UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1732

September Term, 2015

GARY SANDERS AND DALINDA SANDERS

v.

SAMUEL KARKENNY

Eyler, Deborah S.,
Reed,
Beachley,

JJ.

Opinion by Reed, J.

Filed: August 25, 2017

This appeal comes to us after the Circuit Court for Prince George's County found that the appellants, Garry and Dalinda Sanders, failed to prove adverse possession of the property in question after a tax sale. In their timely appeal, the appellants present two questions for our review, which we rephrase and consolidate as follows:[1]

1. Whether the circuit court was legally correct in ruling that Md. Tax Prop. Ann. §14-852 follows the common law definition of adverse possession and therefore requires hostility to be proven?

For the reasons that follow, we answer this question in the affirmative and affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Garry and Dalinda Sanders, the appellants, have lived at 302 69th Place, Seat Pleasant, Maryland ("the property") since October 1979.[2] They owned the property until May 11, 1998, when the appellee, Samuel Karkenny, purchased the property at a tax sale.

[1] The appellants presented the following questions in their brief:

1. Whether the Lower Court erred in requiring the element of "Hostility" be shown to prove Adverse possession within the context of a tax sale and the statute, Md. Tax Prop. Ann. §14-852.

2. Whether the framers of the said statute define Adverse Possession within the four (4) walls of the statute itself for this narrow and specific purpose.

[2] Contrary to the deed and testimonial evidence provided, the record also states the address is 302 69th Place, Capitol Heights, Maryland.

The record suggests that little transpired between the parties in the fifteen years from the date of the tax sale to the date appellants filed their complaint.[3]

On April 20, 2000, the appellee filed suit to foreclose the right of redemption against the appellants. The order was granted on August 16, 2002. Mr. Sanders testified that upon receiving the order, he understood that he "had forfeited the ownership of" the property. The appellee perfected and recorded a deed to the property, dated November 5, 2003, and obtained record title.

The appellants offered to purchase the property from the appellee in 2006 and again in 2010. In a January 27, 2010, letter, counsel for the appellants wrote:

> Several years ago, you attempted to negotiate a buy-back agreement with my clients for the property. Pursuant to a letter dated October 10, 2005, you offered to sell the property to my clients for approximately $138,000. I have been authorized to reopen negotiations regarding a buy-back agreement.

The appellee did not respond to either offer and did not attempt to oust the appellants from the property until after this suit was filed in circuit court.

The appellants filed an action for fee simple ownership under adverse possession pursuant to Md. Tax Prop. Ann. §14-852. Both parties moved for summary judgment, which the trial court denied after finding that there were material disputes of fact in issue. The circuit court ruled that the appellants did not meet their burden of proof to show adverse possession. Specifically, the court found that the appellants' possession was not

[3] Mr. Sanders testified that Mr. Karkenny met him at the property on one occasion and that they have spoken on the telephone, but the record is silent as to the subject of those conversations and when they occurred.

hostile and therefore not adverse because they acknowledged the appellee's superior right to the property:

> In short, I don't find that the Plaintiffs have met their burden showing that this was adverse possession; They acknowledge that Mr. Karkenny, the Defendant had title to the land; He said he "lost the land"; He hired you and other attorneys to negotiate trying to get back the land; And so based on *York* [sic] and also based on *Hungerford*, I don't find that the Plaintiff has met their burden to prove that this was adverse possession; And so, I'm going to grant their motion for judgment, the Defendant's Motion for Judgment.

This appeal followed.

DISCUSSION

A. Parties' Contentions

The appellants argue that the element of hostility is not required under Md. Tax Prop. Ann. §14-852. Instead of employing the common law definition of adverse possession, appellants contend that "adverse possession" is defined within the four walls of the statute and does not include hostility. It is appellants' contention that occupying the property for the requisite time as owners without any eviction action by the tax purchaser constitutes adverse possession under the statute in question.

The appellants also argue that the framers of the statute could not have contemplated that hostility be required to show adverse possession within the context of a tax sale because the recognition or acknowledgment of rights of the owner are clearly articulated in the statute. Appellants assert that their 2010 offer letter merely confirmed the parties' rights as stated in the court order.

The appellee responds that adverse possession elements are the same in tax sale cases. He cites *White v. Hardesty*, 220 Md. 152, 151 A.2d 764 (1959) and *Lippert v. Jung*, 366 Md. 221, 783 A.2d 206 (2001) to support his position that "adverse possession has the same meaning and elements under Md. Tax Prop. Ann. §14-852, as it does under common law." Therefore, the appellee argues, the appellants cannot establish adverse possession because they cannot satisfy the hostile element. The appellee agrees with the circuit court that recognizing his superior right to the property destroyed hostility and the entire adverse possession argument. *See Yourik v. Mallonee*, 174 Md. App. 415 (2007).

The appellee also asserts that the statute does not apply in this case, and therefore, the requisite possessory period is twenty years. He argues that the seven-year statute of limitations applies only for so long as the tax sale purchaser has not brought, "action or suit . . . prosecuted . . . to obtain possession[.]" Md. Tax Prop. Ann. §14-852. It is the appellee's position that he took action to obtain possession by obtaining a deed to the property and becoming the record title holder.

B. Standard of Review

When reviewing cases tried without a jury, Maryland Rule 8-131(c) applies. *See White v. Pines Cmty. Improvement Ass'n*, 403 Md. 13, 30 (2008). The Court of Appeals has explained that:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. The clearly erroneous standard does not apply to

> legal conclusions. When the trial court's decision involves an interpretation and application of Maryland statutory and case law, the appellate court must determine whether the lower court's conclusions are legally correct. *YIVO Institute for Jewish Research v. Zaleski*, 386 Md. 654, 662-63 (2005) (quoting *Nesbit v. GEICO*, 382 Md. 65, 72, 854 A.2d 879, 883 (2004)). We make this determination de novo, without deference to the legal conclusions of the lower court. *Hillsmere Shores Improvement Ass'n v. Singleton*, 182 Md. App. 667, 690, 959 A.2d 130, 143-44 (2008); *see also Yourik v. Mallonee*, 174 Md. App. 415, 423 n. 2, 921 A.2d 869 (2007) (standard of appellate review of judgment concerning adverse possession).

C. Analysis

The issue in this case hinges on the interpretation of Md. Tax Prop. Ann. §14-852. The language of the statute is as follows:

> When land is sold to pay county or State taxes, or both, assessed on the land and in default, and the owner of the land at the time of the tax sale, the owner's heirs, devisees, or assigns, severally, jointly or in continuous successive ownership have held the land sold in *adverse possession* for 7 years after the final ratification of the tax sale and before action or suit is brought, and prosecuted by the purchaser at the tax sale, the purchaser's heirs, devisees, or assigns to obtain possession of the land, the possession is a bar to all right, title, claim, interest, estate, demand, right of entry, and right of action of the purchaser . . . derived from the tax sale as to the land held in possession. (Emphasis added.)

Essentially, if the previous owner holds the land in adverse possession for seven years after final ratification of the tax sale and before action is brought and prosecuted by the tax sale purchaser, the purchaser loses all rights to the property. The appellants would like us to

believe that the term "adverse possession" here does not have the same meaning as under common law. We disagree.

When interpreting a statute, "we begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also." *Chesapeake and Potomac Tel. Co. v. Dir. Of Fin. for Mayor and City Council of Baltimore*, 343 Md. 567, 578, 683 A.2d 512, 517-18 (1996) (citing *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995)). In doing so, we are of the opinion that "adverse possession" is clear and unambiguous.

It is clear through Maryland case law that possession is adverse when it is "actual, notorious, exclusive, *hostile*, under claim of title or ownership, and continuous or uninterrupted for the period of twenty years." *Yourik v. Mallonee*, 174 Md. App. 415, 423 (2007) (emphasis added) (citing *Gore v. Hall,* 206 Md. 485, 490, 112 A.2d 675 (1955)); *see Banks v. Pusey,* 393 Md. 688, 709 n. 11, 904 A.2d 448 (2006); *Hungerford v. Hungerford,* 234 Md. 338, 340, 199 A.2d 209 (1964). It is also evident from the only case involving Md. Tax Prop. Ann. §14-852 that its interpretation relies on the same elements. *See White v. Hardisty*, 220 Md. 152, 158-59, 151 A.2d 764, 769 (1959) (stating that in order to be successful in an adverse possession claim, the claimant must show actual possession, which must be adverse, notorious, exclusive, and continuous for the statutory

period).[4] Therefore, it follows that adverse possession requires hostility under common law as well as this statute, according to its commonly understood meaning.

"[T]he term 'hostile' signifies a possession that is adverse in the sense of it being 'without license or permission,' and 'unaccompanied by any recognition of . . . the real owner's right to the land.'" *Hungerford*, 234 Md. 338 at 340. This Court has held that "[t]he type of recognition of right that destroys hostility is not mere acknowledgment or awareness that another claim of title to the property exists, but rather, ***acceptance*** that another has a ***valid right*** to the property, and the occupant possesses subordinately to that right." *Yourik*, 174 Md. App. 415 at 429 (emphasis in original).

The appellants destroyed hostility and their adverse possession argument when they attempted to purchase the property from the appellee, thereby accepting his valid, superior right to the property.[5] The appellants first sent an offer letter to purchase the property in 2006. If the appellants ever held the property in adverse possession, it ceased on March 29, 2006. Md. Tax Prop. Ann. §14-852 does not change the meaning of adverse possession. The statute decreases the requisite possessory period from twenty years to seven years, but maintains that such possession must be adverse. Here, the appellants were not in adverse

[4] This case involved Md. Code Ann. Art. 57 §15 (1957), Md. Tax Prop. Ann. §14-852's predecessor. It applied only to Prince George's County tax sales, but contained the exact same language.

[5] The appellants insist that they did not acknowledge the appellee's superior right because he did not respond to the letter. There is no authority which states an obligation on the part of the true owner to respond to the recognition of right.

possession of the property for seven years after final ratification of the tax sale. Finding no clear error, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.