



[2024] JMSC Civ. 04

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU2019CV05139

BETWEEN	NADINE WILSON	CLAIMANT
	(By Agent Ian Paul Ellison)	
A N D	DAISY BROWN	1ST DEFENDANT
A N D	MINKA WILSON	2ND DEFENDANT
A N D	MICHAEL WILSON	3RD DEFENDANT

IN CHAMBERS (BY VIDEO CONFERENCE & IN PERSON)

BEFORE THE HONOURABLE MR. JUSTICE DALE STAPLE (Ag)

**Mr. Shane A. Williams and Moneaque McLeod Attorneys-at-Law for the Claimant
Ms. Michelle A. Thomas Instructed by Mesdames Michelle Thomas & Associates
for the 1st and 2nd Defendants**

HEARD: September 26 and November 3, 2023 & January 8, 2024

**Recovery of Possession – Adverse Possession – Sections 3, 4(a) and 30 of the
Limitation of Actions Act – Whether or not the Claimant’s Title has been
Extinguished – Whether or not the 1st and 2nd Defendants were in sole, exclusive
occupation of the property.**

D. STAPLE J

BACKGROUND

[1] This case concerns a family dispute over property in the “Sunshine City” of Portmore in the parish of St. Catherine. It serves as a timely reminder that a house divided amongst itself cannot stand.

- [2] The Claimant is seeking to remove the three Defendants from Lot 946 Benbox Avenue, Westchester, Waterford P.O. in the parish of St. Catherine. That property is registered at Volume 1192 Folio 468 of the Register Book of Titles.
- [3] The Claimant is presently the sole registered owner of the said property she having been previously joint owner with the now deceased Steadman Wilson.
- [4] The 2nd and 3rd Defendants are related to the Claimant through the now deceased Steadman Wilson. The 1st Defendant claims to be the former common law spouse of the now deceased Steadman Wilson and was so up to the date of his death.
- [5] Initially, the claim was filed in the St. Catherine Parish Court by the Claimant for Recovery of Possession. The Defendants resisted the claim there and the matter was eventually transferred to this Court for its ultimate resolution.

THE CLAIMS BEING MADE

- [6] The Claimant's position is quite simple. In her Affidavit in Support of the Fixed Date Claim filed in the matter, she simply posits that she is now the sole registered owner of the property by virtue of the rights of survivorship, she being the former joint tenant with the now deceased Steadman Wilson.
- [7] That being the case she claims she has all right and authority over the property and so gave the Defendants notice to leave her property.
- [8] The position of the 1st and 2nd Defendant is quite different. They assert that the Claimant's title to the property has extinguished as they came to live at the property at the behest of Mr. Steadman Wilson and when he died on the 27th March 1994, they began possessing the property as adverse possessors to the Claimant and the time for the Claimant to bring an action for ejectment had long expired before she brought her suit in the St. Catherine Parish Court in 2019.

The History of Lot 946 Benbox Avenue, Westchester, Waterford P.O. St. Catherine

- [9]** There is a strong dispute between the parties as to the true nature of the Claimant's ownership in the property.
- [10]** At paragraph 2 of their respective Affidavits in Response filed on the 22nd July 2021, the 1st and 2nd Defendants acknowledge that the Claimant is the lawful owner of the property by dint of her survivorship as joint tenant with the now deceased Steadman Wilson.
- [11]** However, both 1st and 2nd Defendants assert that the presence of the Claimant on the title was merely to secure her from being disinherited as she was not a child of the "common law union" between the 1st Defendant and the deceased. Incidentally, the 2nd Defendant is the daughter of the 1st Defendant and the deceased.
- [12]** I do find that there was a common law relationship between the deceased and the 1st Defendant. The 3rd Defendant, in his affidavit sworn on the 4th March 2021 and the 1st and 2nd Defendants all confirm this to be so.
- [13]** The Claimant, the 2nd and 3rd Defendants are all siblings. However, the 2nd Defendant does not share the same mother as the Claimant and the 3rd Defendant.
- [14]** The Claimant lived overseas and the property was occupied by the 3 Defendants and the deceased up to the date of death of the deceased. Thereafter, the property had been occupied by the 3 Defendants and the son of the 3rd Defendant, Mr. Shemar Wilson up to the time he was removed by the 1st and 2nd Defendants.
- [15]** The 1st Defendant has produced a purported Last Will and Testament of the deceased as exhibit DB 2 to her Affidavit. By that purported Last Will and Testament, the deceased purported to leave the subject property of this claim to his 5 children, Jannett Wilson, Nadine Wilson (the Claimant), Remona Wilson, Minka Wilson (the 2nd Defendant) and Michael Wilson (the 3rd Defendant). He purported to give the 1st Defendant a life interest in the property.
- [16]** Suffice it to say that the 1st and 2nd Defendants have apparently conceded, that there was no severance of the joint tenancy during the lifetime of the deceased

and so the Claimant was, in law, the sole owner of the property, subject to the claims they make that the right of the Claimant to bring ejectment proceedings against them has now expired.

- [17] Interestingly, the argument of the 1st and 2nd Defendants that the Claimant's presence on the title is on the basis that there was a fear of her being disinherited is frankly undermined by the very presence of the Claimant in the Will as a beneficiary of the same property.

HAS THE CLAIMANT'S RIGHT TO BRING EJECTMENT PROCEEDINGS BEEN EXTINGUISHED?

The Legal Context

- [18] It starts with section 3 of the Limitation of Actions Act. Section 3 says as follows:

“No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after **the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims**, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after **the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.**”

- [19] Section 3 is essentially a shield from an action by an owner of land for ejectment of an occupier if the owner takes too long to bring the action. Too long being if the owner does not bring the action for ejectment or make entry onto the land within 12 years **from the date his right to re-enter or take the action first accrues to him** (emphasis mine).

- [20] Along with section 3, is section 4. Section 4 sets out the deemed date on which the right to re-enter or bring the action accrues in several circumstances.

- [21] The relevant portion of section 4 for the purposes of this case is s. 4(a). That section states as follows:

“When the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and **shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt (emphasis mine)**, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.”

[22] So the Claimant must show that she has not been dispossessed nor has she discontinued possession of the property. So what does it mean to be dispossessed or to discontinue possession?

[23] A person is dispossessed when the new possessor has:

(i) a sufficient degree of physical custody and control of the claimed land in the light of the land’s circumstances (factual possession); and

(ii) an intention to exercise such custody and control on his own behalf and for his own benefit, independently of anyone else except **someone engaged with him in a joint enterprise on the land** (intention to possess).

[24] If the Claimant cannot prove that her title was not extinguished, then she would have lost her right to bring ejectment proceedings against the 1st and 2nd Defendants. Section 30 of the **Limitation of Actions Act** makes this clear. See also ***Fullwood v Curchar***¹ wherein McDonald-Bishop JA (Ag) (as she then was) distilled the principles relating to the burden and standard of proof in claims for recovery of possession by a Claimant where the Defendant raises adverse possession.

Were the 1st and 2nd Defendants in Sole Possession of the House?

[25] This is really the crux of this case. Has the Claimant’s right to bring ejectment proceedings against the 1st and 2nd Defendants been extinguished? The 1st and 2nd Defendants

¹ [2015] JMCA Civ 37

2nd Defendants must be in sole, exclusive and open possession of the property to be considered as establishing the first requirement of adverse possession – to be in possession of the property. I agreed with the submissions of the Claimant in this regard.

[26] The 1st and 2nd Defendants assert in their Affidavits that it has been extinguished. Curiously, the Court is not able to trace any Affidavit in Reply to those assertions made by the 1st and 2nd Defendants by the Claimant herself. But the 3rd Defendant has filed what he purports to be an Affidavit in Support of the Claimant's position.

[27] The Claimant asserted in her Affidavit in Support at paragraph 9 that she allowed the 1st, 2nd and 3rd Defendants to remain in the property with her permission. The 3rd Defendant has supported the Claimant in this regard and so his possession is her possession as it was done on her behalf.

[28] Now the 1st Defendant says she was brought to the property by the deceased after he acquired the property in 1993. However, from the title exhibited, the property was indeed acquired in 1993 by the deceased, but the record on the title clearly shows that it was he and the Claimant that jointly acquired same as joint tenants.

[29] A further curious position taken by the 1st and 2nd Defendants, in their written submissions filed on the 4th December 2023, is that the Claimant was a minor at the time of her being put on the title by the deceased. But there is absolutely no evidence to support this on the face of the title. On the title, it is noted that the deceased and the Claimant were both machine operators as at the date of them acquiring the title. There was nothing to indicate that the deceased had been holding the property on trust for the Claimant. So I find it is more likely that at the time of acquisition the Claimant was not a minor.

[30] I also find that even if it was the deceased that had put the 1st and 2nd Defendants in the property, it was done jointly with the present Claimant. So his act would have been joint with the Claimant as the acts of one joint tenant are deemed to be the

act of the other. According to Somervell LJ in the case of ***Leek and Moorlands Building Society v Clark***,²

“If property or rights are held jointly, prima facie a transfer must be by or under the authority of all interested.”

- [31] In that case A husband and wife were in possession of premises under a joint tenancy. By a contract of sale dated 21 December 1950, the husband agreed to buy the premises from the landlords “subject to the existing tenancy,” and by a further contract, dated 1 January 1951, he agreed to sell the premises to C, vacant possession to be given on completion. On 13 March 1951, C mortgaged the property to the plaintiffs. The wife had no knowledge of the terms of the sale to C or of the mortgage, nor did she authorise the termination of her joint tenancy. On a claim for possession by the plaintiffs as mortgagees, it was held on appeal that in the absence of express authority it was not competent for one of two joint tenants to surrender rights held jointly, and, therefore, the sale by the husband of the premises to C without the wife's authority did not terminate the joint tenancy, and, as against the husband and wife, the plaintiffs were not entitled to possession.
- [32] In cross-examination of the Claimant's witness, he was quite firm that it was the Claimant who was still in charge of the property as far as he was concerned. He admitted that the 1st and 2nd Defendants removed his son from the property, but was adamant that it was the Claimant that was in charge as far as he was concerned. So his possession was never for his own benefit or for his own purpose.
- [33] What was also revealed, and which I accept, is that the 3 named Defendants occupy the house together. They may occupy separate sections of the house, but it is the same house that they occupy. What this suggests, strongly in my view, is

² [1952] 2 ALL ER 492 at p. 496 per Somervell LJ

that the 1st and 2nd Defendants are **not** (emphasis mine) in **sole possession** of the land as they would seek to say.

[34] The 1st and 2nd Defendants have suggested, at paragraph 9 of their written submissions, that the 3rd Defendant was put into possession of the property by the 1st Defendant *on the evidence of the 1st Defendant (emphasis mine)*. I must confess I was hard pressed to find such evidence in the Affidavits in Response filed by the 1st and 2nd Defendants. In fact, the evidence from the 3rd Defendant is that he had been in possession of the property from he was a boy. It was put to him in cross-examination that he was on the property because of the 1st Defendant and he said no. I did not find him to have been discredited. Indeed, the Affidavits of the 1st and 2nd Defendant were filed **after** the affidavit of the 3rd Defendant (which supported the Claimant). Yet, the 1st Defendant gave no evidence of how the 3rd Defendant came to be on the property.

[35] One other curiosity strikes me about the 1st Defendant's assertion that it was she that was responsible for the 3rd Defendant being in occupation of the property and that he was her licensee. What is plain is that the evidential material to support this position is sorely lacking. There was never any claim made for a declaration to this effect. This was raised for the first time in cross-examination and fleshed out in the written submissions without any firm evidential foundation besides one or 2 questions that were immediately refuted by the 3rd Defendant. It also flies in the face of the clear evidence that the 3rd Defendant obtained his own electricity meter for the property and, in so doing, he did not rely on any authorisation from the 1st Defendant to acquire same. Rather, he relied on the authority of the Claimant. This position I accept to be true. That being the case, I find that it is inconsistent with him being the licensee of the 1st Defendant. In the event, I reject the submission of the 1st Defendant that it was she who had been responsible to put the 3rd Defendant in the property and that the 3rd Defendant was her licensee.

[36] There was no evidence from the 1st and 2nd Defendants, in any subsequent reply to the Affidavit filed by the 3rd Defendant, to refute the fact that he is in joint

occupation of the house with them. In those circumstances, I find that the 1st and 2nd Defendants were not in sole possession of the property the subject of this claim.

[37] This is not to say that several occupants of a whole parcel of land could not be in sole possession of individual parcels of that same whole plot of land in certain circumstances. Consider the decision of the Court of Appeal in *Peter Perry v Carol Baugh et al*³. In that case, the Appellant was the owner of a large parcel of land in Spanish Town in St. Catherine. The Respondents had entered into possession of several parcels of the same land at the same time as the Appellant was in occupation of another section of the same property. The Appellant sued the respondent occupants for recovery of possession of their parcels of the land in the St. Catherine Parish Court. Her Honour, Mrs. Carr (as she then was), found in favour of the Respondents on the basis that they had each extinguished the title of the Appellant to the individual parcels of the property which they occupied.

[38] The Appellant appealed against that decision. A main thrust of his argument was that the Respondents could not be considered to be in sole undisturbed possession of their respective parcels of the property as the Appellant was an occupant with all of them. However, Brooks JA (as he then was) in delivering the judgment of the Court of Appeal, disagreed. Quoting from the judgment of Slade J in the celebrated case of *Powell v McFarlane*⁴, Brooks JA (as he then was) highlighted the point that the question of what acts can amount to exclusive possession is a question of degree and depends on the circumstances of each case.

“...The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to

³ [2018] JMCA Civ 12

⁴ (1977) 38 P&CR 452 at 472

prevent intrusion. „What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants”: *West Bank Estates Ltd. v. Arthur*, per Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. **Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree.** It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession....”

- [39] So acts of individual possession on a part of the land, may or may not entitle one to assert possession over the whole depending on the circumstances and the particular facts.
- [40] In the *Peter Perry* case, the Court went on to find⁵ that the Appellant had been dispossessed of those parts of the land which was occupied by the Respondents for the requisite period of 12 years or more despite the fact that the Appellant had also been in occupation of a separate section of the same land.
- [41] In the case at bar, the facts are different from the *Peter Perry* case. Here it is that the three Defendants occupy the same property and, not only the same property, but the same indivisible portion of the property – the house. Had it been, as I had asked, that the parties had occupied clearly physically separate portions of the same land, then the argument for the 1st and 2nd Defendants would have been stronger. So, for example, had the 1st and 2nd Defendants occupied one dwelling house physically separate from a dwelling house occupied by the 3rd Defendant on a different part of the same property, then that would have been akin to the *Peter Perry* case.
- [42] However, here we have all three Defendants sharing the same spot of land albeit in different sections of the same house. With the 3rd Defendant, the Claimant’s

⁵ Id at para 28

witness, testifying, which I accept, that he acknowledges the Claimant's ownership of the property, it cannot be said that all 3 Defendants are in possession of the property for themselves. Indeed, the 3rd Defendant accepted that the reason he was able to obtain an electricity meter in his own name was because of the document he received from the Claimant.

[43] Accordingly, the 1st and 2nd Defendants were not and are not presently in **sole** undisturbed possession of the house to the exclusion of the Claimant.

[44] The 1st and 2nd Defendants sought to adduce evidence to show that the Claimant had been dispossessed. They asserted the fact that they paid the property taxes for the property. They exhibited 1 receipt. This receipt clearly shows that up to 2018, the property taxes had not been paid. Indeed, it was only in 2018 that taxes were paid. Conveniently, this was the same year when the Claimant served the Defendants with notice to quit. Indeed, the receipt shows the tax for that one year was paid on the 1st October 2018 and the Defendants were served with Notice on the 26th October 2018. In any event, the payment of taxes, without more, is not an act of ownership.

[45] I do agree that the addition of the room on the premises was done by the 1st and 2nd Defendants. However, there was heavy challenge by the Claimant as to whether this was legally done. Here is the sequence in cross-examination of the Claimant:

Q: You are aware of a back room in which your nephew was staying on the property?

A: I was not aware. I never gave anyone any permission to build anything on the property as I have to give authorisation. When I heard that the room was built, I called her myself and told her that she had to remove it as I gave her no documentation. I only told her that I was going to build upstairs.

Q: So you agree that Ms. Daisy constructed a backroom on the property?

A: She constructed an illegal infrastructure against my will and against the Government.

Q: When did she build that backroom to your knowledge?

A I do not know.

- [46] There is no evidence from the 1st and 2nd Defendants that this extension was approved by any local authority. There is no assertion or evidence that the 1st and 2nd Defendants went ahead and sought and obtained the requisite approval for the building of the room nor have they done anything to rectify the illegal building of the structure. I accept the evidence of the Claimant that she did not give any authorisation to build the extension. Indeed, as the titular owner, the Claimant would have been required to give permission.
- [47] Indeed, it was acknowledged by the 1st Defendant in cross-examination that there was material dumped onto the property for the purposes of constructing an extension to the house. This material was placed there without the 1st Defendant being consulted or giving any authorisation. The 1st and 2nd Defendant asserted that the material belonged to the 3rd Defendant, but he was never cross-examined on this. On the contrary, it was the Claimant who said it was she who instructed the 3rd Defendant to purchase the material on her behalf. I accept this evidence as being the truth.
- [48] I also find that this was done by the Claimant without getting the consent from the 1st Defendant. So it is clear that the Claimant still treated the property as hers and used the 3rd Defendant to impose her will on the property. So what we have then are competing acts of possession on the same property. There is clear evidence from the Claimant that the Defendants did not enjoy **sole, exclusive, undisturbed possession** of the property for the requisite period. The Defendants then would not, in my view, have met the crucial requirement for adverse possession.

CONCLUSION

[49] In light of my findings, I find on a balance of probabilities that the Claimant has established that her title remains extant in her name and the 1st and 2nd Defendants would not have extinguished the Claimant's title as they would not have dispossessed her nor has she discontinued her possession as required by ss. 3 and 4(a) of the Limitation of Actions Act.

[50] It is my finding that the 1st and 2nd Defendants were and remained the licensees of the Claimant since they were there from the time when the title was acquired (on their own evidence) and when it was acquired, it was acquired jointly by the Claimant and the deceased as joint tenants. Therefore, the license granted by the deceased is deemed to be a license on behalf of himself and the Claimant and on his death, the license would persist through the surviving licensor, the Claimant.

[51] Accordingly, the Claimant retains the right to recover possession of the property from the Defendants.

DISPOSITION

- 1 The 1st, 2nd and 3rd Defendants are to vacate property situate at Lot 946 Benbow Avenue, Westchester, Waterford P.O. in the parish of St. Catherine being property registered at Volume 1192, Folio 468 of the Register Book of Titles.
- 2 Costs to the Claimant to be taxed if not agreed.
- 3 Claimant's Attorneys-at-Law to prepare file and serve this Order on or before the 12th January 2024 by 4:00 pm.

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Dale Staple
Puisne Judge