

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0062

SHIRLEY NELSEN, EXECUTOR OF THE ESTATE OF
HENRY ELLIS NELSEN

VERSUS

BRUCE D. COX, TANGIPAHOA DEVELOPMENT, L.L.C.
AND LONESOME PROPERTIES, L.L.C.

Judgment Rendered: **JUN 13 2012**

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On Appeal from the
21st Judicial District Court,
in and for the Parish of Tangipahoa
State of Louisiana
District Court No. 2009-0002539

The Honorable Zorraine M. Waguespack, Judge Presiding

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Properties, L.L.C.

* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

CARTER, C.J.

This is a dispute between certain heirs of Henry Burton Nelsen (the Heirs), represented by Shirley Nelsen, executor of the estate of Henry Ellis Nelsen (the plaintiff), and the defendants, Bruce D. Cox, Tangipahoa Development, L.L.C., and Lonesome Properties, L.L.C., concerning the ownership of real property (the property) located in Tangipahoa Parish.

The plaintiff claims that the Heirs are the record owners of the property, as evidenced by an Amended Judgment of Possession signed on June 24, 2009, filed in the record of the matter entitled “Succession of Henry Burton Nelsen,” docket number 8931999, and recorded at COB 1184, page 467, in the conveyance records of Tangipahoa Parish. The plaintiff further contends that the defendants caused to be recorded in the conveyance records of Tangipahoa Parish two documents that place a cloud on the Heirs’ title: 1) a quitclaim deed indicating that on March 12, 2007, Elvira Artigue Nelsen Simmons (Elvira) conveyed the property to Tangipahoa Development (represented by Bruce D. Cox, member);¹ and 2) a cash sale indicating that on March 27, 2007, Tangipahoa Development conveyed the property, together with two other properties, to Lonesome Properties (also represented by Bruce D. Cox, member). Although plaintiff’s petition is titled as one to quiet title, the allegations and prayer for relief seek judgment recognizing the Heirs “as the sole and only owners in perfect ownership” of the property, and therefore sets forth a petitory action.

The defendants answered the petition, asserting the affirmative defense of good faith possession and a peremptory exception raising the objection of

¹ The deed had a stated consideration of \$500.00 cash.

prescription.² The defendants maintained that Lonesome Properties acquired the property pursuant to a valid conveyance in authentic form, as did its predecessor in title, Tangipahoa Development. Finally, the defendants alleged that Elvira had acquired full ownership of the property pursuant to a valid judgment of possession signed April 11, 1989, and recorded April 25, 1989, as part of the succession of her husband, Henry Burton Nelsen.

The defendants later amended their answer and filed a reconventional demand, asserting that Lonesome Properties had “physically detained, enjoyed and possessed publicly the full extent” of the property since it was acquired from Tangipahoa Development on March 27, 2007. Further, the defendants maintained that Lonesome Properties had legal possession of the property by virtue of more than ten years of good faith possession, pursuant to Louisiana Civil Code article 3473, and thirty years of possession, pursuant to Louisiana Civil Code article 3486. In calculating the length of time Lonesome Properties had possessed the property, the defendants included the terms of possession of Lonesome Properties’ ancestors in title, Tangipahoa Development and Elvira, pursuant to Louisiana Civil Code article 3442. To calculate the thirty-year possession, Lonesome Properties also included the possession of Henry Burton Nelsen. Lonesome Properties prayed for judgment recognizing it as the “rightful owner” of the property.

The trial court granted the plaintiff’s motion for summary judgment, confirming and quieting the title of the Heirs and recognizing the Heirs “as the sole and only owners in perfect ownership” of the property. The Clerk of Court of Tangipahoa Parish was ordered to make a notation of the trial court’s judgment on

² The defendants urged that the plaintiff’s cause of action was prescribed pursuant to Louisiana Revised Statutes section 9:5630B. The exception was overruled, and that ruling is not at issue on appeal.

the quit-claim deed and the cash-sale documents in the conveyance records. The judgment further dismissed all claims of the defendants.

The defendants appeal, alleging that the trial court erred in granting the motion for summary judgment, because the plaintiff failed to meet her burden of proving an unblemished title to the property dating back to the sovereign and that genuine issues of material fact remain in dispute regarding whether Lonesome Properties and its ancestors in title possessed the property for the requisite prescriptive period.

After *de novo* review, we find that the plaintiff was entitled to summary judgment as rendered by the trial court. In a petitory action, the plaintiff has the burden of proving that the Heirs acquired ownership from a previous owner. *See* La. Code Civ. Proc. Ann. arts. 3653 and 3654; La. Civ. Code Ann. art. 531. When the titles of the parties are traced to a common author, the common author is presumed to be the previous owner. La. Code Civ. Proc. Ann. art. 3653; La. Civ. Code Ann. art. 532. Here, Henry Burton Nelsen is the common author-in-title and, contrary to the defendants' assertion, the plaintiff need not prove title to the sovereign. Rather, the plaintiff can establish the Heirs' apparent title to the property by setting forth an unbroken chain of valid transfers from their uncle, Henry Burton Nelsen.³ *See Egle v. Kidd*, 442 So. 2d 669, 674 (La. App. 1st Cir. 1983). The plaintiff established the Heirs' apparent record title through: 1) an "Amended Judgment of Possession" signed on June 24, 2009, declaring the Heirs to be the sole owners of the property, which was identified as the separate property of Henry Burton Nelsen, and placing the Heirs in possession; and 2) the March 12, 1942 act of sale in which Robert R. Reid sold the property to "[Henry] B. Nelsen,

³ So concluding, the defendants' assignment of error regarding the existence of genuine issues of material fact is without merit.

single never married, resident of the Parish of Tangipahoa, State of Louisiana.”

The March 1942 act of sale shows that Elvira never had an ownership interest in the property, because the April 1989 judgment in her husband’s succession transferred only property acquired during their marriage.

The summary judgment evidence further establishes that the defendants cannot prove that they acquired the property by ten-year acquisitive prescription, because they cannot show that Lonesome Properties, Tangipahoa Development, and Elvira each had just title and was in good faith, or that there were ten years of continuous, uninterrupted, peaceable, public, and unequivocal possession of the property. *See* La. Civ. Code Ann. arts. 3475 and 3476. Heir Francile Nelsen Ortiz stated in an affidavit that in March 2006, she was informed by a letter from attorney Robert Tillery that defendant Bruce D. Cox wanted to purchase the property from the Heirs. The letter from Tillery was attached to Ortiz’s affidavit, in which it was stated that the property was part of the 44.26 acres that Cox was attempting to purchase from Elvira and that the property “was subject to a possible claim of ownership in the name of . . . Henry Nelsen.” The plaintiff also presented the affidavit of heir Janice Nelsen Stark, who referenced email correspondence to her from Cox, in which Cox wrote in November 2006 that “although I do not expect to have a problem with your [A]unt Elvira[,] she must sign and agree that she has no interest in the property.” These factors are sufficient to establish that defendants’ possession did not commence in good faith. In fact, the absence of good faith on the part of Bruce D. Cox is obvious.

Unlike ten-year acquisitive prescription, ownership of immovable property can be acquired by prescription of thirty years of possession without the need of a just title or good faith. La. Civ. Code Ann. art. 3486. However, the record

establishes that the defendants cannot establish the requisite possession, which would require tacking the possession of both Elvira and Henry Burton Nelsen, the common author-in-title. *See* La. Civ. Code Ann. arts. 3442 and 3476.

CONCLUSION

For the above reasons, we affirm the summary judgment entered in favor of the appellee/plaintiff, Shirley Nelsen, executor of the estate of Henry Ellis Nelsen, and the dismissal of the reconventional demand of the appellants/defendants, Tangipahoa Development, L.L.C., Lonesome Properties, L.L.C., and Bruce D. Cox. Costs of this appeal are assessed to the appellants/defendants. We issue this memorandum opinion in compliance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B.

AFFIRMED.