IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

JODY L. OELSCHLAGER, D.V.M. and
CHARLES K. WILSON

Plaintiffs,

v. **CIVIL ACTION NO. 20-C-64(C)**

GAREN E. FRANCIS, DIANA L. FRANCIS
and DANIEL E. FRANCIS,

Defendants.

FILED
2021 SEP -1 PM 3:02

FINAL ORDER

On the 10th day of August, 2021, came the plaintiffs, Jody L. Oelschlager, D.V.M. and Charles K. Wilson, in person and by counsel, D. Kevin Coleman, and also came the defendants, Garen E. Francis, Diana L. Francis and Daniel E. Francis, in person and by counsel, Thomas E. White, for bench trial on the issue of *bona fide* purchasers.

Whereupon, after reviewing the pleadings and previously filed memoranda of counsel, and hearing testimony and submission of proposed findings and conclusions, the Court does hereby make the following findings, conclusions, and relief:

FINDINGS OF FACT

1. This matter was filed May 18, 2020, denominated as a declaratory judgment action.
2. The plaintiffs are seeking a declaration that they are the owners of a plot of ground upon which sets a garage at 2205 First Street, Moundsville.

3. The plaintiffs are also seeking the reformation of a deed that they executed on November 10, 2009, wherein they allege they mistakenly conveyed the garage along with the house at 2205 First Street, to a Mr. Thomas Hunt.

4. The attorney who prepared the deed made the mistake because he was not told by the plaintiffs' realtor to except the garage from the deed, by using a new subdivision description.

5. It is undisputed that the plaintiffs signed the deed that shows on its face the conveyance of the house and the garage without raising any issue about its contents or description.

6. The plaintiffs claim they are entitled to the garage alleging the defendants, who purchased the property at 2205 First Street at a foreclosure sale on September 16, 2019, were not *bona fide* purchasers of the Hunt property, and should have discovered the plaintiffs' error of ten years earlier.

7. In support of their claim, the plaintiffs point out that an addendum to the sales contract with Mr. Hunt in 2009, provided that he was not purchasing the garage.

8. It is undisputed that the defendants had no knowledge of the same.

9. In further support of their claim, the plaintiffs assert that they exercised various forms of control and use of the garage, including repairs thereof, after the sale to Mr. Hunt.

10. It is undisputed that the defendants had no knowledge of the same.

11. In further support of their claim, the plaintiffs showed that they had the property officially subdivided in 2008 before the sale in 2009, which provided a separately described plot

upon which the garage was located and that the same was recorded with the Marshall County Clerk.

12. It is undisputed that the subdivision plat was not indexed under the name of either of the plaintiffs. It is undisputed that the defendants could not have discovered the same by title examination. The defendants had no actual knowledge of the subdivision.

13. It is undisputed that the defendants had no contact or conversation with Mr. Hunt, before his death, and consequently could not have learned anything about the garage from him.

14. The sole knowledge that the defendants had of any problem with the garage before they purchased the property at the foreclosure sale, was an advertisement or sales listing from the plaintiffs that they were selling the former veterinary clinic property at 2203 First Street, Moundsville, including a garage with it.

15. At some point, one or more of the defendants contacted plaintiffs' realtor in the fall of 2019, where an inquiry was made as to whether the plaintiffs were claiming to sell the garage with the veterinary clinic. From their testimony, it is unclear whether the defendants remembered such phone calls being before or after the foreclosure sale wherein they purchased the property at 2205 First Street. Two realtors testified that two of the defendants called before the sale, inquiring about the garage.

16. There was no in-depth discussion before the sale about why the plaintiffs were listing the garage to be sold with the veterinary clinic, and the defendants were given no explanation as to why the plaintiffs were listing the garage for sale.

17. It is clear from the testimony of the defendants, that they were certain that any such listing of the garage was simply in error.

18. The defendants conducted a title exam of the 2205 First Street property before they purchased it. It is undisputed that the courthouse records showed that the property they were purchasing included the garage, and that there were no discoverable documents to the contrary.

19. It is undisputed that the plaintiffs had in fact conveyed the garage to Mr. Hunt. It is undisputed that he borrowed purchase money and gave a deed of trust on the house and the garage together. It is undisputed that the foreclosure advertisement listed and described the house and garage together as being for sale. It is undisputed that the trustee's deed to the defendants included the house and the garage.

20. One of the defendants had spoken to the trustee, a lawyer, who assured them that they were purchasing both the house and the garage.

21. The realtor apprised one of the plaintiffs, Jody Oelschlager, before the sale that one of the defendants had called questioning the listing of the garage with the veterinary clinic. (Tr. 59, lines 1 – 17). Thus, the plaintiffs were apprised, and made no inquiry or investigation.

CONCLUSIONS OF LAW

22. The Court concludes that the actions of the plaintiffs having signed a mistaken deed, having provided for exclusion of the garage in a sales contract, having subdivided the parcel, and having exercised control and use of the garage were not in fact known by the

defendants. Morevover, the Court finds that the same would not be easily discoverable by the defendants on the scant information they had.

23. Although the evidence shows the defendants did know that the plaintiffs were attempting to sell the garage with the veterinary property, the question is whether this knowledge, in the face of a mountain of public recordings to the contrary, was sufficient to assign them having acted in bad faith, or *mala fides* in continuing with their purchase. The "faith" or "fides" of the defendants is the open debate in this matter. Were they suspicious enough to think the plaintiffs really owned the garage somehow despite public records, or did they just think the plaintiffs were wrong, and nothing needed to be remedied? The burden of proving their *mala fides* is on the plaintiffs.

24. The testimony of the defendants was clearly to the effect that they thought that the plaintiffs were just wrong about owning the garage, rather than having some suspicion that there was perhaps some ancient mistake that needed remedied. Such a belief would be reasonable based on the facts. Such reasonable belief makes them *bona fide* purchasers.

25. The defendants will not be charged with the obligation to discover the whole mess created ten years earlier, rather that requiring the plaintiffs to be diligent and discover it themselves.

26. Our state supreme court has opined that: "To reform a deed on the ground of mistake, the mistake must be mutual (that is, participated in by both parties), and must be made out, by clear and convincing proof, beyond reasonable controversy; and in no case will it be made to the injury of a *bona fide* purchaser for value without notice." *Robinson v.*

Braiden, 44 W.Va. 183, 28 S.E. 798 (W. Va. 1897). And in *Myers v Stickley*, 180 W.Va. 124, 375 S.E.2d 595 (1988), the appellate court indicated that a subsequent *bona fide* purchaser for value, who was not a party to the mistake, was not subject to having his deed reformed due to a remote mistake by others. Here, it is far from clear and convincing and beyond reasonable controversy.

27. The defendants could not possibly be on notice of whether any mistake was mutual between the plaintiffs and a deceased person they never met. To require purchasers to search for a mutual mistake between such remote conveyers to be *bona fide* purchasers will not be commissioned by this Court.

28. The plaintiffs signed the mistaken deed. Deeds are important documents. One is charged with knowing the contents thereof. Consequently, it was not just the realtor or the drafting attorney's mistake. The plaintiffs joined in and approved the mistake. The mistake should be rested on the ones that make it, not someone ten years later who has no knowledge of the mistake and scant information to discover it.

RELIEF GRANTED

It is hereby ADJUDGED and ORDERED that the plaintiffs, Jody Oelschlager and Charles Wilson, have failed to prevail on their claims asserted in the complaint in this matter. The Court will not reform either the 2009 deed to Mr. Hunt, nor the trustee's deed to the defendants. Consequently, the defendants own the garage and the plaintiffs do not.

Exceptions and objections of the plaintiffs to the ruling herein are saved to them.

The Clerk shall provide copies of this Final Order to counsel of record, being Thomas E. White, Esq., White Law Office, 604 Sixth Street, Moundsville, WV 26041, and to D. Keven Coleman, 453 Suncrest Towne Centre, Suite 300, Morgantown, WV 26505.

Entered this 1st day of September, 2021.

Jeffrey D. Cramer
Circuit Court Judge