

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Stephen Atkinson v. Deborah B. Anderson and Michael O. Anderson

Atkinson v. Anderson, 77 So.3d 768 (Fla. Dist. Ct. App. 2011) · No. 4D09–2638

SUMMARY

The Florida District Court of Appeal reversed a judgment notwithstanding the verdict (JNOV) and reinstated a jury finding of ouster in a dispute between co-tenants of a condominium. The court held that sufficient evidence supported the jury’s conclusion that the defendants ousted the plaintiff by moving into the unit as a permanent residence, restricting the plaintiff’s use to a single bedroom with seven days’ notice, and doing so over his express objection—acts inconsistent with the plaintiff’s rights and communicated to him. The decision reiterates that ouster requires acts of possession inconsistent with and exclusive of a co-tenant’s rights, plus communication of the claim of exclusive ownership, and that on JNOV review all evidence must be viewed in the light most favorable to the non-movant.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Polen, J.; Conner, J.
JURISDICTION	Florida
DOCKET	4D09–2638
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting a motion for judgment notwithstanding the verdict (JNOV) after a jury found ouster and awarded \$21,000 to the plaintiff co-tenant.
STANDARD OF REVIEW	De novo review of a ruling on a motion for judgment notwithstanding the verdict, viewing all evidence in the light most favorable to the non-movant.
PRECEDENTIAL VALUE	published
PARTIES	Stephen Atkinson v. Deborah B. Anderson and Michael O. Anderson

TOPICS

- real estate
- civil procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court erred in granting judgment notwithstanding the verdict (JNOV) by finding that there was no evidence of communication by the co-tenant in possession to the ousted co-tenant claiming exclusive use, thereby overriding the jury's ouster finding.

HOLDINGS

1. The trial court erred in granting the JNOV because, viewing all evidence in the light most favorable to the non-movant, there was sufficient evidence from which a jury could find an ouster had occurred.

KEY QUOTATIONS

“[A] tenant in common, to show an ouster of his cotenant, must show acts of possession inconsistent with, and exclusive of, the rights of such cotenant, and such as would amount to an ouster between landlord and tenant, and knowledge on the part of his cotenant of his claim of exclusive ownership. He has the right to assume that the possession of his cotenant is his possession, until informed to the contrary, either by express notice, or by acts and declarations that may be equivalent to notice.” (770)

FACTUAL BACKGROUND

Stephen Atkinson and the Andersons were long-time friends who jointly purchased a condominium unit as a vacation home for alternating weekend use. Due to the Andersons' financial difficulties, Deborah Anderson's mother initially held title with Atkinson as tenants in common. The Andersons later wanted to move into the unit permanently. Over Atkinson's objection, the mother quit-claimed her interest to the Andersons, who moved in and sent Atkinson a letter requiring seven days' notice and limiting him to one bedroom. Atkinson sued for ouster.

PROCEDURAL HISTORY

Atkinson sued the Andersons for ouster from a jointly owned condominium. The trial court denied Atkinson's motion for directed verdict. The jury found that Atkinson had been ousted and awarded \$21,000 in damages. The trial court then granted the Andersons' motion for judgment notwithstanding the verdict, finding no evidence that the co-tenant in possession communicated a claim of exclusive use. Atkinson appeals the JNOV.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reversed and remanded for reinstatement of the verdict and to enter judgment in accordance therewith.

CASES CITED

- Premier Lab Supply, Inc. v. Chemplex Ind., 10 So.3d 202 (Fla. 4th DCA 2009)
- Stokes v. Ruttger, 610 So.2d 711 (Fla. 4th DCA 1992)
- Collins v. School Bd. of Broward Cnty., 471 So.2d 560 (Fla. 4th DCA 1985)
- Dorestin v. Hollywood Imports, Inc., 45 So.3d 819 (Fla. 4th DCA 2010)
- Johnson v. Swerdzewski, 935 So.2d 57 (Fla. 1st DCA 2006)
- James Barrow, Petitioner, v. Donna Barrow, Respondent, Barrow v. Barrow, 527 So.2d 1373 (Fla. 1988)
- Stokely v. Connor, 69 Fla. 412, 68 So. 452 (Fla. 1915)
- Coggan v. Coggan, 239 So.2d 17 (Fla. 1970)