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IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA
SONJA H. EPPEN, CLERK
HAMPSHIRE COUNTY CIRCUIT COURT

JUDITH D. WARD,
Plaintiff,

vs.

Civil Action No.: 14-C-126

SUSAN K. WARD,
Defendant.

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

On the 15th day of January, 2015, this matter came before the Court upon Plaintiff's Motion for Judgment on the Pleadings, pursuant to Rule 12(c) of the West Virginia Rules of Civil Procedure, the said Motion having been filed and served upon the Defendant.

Based upon the evidence presented by the Plaintiff in her Motion, this Court makes the following Findings of Fact and Conclusions of Law:

1. That the Petitioner filed her Complaint For Unlawful Detainer with this Court on or about the 28th day of October 6, 2014.

2. That personal service of the Civil Summons and Complaint for Unlawful Detainer was had upon the Defendant on or about October 15, 2014.

3. That on or about the 24th day of October, 2014, the Defendant filed her pro se Answer with this Court.

4. That the Plaintiff is the sole fee simple owner of a parcel of real property situate in Capon District, Hampshire County, West Virginia, known and designated as Tract No. 24 of Green Meadows Estates, as set forth in the Deed dated July 14, 1992, and also described upon the plat of Green Meadow Estates of record in the Office

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of the Clerk of the County Commission of Hampshire County, West Virginia in Map Book No. 2 at Page 45, hereinafter referred to as "the parcel." Said parcel contains approximately 6.618 acres. That the said DEED was attached to the Plaintiff's Complaint as Exhibit 1.

5. That the parcel has two dwellings: HC 61 Box 36 is a home built in 1983 and occupied by the Plaintiff's son; HC 61 Box 36A is a log cabin built in 1999 and occupied by the Defendant and her family and/or various guests.

6. That the parcel has never been subdivided and is known collectively for tax purposes as Lot 24 Green Meadows Subdivision. However, because there are two separate residences located on the parcel, two separate county tax statements are generated for Lot 24 Green Meadows Subdivision each year. Furthermore, both tax statements are issued in the name of the Plaintiff and paid by the Plaintiff. That the said Statement of Taxes Due was attached to the Plaintiff's Complaint, collectively, as Exhibit 2.

7. That the Defendant was married to Gary A. Ward, Jr., who was the son of the Plaintiff.

8. That around 1999 the Defendant and her husband, Gary A. Ward, Jr., purchased a log home kit for \$50,000 which they built upon the Plaintiff's parcel.

9. That Gary A. Ward, Jr. and the Defendant resided in the log home on Plaintiff's parcel, rent free, from approximately 1999 until February 28, 2014, when Gary A. Ward, Jr. passed away.

10. That on April 28, 2014, the Plaintiff provided a Notice to

Quit to the Defendant, demanding that Defendant vacate the premises known as HC 61 Box 36A, located on the Plaintiff's parcel. That the said Notice to Quit was attached to the Plaintiff's Complaint, as Exhibit 3.

11. "Under Code, 37-6-19, an action of ejectment or unlawful detainer may be maintained to recover real estate, by reason of the breach of any covenant or condition of the lease under which the same is held, including a covenant to pay rent, without any previous demand being made for the payment of such rent on the leased premises or elsewhere, or any demand for possession of such premises." Kincaid v. Patterson, 39 S.E.2d 920, 129 W.Va. 234 (W.Va., 1946).

12. "A circuit court, viewing all the facts in a light most favorable to the nonmoving party, may grant a motion for judgment on the pleadings only if it appears beyond doubt that the nonmoving party can prove no set of facts in support of his or her claim or defense." Choice Lands, LLC v. Tassen, 685 S.E.2d 679, 224 W.Va. 285 (W.Va., 2008), citing Syl. Pt. 3, Copley v. Mingo County Bd. of Educ., 195 W.Va. 480, 466 S.E.2d 139 (1995). And further, "a motion for judgment on the pleadings presents a challenge to the legal effect of given facts rather than on proof of the facts themselves." Copley v. Mingo County Bd. of Educ., 195 W.Va. 480, 466 S.E.2d 139 (W.Va., 1995).

13. That the seminal issue before the Court is legal, fee simple ownership of the Plaintiff's parcel.

14. That, as evidenced by the pleadings and their Exhibits, no genuine issue of material fact exists as to the legal ownership of

the said parcel. The said parcel is Deeded in the name of the Plaintiff and the Plaintiff is the sole fee simple owner of same.

15. That the Plaintiff has good, fee simple title to the subject parcel and the Defendant is unlawfully occupying a portion of the Plaintiff's parcel, and an action in unlawful detainer "may be maintained to recover real estate, by reason of the breach of any covenant or condition of the lases under which the same is held, including a covenant to pay rent, without any previous demand being made for the payment of such rent on the leased premises or elsewhere, or any demand for possession of such premises." Kincaid v. Patterson, 39 S.E. 2d 920, 129 W.Va. 234 (1946).

16. That the Defendant's pro se Answer presents no facts sufficient to support a claim of legal, fee simple ownership of the said parcel. Nor can the Defendant present such facts as she simply has no legal claim to the Plaintiff's parcel.

17. The Defendant raises absolutely no defense to the Plaintiff's fee simple title to the subject parcel.

18. The Supreme Court of Appeals of West Virginia has recognized, "a motion for judgment on the pleadings presents a challenge to the legal effect of given facts rather than on proof of the facts themselves." Copley v. Mingo County Bd. of Educ., 195 W.Va. 480, 466 S.E.2d 139 (W.Va., 1995). In the present case, the legal effect of the given facts, raised in the pleadings by and through the allegations and Exhibits, presents one legally recognizable outcome pursuant to West Virginia Code §37-6-19, and that outcome is the

Plaintiff being restored to the immediate possession of her entire parcel upon payment of \$50,000 to Defendant for the unjust enrichment of the Plaintiff.

19. The Plaintiff's cause of action against the Defendant pursuant to West Virginia Code §37-6-19 alleges sufficient facts to justify recovery against the Defendant.

Based upon the foregoing, it is accordingly ADJUDGED and ORDERED:

A. Judith D. Ward, the Plaintiff, shall pay to Susan K. Ward, the Defendant, the sum of \$50,000 which Susan K. Ward, and others, paid for the log house on the contested property.

B. That as heretofore Ordered, once the Plaintiff has paid to the Defendant the sum of Fifty Thousand Dollars (\$50,000), then the Plaintiff is hereby restored to the possession of her entire parcel, situate in Capon District, Hampshire County, West Virginia, known and designated as Tract No. 24 of Green Meadows Estates, as set forth in the Deed dated July 14, 1992, and also described upon the plat of Green Meadow Estates of record in the Office of the Clerk of the County Commission of Hampshire County, West Virginia in Map Book No. 2 at Page 45, and including the log cabin located at HC 61 Box 36A.

C. That the Defendant, her family, guests, and invitees, shall vacate the parcel set forth in paragraph A., above, by 5:00 p.m., ten days after the Plaintiff's payment of \$50,000 to the Defendant has been made.

D. That should the Defendant, her family, guests, and

invitees, fail to vacate the Plaintiff's parcel at the time and date set forth herein, the Plaintiff shall contact the Hampshire County, West Virginia Sheriff's Department and Sheriff's Department shall assist the Plaintiff in recovering possession of the said parcel.

***The Clerk is Ordered to send an attested copy of this Order to all counsel of record; and the Defendant, Susan K. Ward, at HC 61, Box 36, Capon Bridge, WV 26711.

Enter: January 26th, 2015.

Mailed
F. Aliveto
S. Ward
1/29/15 #8



ANDREW N. FRYE
SENIOR STATUS CIRCUIT COURT JUDGE

A TRUE COPY
ATTEST:



Clerk of the Circuit/Family Courts
of Hampshire County, West Virginia