

SUPREME COURT OF OKLAHOMA

Johnson v. Butler, 206 Okla. 632

245 P.2d 720 (1952) · No. No. 35135 · Decided May 20, 1952

SUMMARY

The Oklahoma Supreme Court held that accretions attached to land pass with a conveyance of the land unless specifically reserved or excepted. Because the deeds in the plaintiff's chain of title were plain and unambiguous, the trial court improperly admitted oral evidence of the parties' intent, and the defendant's earlier deed was void because the property was restricted against alienation. The judgment was reversed with directions to enter judgment for the plaintiff.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Bingaman, J.; Arnold, C.J.; Halley, V.C.J.; Gibson, J.; Davison, J.; Johnson, J.; O'Neal, J.
JURISDICTION	Oklahoma
DECIDED	May 20, 1952
DOCKET	No. 35135
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment for defendant in an action for ejectment and quiet title.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential.
PARTIES	S.E. Johnson v. Randall Butler

TOPICS

- ejectment
- quiet title
- deeds
- indian affairs
- evidence

PRACTICE AREAS

- real estate
- Indian law
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether accretions attached to land pass with a conveyance of the land unless specifically excepted or reserved.

2. Whether oral evidence of the parties' prior negotiations, statements, and intentions may vary the terms of plain and unambiguous deeds absent fraud, accident, mistake, or absurdity.
3. Whether Butler acquired any title or right under a deed from a restricted Indian allottee while the land was subject to restrictions against alienation.

HOLDINGS

1. Accretions that have attached to and become part of land pass with a conveyance of that land unless they are specifically excepted or reserved.
2. When a deed is plain and unambiguous and there is no allegation of fraud, accident, or mistake, the parties' intent is determined from the language of the written instrument alone; prior oral negotiations or expressions of intent may not vary the deed.
3. A deed by the allottee conveying restricted Indian homestead land while the land is subject to restrictions against alienation is absolutely void and conveys no right or title.

KEY QUOTATIONS

“However, if the language is clear and explicit it governs in determining the intent of the parties in the absence of fraud, accident, mistake or absurdity.” (634)

“The deeds in plaintiff's chain of title being in plain and unambiguous language could not be varied by evidence of oral negotiations or expressions of the intention of the parties made previous to their execution.” (634)

“The fact that defendant was in possession does not avail him since it gave him no rights whatever in the property, but he was a mere trespasser without even color of title.” (634)

FACTUAL BACKGROUND

The disputed property consisted of accretions attached to lot 3, part of the restricted homestead of William McKinley Thompson, a half-blood Choctaw Indian. While the land remained restricted against alienation, Thompson executed a deed purporting to convey the accretions to Butler, who took possession and made improvements. After the restrictions were removed, Thompson conveyed lot 3 without reserving the accretions, and the property ultimately passed through Cunningham and Boren to Johnson. Butler relied on alleged oral statements and evidence that Thompson and Cunningham did not intend the later deed to include the accretions.

PROCEDURAL HISTORY

Johnson sued Butler to recover possession of and quiet title to lot 3 and its accretions. The trial court admitted evidence concerning the parties' alleged intent and prior oral statements, entered judgment for Butler, and Johnson appealed. The Supreme Court of Oklahoma reversed and directed entry of judgment for Johnson.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The lower court was directed to render judgment for the plaintiff.

CASES CITED

- Braddock v. Wilkins, 182 Okla. 5, 75 P.2d 1139
- Criswell v. Wilson, 198 Okla. 47, 175 P.2d 87
- White v. Wester, 170 Okla. 250, 39 P.2d 22
- Continental Casualty Co. v. Wear, 185 Okla. 245, 91 P.2d 91
- VanZant v. State Ins. Fund, 203 Okla. 421, 223 P.2d 111
- Jennings v. Amerada Pet. Corp., 179 Okla. 561, 66 P.2d 1069
- Terrill v. Laney, 200 Okla. 308, 193 P.2d 296
- Bayouth v. Howard, 199 Okla. 646, 190 P.2d 783
- Simmons v. Whittington, 27 Okla. 356, 112 P. 1018
- Tidal Oil Co. v. Flanagan, 87 Okla. 231, 209 P. 729
- Wrigley v. McCoy, 73 Okla. 161, 175 P. 259

OPINION

BINGAMAN, J.

206 Okla. 632 (1952) 245 P.2d 720 JOHNSON v. BUTLER. No. 35135. Supreme Court of Oklahoma. May 20, 1952. Rehearing Denied July 8, 1952. *633 Geo. T. Arnett, Idabel, for plaintiff in error. Tom Finney, Idabel, for defendant in error. BINGAMAN, J. This is an action in ejectment, with a second cause of action to quiet title, brought by S.E. Johnson, plaintiff, against the defendant, Randall Butler, to recover possession of and quiet title to lot 3, of section 7, township 8 south, range 22 east, McCurtain county.

Plaintiff claimed title by reason of certain warranty deeds passing title from the allottee through two intermediate grantees into plaintiff. Judgment was for defendant and plaintiff appeals. From the record it appears that William McKinley Thompson was a half-blood Choctaw Indian, and that lot 3 was a part of his restricted homestead which was bounded on one side by a nonnavigable stream, and that the lands in controversy are certain accretions which had been lodged by the river against lot 3 and became a part thereof.

It appears that in 1943, while the homestead of Thompson was still restricted against alienation, he made and delivered to defendant a warranty deed conveying the accretions to defendant and that defendant went into possession and erected improvements on the property. Thereafter, in 1949, Thompson's restrictions were removed by the Secretary of the Interior and after the restrictions were removed he conveyed lot 3 by warranty deed to one Cunningham; that Cunningham thereafter conveyed to one Boren and that Boren thereafter conveyed the property to plaintiff.

All of these conveyances involved in plaintiff's chain of title were warranty deeds in regular form, and did not contain any reservation or exception of any kind. At the trial of the case the trial court, over the objection of the plaintiff, permitted the defendant to introduce evidence to the effect that at the time Thompson sold lot 3 to Cunningham he did not intend to sell the accreted land and Cunningham did not understand that he was buying the same.

Thompson testified that at the time he sold the land to Cunningham he told Cunningham that he had previously conveyed the accreted land to defendant and that said land was not included in the deed. Neither Cunningham nor his grantee, Boren, ever attempted to take possession of the accreted land, which was separated from the remainder of lot 3, by a fence erected by defendant.

The decisive question presented is whether the trial court erred in admitting evidence of intention, and the oral statements made by Thompson to Cunningham, prior to the execution of the deed to Cunningham, and whether it further erred in rendering judgment for defendant on the theory that the deeds were to be construed according to this intention.

We have heretofore held that accretions become a part of the lands to which they have been attached. *Braddock v. Wilkins*, 182 Okla. 5, 75 P.2d 1139; *Criswell v. Wilson*, 198 Okla. 47, 175 P.2d 87. These cases further hold that having attached to and become a part of the land to which they are attached, they pass with the conveyance of such land, unless specifically excepted or reserved.

Defendant concedes the correctness of the rule announced in these cases, but contends *634 that testimony of intention was properly admitted, citing *White v. Wester*, 170 Okla. 250, 39 P.2d 22, and 56 Am. Jur. 898, § 451, which states that an accretion passes to the grantee of the land to which it is attached, although not specifically mentioned, unless expressly excepted or reserved or unless it has been previously conveyed to another.

We think the trial court erred in admitting the oral testimony of witnesses as to the intention of the parties at the time the Cunningham deed was executed, and in rendering judgment for defendant. We have many times held that where a contract or deed is plain and unambiguous, and there is no uncertainty therein, the intent of the parties is to be determined by the language of the written instrument alone.

Thus, in *Continental Casualty Co. v. Wear*, 185 Okla. 245, 91 P.2d 91, we said: "Rules of construction and interpretation are available to remove uncertainty concerning the meaning of a contract when ambiguity exists in the written instrument.

However, if the language is clear and explicit it governs in determining the intent of the parties in the absence of fraud, accident, mistake or absurdity." To the same effect are *VanZant v. State Ins. Fund*, 203 Okla. 421, 223 P.2d 111; *Jennings v. Amerada Pet. Corp.*, 179 Okla. 561, 66 P.2d 1069;

Terrill v. Laney, 200 Okla. 308, 193 P.2d 296; and Bayouth v. Howard, 199 Okla. 646, 190 P.2d 783.

In Jennings v. Amerada Petroleum Corp., supra, we further said that a deed should be interpreted and the meaning of the parties thereto ascertained in the same manner as other written contracts. The rule announced in the cases above applies in cases involving unambiguous contracts in the absence of any allegation of fraud, accident or mistake.

The deeds in plaintiff's chain of title being in plain and unambiguous language could not be varied by evidence of oral negotiations or expressions of the intention of the parties made previous to their execution. In the instant case there was no allegation of fraud, accident or mistake. It must be borne in mind that at the time defendant obtained title and took possession of the accreted land, said land was restricted against alienation, being a part of the homestead of the allottee; that being so restricted a deed by the allottee was absolutely void, and that defendant acquired no right or title whatever under his deed from Thompson.

Simmons v. Whittington, 27 Okla. 356, 112 P. 1018; Tidal Oil Co. v. Flanagan, 87 Okla. 231, 209 P. 729. The fact that defendant was in possession does not avail him since it gave him no rights whatever in the property, but he was a mere trespasser without even color of title. Wrigley v. McCoy, 73 Okla. 161, 175 P. 259; Tidal Oil Co. v. Flanagan, supra. Reversed, with directions to render judgment for plaintiff.

ARNOLD, C.J., HALLEY, V.C.J., and GIBSON, DAVISON, JOHNSON, and O'NEAL, JJ., concur.