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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-622

Filed: 17 March 2020

Wilkes County, No. 17 CVS 1049

JUDY CHEEK, Plaintiff,

v.

RICKY W. DANCY, Defendant.

Appeal by defendant from judgment entered 5 April 2019 by Judge Gregory Horne in Wilkes County Superior Court. Heard in the Court of Appeals 7 January 2020.

Partin & Cheek, P.L.L.C., by R. Blake Cheek, for plaintiff-appellee.

Randolph & Fischer, by J. Clark Fischer, for defendant-appellant.

ZACHARY, Judge.

Defendant Ricky W. Dancy appeals from a judgment entered upon a jury's verdict finding that Plaintiff Judy Cheek acquired title to certain real property by adverse possession. Upon review, we affirm the judgment below.

Background

In the 1930s, Cheek's grandparents built a home on 2.6 acres in North Wilkesboro, which was later conveyed to Cheek's aunt and uncle. In 1979, Cheek

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purchased the home from her aunt and uncle, but had the property deeded to her sister, Marianne Tharpe. In 1985, at Cheek's request, Tharpe deeded the property to Stephen Ray Kemp, a neighbor whom Cheek had known for decades.

Around 1985, Dancy and Cheek began dating, and they began living together within the next few years. At Cheek's request, in November 1986, Kemp deeded the property to Dancy.

During their period of cohabitation, Cheek made multiple requests that Dancy deed the property back to her; however, Dancy always refused. Cheek paid taxes on the property from 1979 to 1990, but warned Dancy in 1990 that she would no longer pay the taxes until the property was deeded to her. Dancy again dismissed her request. The couple separated around 1991; Dancy moved out of the home, but Cheek continued living on the property. Dancy testified that he paid the taxes on the property from 1987 through 2018.¹ In January 2000, he took out a \$75,000 homeowner's insurance policy with a \$1,000 premium on the property.

In 2005, Cheek moved out of the home and rented the property to tenants. The last tenant, Doris Billings, began renting the property in 2012. Billings met Dancy in August 2017, when he came to her home claiming to be the landlord. Dancy also asked Billings a number of questions, inquiring about how much property Cheek owned, how many rental properties she had, and how much money Billings was

¹ There was also evidence presented at trial tending to show that Dancy only paid taxes from 1991 through 2018. However, the earliest record introduced at trial was from 2008.

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paying in rent. He also asked Billings not to tell Cheek that he had visited, and to continue paying the rent to Cheek. Billings ordered him to leave, and Dancy instituted eviction proceedings against Billings the next month.

On 29 September 2017, Cheek filed a “Complaint & Motion For Restraining Order” against Dancy, claiming that (1) she “ha[d] adversely possessed the property . . . for approximately 29 years[,] in excess of the 20 years required pursuant to” statute; (2) Dancy had “breached his constructive trust . . . with the requirement and understanding that such property was to be returned to Plaintiff”; and (3) Dancy had “made a false representation . . . that he would return the property” to her, which amounted to fraud in the inducement. Cheek sought damages, as well as temporary restraining order “to prevent the waste, conversion, transfer, conveyance, or assignment of the property[.]” Dancy, in turn, filed an answer and counterclaim denying all of Cheek’s claims, and demanding “damages . . . in excess of \$25,000 for back rental money owed, or in the alternative, . . . that [Dancy] be allowed to enjoy quiet title to the property at issue, and thus rightfully and legally evict tenants living on said property.”

On 7 January 2019, the case came on for trial in Wilkes County Superior Court, the Honorable Gregory Horne presiding. The jury found that (1) Cheek had acquired title to the property by adverse possession; (2) Dancy “render[ed] services to [Cheek] by paying taxes, insurance, and upkeep on the property,” for which Dancy

was entitled to recover \$4,264.79 from Cheek; and (3) Dancy was not entitled to recover any rent that Cheek received from her various tenants under a theory of constructive trust.

At the close of Cheek's evidence, then again at the close of all the evidence, Dancy moved for a directed verdict. Those motions were denied. Dancy timely filed a "Motion for Judgment N.O.V. And Alternative Motion For A New Trial," which Judge Horne denied by order on 5 April 2019. That same day, Judge Horne entered judgment in accordance with the jury's verdict. Dancy timely filed written notice of appeal.

Discussion

On appeal, Dancy argues that the trial court should have granted these motions because there was insufficient evidence that Cheek's possession of the disputed property was "hostile," a necessary element of adverse possession. We disagree.

I.

"When considering the denial of a directed verdict or JNOV, the standard of review is the same." *S. Shores Realty Servs. v. Miller*, 251 N.C. App. 571, 578, 796 S.E.2d 340, 347 (2017) (citation omitted). "The standard of review for directed verdict is whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury." *Id.* (citation omitted).

“On appeal, our scope of review is limited to those grounds asserted by the moving party at the trial level.” *Vandervoort v. McKenzie*, 117 N.C. App. 152, 156, 450 S.E.2d 491, 494 (1994) (brackets and internal quotation marks omitted).

II.

Before reaching the merits of Dancy’s appeal, we briefly address Cheek’s assertion that Dancy did not state the grounds for his motion for directed verdict with the requisite specificity.

N.C. Gen. Stat. § 1A-1, Rule 50(a) (2019) provides that “[a] motion for a directed verdict shall state the specific grounds therefor.” Failure to state the specific grounds for the motion precludes an appellate challenge to the sufficiency of the evidence to support the verdict. *Wheeler v. Denton*, 9 N.C. App. 167, 169, 175 S.E.2d 769, 770 (1970). Furthermore, “grounds not asserted in the trial court may not be asserted on appeal.” *Broyhill v. Coppage*, 79 N.C. App. 221, 225, 339 S.E.2d 32, 36 (1986). Although Rule 50(a) does not dictate the level of specificity required in moving for directed verdict, this Court has held that a party need not always state specific grounds where the grounds are contextually apparent:

[W]hile Rule 50(a) requires that a motion for directed verdict state specific grounds for the motion, failure to state such grounds is not a basis for an automatic reversal of the directed verdict on appeal. *The courts need not inflexibly enforce the rule* as to stating specific grounds when the grounds for the motion are apparent to the court and the parties.

In re Will of Jones, 114 N.C. App. 782, 784, 443 S.E.2d 363, 364 (emphasis added) (brackets, citation, and internal quotation marks omitted), *disc. review denied*, 337 N.C. 693, 448 S.E.2d 526 (1994).

In his motion, Dancy's counsel stated, "Given the evidence, when considered in the light most favorable to the Plaintiff, it affirmatively fails to show [Cheek] has failed to sustain their burden of proof at this time," and requested judgment as a matter of law be rendered in favor of Dancy. Although Dancy's motion did not specifically challenge the element of "hostility," this was a significant issue at trial. Moreover, the other claims at trial arose from, and were related to, Cheek's claim of adverse possession. Thus, we are satisfied that this motion was addressed to whether Cheek adversely possessed the property. We therefore proceed to the merits of Dancy's argument on appeal.

III.

Dancy asserts that because he paid the taxes and insurance on the property, this "precluded a finding that [Cheek's] possession and use of the land was legally sufficient to overcome the presumption of permissive use." We disagree.

Where a party has moved for directed verdict, the "trial court must view the evidence in the light most favorable to the non-moving party, giving that party the benefit of every reasonable inference arising from the evidence. Any conflicts and inconsistencies in the evidence must be resolved in favor of the non-moving party."

Jernigan v. Herring, 179 N.C. App. 390, 392, 633 S.E.2d 874, 876-77 (2006) (internal citation omitted), *disc. review denied sub nom. Jernigan v. Rayfield*, 361 N.C. 355, 645 S.E.2d 770 (2007). “If more than a scintilla of evidence supporting each element of the case exists, motions for directed verdict should be denied.” *Lancaster v. Maple St. Homeowners Ass’n*, 156 N.C. App. 429, 435-36, 577 S.E.2d 365, 371 (citation and internal quotation marks omitted), *appeal dismissed and disc. review denied in part*, 357 N.C. 251, 582 S.E.2d 272, *aff’d per curiam in part*, 357 N.C. 571, 597 S.E.2d 672 (2003), *reh’g denied*, 358 N.C. 159, 592 S.E.2d 201 (2004). Furthermore, civil cases for which directed verdict is not clearly warranted should be submitted to the jury “to avoid unnecessary appeals and retrials.” *Hall v. Mabe*, 77 N.C. App. 758, 760, 336 S.E.2d 427, 428 (1985) (citation and internal quotation marks omitted).

“In North Carolina, to acquire title to land by adverse possession, the claimant must show actual, open, hostile, exclusive, and continuous possession of the land claimed for the prescriptive period . . . under known and visible lines and boundaries.” *Jones v. Miles*, 189 N.C. App. 289, 292, 658 S.E.2d 23, 26 (2008) (brackets and internal quotation marks omitted). Pursuant to statute, “adverse possession against an individual without color of title must run for 20 years before title ripens in the adverse possessor and is extinguished in the former owner.” *Casstevens v. Casstevens*, 63 N.C. App. 169, 171, 304 S.E.2d 623, 625 (1983); N.C. Gen. Stat. § 1-40. The burden of proof

rests upon the party asserting title by adverse possession. *State v. Brooks*, 275 N.C. 175, 181, 166 S.E.2d 70, 73 (1969).

Regarding the hostility element, this Court has noted that “[a] ‘hostile’ use is simply a use of such nature and exercised under such circumstances as to manifest and give notice that the use is being made under claim of right.” *Jones*, 189 N.C. App. at 292, 658 S.E.2d at 26 (citation omitted). “The true owner’s grant of permission negates the hostile nature of the possession, and the possessor has not manifested and given notice that the use is being made under claim of right.” *Id.* at 294, 658 S.E.2d at 27 (brackets and internal quotation marks omitted). Because adverse possession “is not favored in the law,” our Supreme Court has held, as a matter of policy, that “a use[] is presumed to be permissive[.]” *Potts v. Burnette*, 301 N.C. 663, 666-67, 273 S.E.2d 285, 288 (1981).

In support of his position, Dancy cites *Minor v. Minor*, 224 N.C. App. 471, 737 S.E.2d 116 (2012), *aff’d*, 366 N.C. 526, 742 S.E.2d 790 (2013). In *Minor*, the defendant, who was the former daughter-in-law of the plaintiff, failed to show that her possession of the real property in question was hostile for the requisite period of time. 224 N.C. App. at 475, 742 S.E.2d at 119. However, the facts of *Minor* are not analogous to those of the instant case for two simple reasons. First, the defendant in *Minor* clearly lived on the property with the plaintiff’s permission. *Id.* Second, and more importantly, the defendant argued to this Court that the trial court erred in

denying *her requested jury instructions* “on acquiring title to less than the entire tract” of land. *Id.* at 474, 742 S.E.2d at 118. In reviewing challenges to jury instructions, we have stated that “[t]he [jury] charge will be held to be sufficient if it presents the law of the case in such manner as to leave no reasonable cause to believe the jury was misled or misinformed[.]” *Bass v. Johnson*, 149 N.C. App. 152, 160, 560 S.E.2d 841, 847 (2002) (citation and internal quotation marks omitted). By contrast, motions for directed verdict should be denied “[i]f more than a scintilla of evidence supporting each element of the case exists.” *Lancaster*, 156 N.C. App. at 435-36, 577 S.E.2d at 371 (internal quotation marks omitted).

Mindful of the applicable standard of review, we conclude that the trial court did not err in denying Dancy’s motions. Although the real property in question was deeded to Dancy in 1986, he left the property in 1991. Before his departure, Cheek indicated that she wanted the property deeded back to her, a proposition Dancy angrily rejected on numerous occasions. Relatedly, Cheek informed Dancy that she would not pay any additional property taxes unless and until Dancy deeded the property to her, which he again refused to do. After the couple separated and Dancy moved out, Cheek warned Dancy “not to come back down and not to call” or she would “call the law.” However, Cheek testified Dancy did in fact call her in 1993:

Q. . . . And what did Mr. Dancy say to you?

A. He told me not to send word or not to never mention that property again or -- and -- or me and my children would

suffer the consequences and that we needed to get out of that house now.

Q. And he told you to get out of the house?

A. Yes.

Q. And did you remain on the property?

A. Yes.

Q. Without his permission?

A. Yes. I thought it was mine.

In addition to Cheek's belief that she owned the property, the evidence at trial established that she had a reputation in the community as being the sole owner of the home. Cheek made improvements on the home over the years, and she instructed the tenants to pay the rent directly to her. Moreover, members of Cheek's family testified to never once seeing Dancy around the property since he left in 1991. Billings, the last tenant to live on the property, testified that she had never seen or heard of Dancy until 2017 when he came to her home claiming to be the landlord; but even then, Dancy instructed Billings to continue to pay the rent to Cheek. Thus, Cheek clearly held herself out as the owner of the property, and any connection that she or the property had to Dancy was effectively unknown to the community.

Although Dancy testified that he gave Cheek permission to stay on the property because he "felt sorry for her," there was "more than a scintilla of evidence"

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supporting the hostility element of adverse possession. *Lancaster*, 156 N.C. App. at 435, 577 S.E.2d at 371. Accordingly, the case was properly submitted to the jury.

Conclusion

For the reasons stated herein, the trial court did not err in denying Dancy's motions for directed verdict. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges BRYANT and COLLINS concur.

Report per Rule 30(e).