

Ⓢ
docket #

- ownership of real property - option to purchase

IN THE COURT OF APPEALS
OF THE
ROSEBUD SIOUX TRIBE

- f

RAY BAIRD,	*	
	*	
Defendant and Appellant,	*	
	*	DECISION
v.	*	
	*	
CHARLES WARD, WILLIAM WARD,	*	
and JOANN WRIGHT,	*	
	*	
Plaitiff and Appellees.	*	
	*	

APPEAL FROM THE
ROSEBUD SIOUX TRIBAL COURT
HONORABLE SHERMAN J. MARSHALL
PRESIDING JUDGE

Terry Pechota
Viken, Viken, Pechota,
Leach and Dewell
Attorney for Appellant
1617 Sheridan Lake Road
Rapid City, South Dakota

Alvin Pahlke
Attorney for Appellees
P.O. Box 432
Winner, SD 57580-0432

I. Introduction

The Defendant/Appellant in this action is Ray Baird who is an enrolled member of the Rosebud Sioux Tribe. The Plaintiffs/Appellees are Charles Ward, William Ward (Wards) and JoAnn Wright. The Wards are non-Indians.

On August 6, 1986 Ray Baird sold deeded land located in Mission, South Dakota, in his capacity of Administrator of the Estate of his mother, Irene Eva Baird (Eastman), to Charles A. Ward and William W. Ward for \$12,000.00.

The Wards paid the real estate taxes on the deeded land from the date of purchase to date of the action in tribal court. A house on the deeded land was rented to Ray Baird for \$100.00 per month. He resided in the home from 1987 through August 1992 and did not pay any rental payments. The amount in arrears is \$6,200.00.

The Wards conveyed the property by contract for deed to JoAnn Wright, who is also an enrolled member of the Rosebud Sioux Tribe.

On July 31, 1992, the Wards and JoAnn Wright brought a forcible entry and detainer action against Ray Baird for failure to pay rent and refusal to move out of the home, upon request. Plaintiffs sought judgment in their favor for immediate possession of the real estate and damages in an amount consistent with the evidence together with costs, disbursements, and attorney's fees.

On August 13, 1992 Baird filed an Answer and Counterclaim which claimed that Baird and the Wards were owners of a business known as Circle Industries, Inc. and that the real estate was owned by the corporation. Baird stated that he therefore had an ownership interest in the home and that he had an option to buy the property. Further, he claimed that he had made improvements on the property including 172 feet of sewer lines and replaced two water pumps in the amount of \$1900.00.

On August 18, 1992 Plaintiffs' Reply to Defendant's Counterclaim was filed with the Rosebud Sioux Tribal Court. The Plaintiffs' alleged that the Statute of Frauds barred the action because of both a lack of a written document and absence of consideration on Defendant's part.

On September 10, 1992 a hearing was held before the Honorable Sherman J. Marshall, Chief Tribal Judge.

On September 29, 1992 the Court issued its Findings of Fact and Conclusions of Law and an Order of Eviction. The Court found that the Wards were the owners of the property that the Wards never intended to convey an interest to Baird and that the Statute of Frauds barred the Defendant from claiming an interest to the real property therefore, Baird had no ownership interest in the property. Further, the Court found that there was an oral rental agreement for \$100.00 per month; and that Baird unlawfully held and kept possession of the premises which he acquired possession of peaceably.

On October 9, 1992, a notice of appeal and order staying execution of judgment was timely filed by Baird.

The Rosebud Sioux Tribal Court of Appeals convened for a hearing on May 7, 1993.

I. ISSUES

The Appellant raised a number of issues which center around ownership of the property involved in this action. Appellant claims: (A) Ownership of the real property through Circle Industries, Inc. in which corporation he owned a majority interest and that he had an option to purchase the property; and (B) That the trial court did not have jurisdiction to determine ownership of property in the forcible entry and detainer action.

III. DECISION

A. Appellant's Counterclaim

The Appellant's counterclaim for ownership of the property is based on breach of an oral agreement and option to purchase. Although the trial court did not issue any memorandum opinion to support its judgment in this matter, the court did issue appropriate findings of fact and conclusions of law.

Five of the findings of fact explicitly state that there is an insufficient factual basis to support Appellant's claim. Specifically, the court below found its findings of fact that:

2. That Lewis Raymond Baird, Jr., who is the Defendant herein, Ray Baird, testified that he sold the real property described as:

Lots Thirty and Thirty-One (30 & 31) of Subdivision of Lot Twenty-three (23) of Outlot Five (5), located in the Southwest Quarter (SW 1/4) of Section Thirty-two (32), Township Thirty-nine (39) North, Range Twenty-eight (28), West of the 6th P.M., Todd County, South Dakota.

in his capacity of Administrator of the Estate of his mother, Irene Eva Baird, f/k/a Irene E. Eastman, Deceased, to Charles A. Ward and William W. Ward for \$12,000.00 on August 6, 1987. This conveyance is reflected by Plaintiff's Exhibit 1, which was received into evidence.

3. That the uncontroverted testimony of Charles A. Ward established that he and his brother paid the real estate taxes on said deeded land to Todd County, South Dakota, from the time of their purchase of it, through the time of trial. That Ray Baird paid no real property taxes from the time he sold the property as Administrator, through the time of trial, pursuant to his own testimony.

5. That Charles A. Ward and William W. Ward rented the house and lots to Ray Baird, after they purchased it in July of 1987, for the amount of \$100.00 per month. The Defendant, Ray Baird, did not pay any rental payments as due, and he admitted that he did not pay any rental payments at any time. Defendant resided in the home from 1987, through the present. That Defendant Ray Baird is in arrears \$6,200.00 in rent to Plaintiffs for July of 1987, through August of 1992.

12. The Court finds that the Defendant had an oral rental agreement, for \$100.00 per month rent, which was not honored nor paid by the Defendant. He is in violation of the lease agreement.

20. That there is no credible testimony showing that there was ever an oral agreement whereas an interest in Plaintiffs' real property would be conveyed in part or whole to Defendant. This is even more clear considering the fact that Defendant wrote in one of the Exhibits, that he desired to buy the property and was heard to say, in front of JoAnn Wright, that he wanted to buy the property, after she inspected it in June of 1992.

In order to prevail upon appeal, the Appellant must identify the standard of review to be applied by this Court to these findings and to demonstrate that the standard of review has been

met, which entitles the Appellant to a reversal of the judgment below.

Indeed, it is a well established general rule that issues of fact in civil cases are to be determined in accordance with the preponderance of the evidence standard. *New York Life Insurance Co. v. Garner*, 303 U.S. 161 (1938). The term "preponderance of the evidence" means the weight, credit, and value of the evidence on either side. The application of this standard by a trial court is generally reversible on appeal only if it is shown that the trial court's determination of dispositive facts was clearly erroneous.

As noted, Appellant identifies the standard of review for determining the adequacy of the trial court's findings of fact and weighing the evidence as a preponderance of the evidence. Since the burden on appeal lies with the Appellant to demonstrate that the trial court's findings were clearly erroneous, the Appellant has failed to meet the burden.

B. Issues in a Forcible Entry and Detainer Action

The Appellant claims that the lower court had no jurisdiction to determine ownership of real property in a forcible entry and detainer action.

A forcible entry and detainer action tries only the right to possession of land and not title to property. E.g. *Miller v. Maust*, 259 NW 191 (Ne. 1935; *Brennan v. Brennan* 332 NW 2d 696 (Ne. 1983).

In some circumstances, however title may be considered in a forcible entry and detainer action as an incident of the right of possession, but only for the purpose of determining that question, and not for the purpose of determining title. E.g. McCracken v. Wright, 157 P2d 814 (Kan. 1968). Such is the case at bar. Thus, the proper means to determine ownership of real property is a quiet title action, ut that is not the case before us.

Appellant does not have any rights of ownership to the property as a shareholder under the corporation, Circle Industries, Inc. The trial court found incidentally to the forcible and entry detainer action that no evidence was presented that the title was recorded to reflect Baird's ownership in the corporation's name. Nor did the Appellant have an option to purchase the real estate. Further, as a matter of equity and law, the court finds that Appellant is not entitled to reimbursement of the \$1900.00 in improvements.

For all the foregoing reasons, the appeal in this matter is dismissed and the lower court decision is affirmed.

Dated this May 21, 1993

FILED
In the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned (Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and placed on the docket in the above entitled action by this Court on the 24th day of May, 1993.

Diana Mishnell

Diane Zepher Byrd
Diane Zepher Byrd
Associate Justice