

IN THE SUPREME COURT OF STATE OF MISSISSIPPI

FRANK L. MCWILLIAMS

APPELLANT

VS.

NO. 2007-CA-00170

JOHN H. MCWILLIAMS, AS TRUSTEE OF
THE D. RIALS MCWILLIAMS TRUST, AND
INDIVIDUALLY; AND, D. RIALS
MCWILLIAMS, A MINOR

APPELLEES

**APPEAL FROM THE JUDGMENT OF THE CHANCERY COURT OF SUNFLOWER
COUNTY, MISSISSIPPI**

**CORRECTED
Appellant's Rebuttal Brief**

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LAW AND ARGUMENT

STATUE OF LIMITATIONS

This appeal is based on an action by Frank McWilliams to “recover” property he conveyed while on drugs and in jail, while he was a victim of fraud and undue influence and while he lacked mental capacity. He had a future interest in land as related in his mother’s Will at the time of conveyance. Later there was a Court Order entered that he was part owner of the land in question by bequest from his mother. He has an ownership claim. The ten year statute of limitations therefore applies. The ALR annotation related by the Appellee (cited when Mississippi has several cases on point) was written in 1939. Several cases have been decided by the Mississippi Supreme Court since that time.

In C.L. Lloyd v. Gibbs, 910 So. 2d 587 (CA. Miss. 2005), cited by Appellee, the issue involved a “contract” to purchase a Deed from Gibbes. The Court of Appeals ruled this was not an action to recover land. However, a contract is not an ownership interest in the land. Gibbes did not involve an action to recover property because the Plaintiff in Gibbes never had an interest in the property. In the instant case Frank McWilliams has a legal interest as shown by the decree adjudicating Frank McWilliams to be an heir of his mother and he seeks to set aside a previous deed executed by him, not to void a contract.

The distinction, mentioned in Appellee’s Brief, states that Lloyd (the purchaser) had “no real property” and “title had never vested in him”. In the instant case Frank McWilliams had an interest or he could not have conveyed that interest to the Appellee. The Court in Gibbes, also

noted that Lloyd had not met the obligations of the contract and thus had no interest in the real property in question. The basic difference is that Frank McWilliams had an adjudication of ownership and conveyed land by deed. This is a far different set of facts than a “contract” to convey deed when the purchaser did not meet the terms of the contract.

O’Neal Steel, Inc. v. Millette, 797 So 2d 869 (Miss. 2001) involved a Judgment Creditor attempting to place a lien on the subject property. Obviously he had no interest in the land and had no ability to “recover” the property since he never had an interest in it.

Suthoff v. Yazoo County Industrial Development Corporation, 722 F.2d 133 (Fifth Cir. 1983) was based on a §1983 action, and involved concealment and fraud involving an condemnation action. The Plaintiff alleged the condemnation action was a pretense to tricking land owners to sell the property for less than it was worth. The Plaintiff sought compensatory and punitive damages. The Court, rightly, held Suthoff was not an action to recover land but an action for damages. It did not involve an action to “recover” land. This Court applied the “discovery rule” (the rule that the statute of limitations does not begin to run until a reasonable Plaintiff would “discover” his cause of action) as to when the statute of limitations began running.

SAVINGS STATUTE

The Appellee addresses an issue that is not applicable to the present case when referring to the “savings statute”. This was not claimed as a defense to the running of the statute of limitations by the Appellant. It was also not raised as an assignment of error, nor was it argued in the Brief. The Appellant alleges that he was not competent to execute the Deed and Trust

Agreement, that he was defrauded and that he was not aware nor should he have been aware of his rights until he was told of the Deed, but does not allege he was disabled for the several years after the execution of the Deed and before the suit was filed.

HEIRSHIP CASES

The Appellee then alleges that the Supreme Court carved out an “exception” in the case of “heirship” cases. While the cases cited by Appellant and Appellee do involve suits by heirs (which incidentally is how Frank McWilliams received the property) none of the cases cited mentions the creation of heirship exception. There is no rationale for such exception. The heirs have the rights of the person who executed the deed and as has been set forth in detail in Appellant’s Brief, these cases involved an action to recover land and applied the ten (10) year statute of limitations. The distinction mentioned in the Appellee’s Brief as to the “heirship cases”, is simply not contained in the cases cited.

EFFECT OF DEFECTIVE ACKNOWLEDGEMENT

The defective acknowledgement does not void the deed itself, it merely makes it invalid for constructive notice or public record, as supported previously by the cases in Appellants Brief. The effect of this would be that the Appellant would not fall under the cases wherein there was a valid acknowledgement and proper recording which would hold the Appellant with constructive notice and therefore forestall the Appellant from claiming tolling of the statute of limitations. The acknowledgement was defective since it was back dated and not signed before the Notary Public.

CONCLUSION

Frank McWilliams was induced , while on drugs, in jail, by use of the undue influence of his brother, without legal capacity to execute anything, to execute the Deed and Trust to Rials McWilliams. Frank McWilliams took action within a reasonable amount of time after he discovered this action, well within the three year statute, and certainly within the ten year statute of limitations. The Chancellor erred in granting Appellee's Motion for Summary Judgment and the case should be remanded for hearing on the facts.

CERTIFICATE OF SERVICE

I, Michael L. Knapp, Attorney for Appellant, Frank L. McWilliams, hereby certifies, that on this date, I delivered, or caused to be delivered a true a true and correct copy of the above and forgoing Appellant's Rebuttal Brief by the Appellant to the Clerk of the Supreme Court of the State of Mississippi and mailed, by United States mail, postage fully pre-paid, to the following:

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