of counsel and consulted the pertinent legal authorities.

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As a result of these deliberations, the Court has rendered a verdict in favor of the Petitioners and determined that the Petitioners' Motion for Partial Summary Judgment is appropriate. Therefore, the Court does hereby **GRANT** the Motion for Partial Summary Judgment filed on behalf of the Petitioners. The facts of the case and applicable legal authority to support this contention are as follows:

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## I. FACTS AND PROCEDURAL HISTORY

This case involves a dispute over two tracts of land, a fifty-one acre parcel and a one acre parcel, located in Talcott District, Summers County, West Virginia. The parties often refer to the property as “The Old Homeplace.” Both tracts were originally purchased by Thomas Neighbors in 1921 and 1954 respectively. In the 1930’s Thomas Neighbors began a relationship with Maude Crowe. Maude Crowe and Thomas Neighbors never married; however they did have several children together: John Crowe, Stella Crowe Pickeral, Kenneth Earl Crowe, Vivian P. “Scott” Crowe, Donald Crowe, and Betty Lou Crowe Thompson. Donald Crowe died in infancy.

Prior to Maude Crowe’s relationship with Thomas Neighbors, she was married to Early Crowe. Based upon information and belief, Maude Crowe and Early Crowe married in 1924 and had several children: George Crowe, Denton “Gordon” Crowe, Charles Crowe, William Crowe, Elmer Crowe and Helen Crowe. In approximately 1934 or 1935, Early Crowe divorced Maude Crowe.

Thomas Neighbors died testate a resident of Summers County, West Virginia, on July 13, 1956. His Last Will and Testament signed and dated April 12, 1952, provides in pertinent part: “SECOND: All my real estate, wheresoever situated, I give, devise, and bequeath unto Maude Crowe during her lifetime. Upon the death of the said Maude Crowe, I give, devise, and bequeath my said real estate to the child of the said Maude Crowe who supported me until my death; which child is to use, rent, or sell my real estate as said child shall choose. If said child who supported me until my death is deceased at the time of Maude Crowe’s death, then I give, devise and bequeath my said real estate to the child of the said Maude Crowe that supported the said Maude Crowe until her death.”

Based upon the evidence and testimony, undisputedly, Maude Crowe was Thomas Neighbors' primary caretaker prior to his death. Betty Lou Crowe Thompson testified that her mother, Maude Crowe, cared for Thomas Neighbors during the months preceding his death while he was suffering from gangrene in his foot. John Crowe and Vivian P. "Scott" Crowe also testified that Maude Crowe took care of Thomas Neighbors until he died.

Maude Crowe died intestate in 1959. At the time of her death all of the children with the exception of Donald Crowe were alive and all of the children with the exception of Betty Lou Crowe Thompson had left the home. The evidence is inconclusive on which of the children cared for Maude Crowe prior to her death.

On June 28, 2007, the Respondent, George Crowe, signed and recorded a Quitclaim Deed to himself in which he alleges he cared for Thomas Neighbors and Maude Crowe prior to their deaths. Subsequently, a dispute arose between the Petitioners and the Respondent concerning ownership of the property and the interpretation of Thomas Neighbors' Will.

On April 10, 2008, the Petitioners filed a Petition and Suit to Quiet Title. On May 28, 2008, the Respondent filed a Response to the Petition. On October 21, 2009, the Petitioners filed a Motion for Declaratory Judgment Regarding the Will of Thomas Neighbors and Partial Summary Judgment as to the Respondent's Adverse Possession Claim. The Petitioners contend that George Crowe did not care for nor support either Thomas Neighbors or Maude Crowe prior to their deaths. The Respondent contends that he owns the property by a valid will or quitclaim deed, or in the alternative, by adverse

possession. The Respondent also contends that there are disputed facts on all issues which preclude summary judgment.

## II. DISCUSSION OF AUTHORITY

The Court must first interpret the provisions of the Last Will to ascertain the intent of Thomas Neighbors. According to the West Virginia Supreme Court of Appeals, “the cardinal principle of will construction is to ascertain testator’s intent as expressed in words of will and codicils, giving consideration to all surrounding circumstances.” Syl. Pt. 1, *Claymore v. Wallace*, 146 W.Va. 379, 120 S.E.2d 241 (1961).

Turning to the second sentence of the Will, it states: “Upon the death of the said Maude Crowe, I give, devise, and bequeath my said real estate to the child of the said Maude Crowe who supported me until my death.” Based upon the evidence and testimony before the Court it appears that Maude Crowe was Thomas Neighbors primary caretaker until his death.

The next sentence of the Will states: “If said child who supported me until my death is deceased at the time of Maude Crowe’s death, then I give, devise, and bequeath my said real estate to the child of the said Maude Crowe that supported the said Maude Crowe until her death.” The evidence is inconclusive on which child supported Maude Crowe during her lifetime and the testimony establishes that she was self-sufficient throughout most of her lifetime. There is evidence that each of the children provided some support for their mother.

The Court finds that Thomas Neighbors’ intention was to devise his property to the children of Maude Crowe who supported the two of them. Since there is evidence that each of the children provided some support, there is no standard set forth in the will

which would allow this Court to award it to one or more children over the others, and his clearly expressed intent was to leave it to the children of Maude Crowe, this Court can only conclude it must pass to the children or their decedents equally, *per stirpes*.

The second issue before the Court is the Respondent's adverse possession claim. The Petitioners argue that the Respondent's claim of ownership of the property pursuant to the doctrine of adverse possession should be dismissed on summary judgment because he does not meet the elements of an adverse possession claim. The Respondent contends he meets all six of the elements and furthermore, there are disputed facts that preclude summary judgment.

Rule 56(c) of the *West Virginia Rules of Civil procedure* requires summary judgment to be granted when the record reveals 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." A "material fact" is one that has the capacity to sway the outcome of the litigation under the applicable law.

Summary judgment is a device designed to effect a prompt disposition of controversies on their merit without resort to a lengthy trial, if in essence there is no real dispute as to salient facts or if only a question of law is involved. *Hanks v. Beckley Newspapers Corp.*, 153 W.Va. 834, 172 S.E.2d 816 (1970).

The standard for granting a Motion for Summary Judgment has been often stated by the West Virginia Supreme Court of Appeals as, "[a] motion for Summary Judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law" *Williams v. Precision Coal, Inc.*, 194 W.Va. at 59, 459 S.E.2d 329 (1997), quoting *Syl.*

Pt. 1, *Andrik v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992), quoting Syl. Pt 3., *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).

In addressing this issue, the Court will look to the necessary requirements to establish a claim through adverse possession in the state of West Virginia. The doctrine of adverse possession is firmly established in West Virginia property law. West Virginia Code § 55-2-1 states “no person shall make an entry on, or bring an action to recover, any land, but within ten years next after the time at which the right to make such entry or to bring such action shall have first accrued to himself or to some person through whom he claims.”

One who seeks to assert title to a tract of land under the doctrine of adverse possession must prove each of the following elements for the requisite statutory period: 1) That he has held the tract adversely or hostilely; 2) That the possession has been actual; 3) That it has been open and notorious; 4) That possession has been exclusive; 5) That possession has been continuous; 6) That possession has been under claim of title or color of title. *Naab v. Nolan*, 174 W.Va. at 154, 327 S.E.2d 151(1985).

In order to prove the first element of “adverse” or “hostile”, the person claiming adverse possession must prove that his possession of the property was against the right of the true owner and is inconsistent with the title of the true owner. *Somon v. Murphy Fabrication & Erection, Co.* 160 W.Va. at 90, 232 S.E.2d 524 (1977). The subject property has been used by all of the heirs since the deaths of Maude Crowe and Thomas Neighbors. Most, if not all, of the heirs have made visits to the property to vacation or to

attend family reunions. The Respondent's use of the property cannot be said to be inconsistent with or hostile to the ownership of the other heirs.

For "actual possession", there must be an exercising of dominion over the property and the qualities of the acts of dominion are governed by the location, conditions, and reasonable uses which can be made of the property. *Id.* The Respondent has not exercised any more dominion over the property than the other heirs. Although the Respondent attempted to deed the property to himself and also took it upon himself to timber the property, other family members have resided on the property and contributed to the maintenance of the property.

The third element, that possession be open and notorious, requires that the acts asserting dominion over the property "must be of such a quality to put a person of ordinary prudence on notice of the fact that the disseisor is claiming the land as his own." *Naab v. Nolan*, 174 W.Va. at 154, 327 S.E.2d 151(1985). Other family members, including the Petitioners, have regularly visited the property. No single family member, including the Respondent, has openly and notoriously held the property as their own.

The fourth element, that possession has been exclusive, relates to the fact that others do not have possession over the property. All of the family participated in family reunions on the property without seeking permission or receiving objection from the Respondent. The Respondent testified that the families were "welcome to come."<sup>1</sup>

The fifth element, that possession has been continuous, means that the possession must be for the statutory period of ten years. The Court finds the Respondent has not had exclusive possession of the property let alone for the statutory period of ten years.

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<sup>1</sup> Transcript of George Crowe, Page 13, Line 2, October 26, 2009.

Finally, the sixth element, that possession has been under claim of title or color of title is not met. A claim of title is the disseisor's entering upon the property with the intent to claim it as his own. *Naab v. Nolan*, 174 W.Va. at 154, 327 S.E.2d 151(1985). The Respondent deeded the property to himself in 2007, which lead the Court to find that the Respondent believed he did not own the property prior to this time. Although the Respondent may have paid taxes on the property this is not conclusive because other members have also offered to pay or have paid taxes on the property.

### III. CONCLUSION

For the reasons set forth above, the Court finds that Thomas Neighbors' intention can only be satisfied by finding that the property is devised to Maude Crowe's children *per stirpes*. Furthermore, since no dispute exists as to the facts material to the adjudication of the adverse possession claim, it appears the Partial Motion for Summary Judgment is appropriate. Therefore, it appearing proper to do so, it is hereby **ORDERED and ADJUDGED** as follows:

1. That the "Partial Motion for Summary Judgment" filed on behalf of Petitioners is **GRANTED**.
2. Title to the real estate in question is vested in the heirs of Maude Crowe, *per stirpes*.
3. The Circuit Clerk is directed to provide copies of this order to all parties and counsel of record.

Dated: November 17, 2010.

A TRUE COPY:  
*Linda S. Brumit*  
CLERK, CIRCUIT COURT  
MORGAN COUNTY, WV

*Robert A. Irons*  
ROBERT A. IRONS, CIRCUIT JUDGE