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Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number:	46108-7-I
Title of Case:	Byron D. Coney, et al., Appellants v. Seattle School District No. 1, Respondent
File Date:	04/23/2001

SOURCE OF APPEAL

Appeal from Superior Court of King County
Docket No: 97-2-31486-1
Judgment or order under review
Date filed: 02/02/2000
Judge signing: Hon. Robert J. Wesley

JUDGES

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BYRON D. CONEY, STANLEY G. RIDINGS, ELAINE COMERFORD, PATRICIA L. ASHCRAFT, LORETTA SCOTT, EDWARD K. BOPREY, JAMES N. GILBERT, and CLEVELAND MEMORIAL FOREST FOUNDATION, INC.,	)	No. 46108-7-I
	)	DIVISION ONE
Appellants,	)	

v.

SEATTLE SCHOOL DISTRICT NO. 1,

Respondent.

UNPUBLISHED OPINON

FILED:

GROSSE, J. -- In order to rebut a motion for summary judgment, the non-moving party must assert specific facts beyond bare assertions or conclusions, demonstrating that a genuine issue of material fact exists.1 Here, former students at Cleveland High School from the classes of 1943 and 1944 (Cleveland students) sought to quiet title to land given to Seattle School District No. 1 (School District). Given the form of the action and the problematic evidence proffered below, the former students failed to provide evidence refuting the title held by the School District. The decision of the trial court is affirmed.

FACTS

Cleveland students from the class of 1943 collected funds to purchase a bronze memorial plaque to honor Cleveland students killed in World War II. The donations collected were insufficient to purchase the desired plaque. The president of the class of 1943 gave the funds raised to the principal of Cleveland High School to be put toward a use at his discretion. In April 1944, the idea of purchasing real property with monies raised by the classes of 1943 and 1944, as well as other class activities, for use as a memorial forest was proposed and considered. Approval was sought from the Seattle School District School Board (School Board).

The School Board granted authority 'to purchase the property for cash to be provided from Cleveland High School funds and to accept it for the School District upon a gift basis.' The tract under consideration was one of logged property to be reforested and developed into the 'Cleveland High School Memorial Forest.' Upon the recommendation of an interested trial court judge, the principal of the school personally purchased a tract of land at a tax sale for $300. The tract was comprised of 131 acres located near Issaquah, Washington. A county treasurer's deed for the property was executed, vesting title in fee simple in the name of the school principal. Later that year, the principal transferred this fee simple interest to the School District by a recorded quit claim deed. The School District has been the owner of record since December 20, 1944, continuously insuring the property, paying applicable taxes, improving and developing the property by planting trees, building and maintaining trails, and erecting buildings on the property. A memorial plaque honoring the war dead from Cleveland High School was purchased many years later by the School District and continues to be maintained on the property.

The Cleveland students filed a complaint to quiet title to the property.2 The Cleveland students sought to have title quieted in the Cleveland Memorial Forest Foundation, Inc., a foundation set up by them. The trial court heard argument on the School District's motion for summary judgment and ruled in its favor.3

DISCUSSION

The standard of review on summary judgment is well settled. Review is de novo and this court engages in the same inquiry as the trial court.4 Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993); CR 56(c). All facts submitted and all reasonable inferences from them are to be considered in the light most favorable to the nonmoving party. Clements, 121 Wn.2d at 249. 'The motion should be granted only if, from

all the evidence, reasonable persons could reach but one conclusion.' Clements, 121 Wn.2d at 249 (citing Wilson v. Steinbach, 98 Wn.2d 434, 656 P.2d 1030 (1982)). However, bare assertions that a genuine material issue exists will not defeat a summary judgment motion in the absence of actual evidence. White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).{5}

A nonmoving party may not rely solely on speculation or argumentative assertions that unresolved factual issues remain. Upon the moving party's submission of adequate affidavits, the nonmoving party must set forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact.6

The record clearly shows that the funds initially raised by the Cleveland students were to be used to purchase a plaque as a gift, not forest land to be held in trust. When the funds were found to be inadequate to purchase the plaque, the monies from the class of 1943 were deposited with the school's principal with the understanding that something else would be done. By his own admission, the class president indicated he had no involvement with the purchase of the memorial forest. He indicated that the forest idea came up after the initial monies had been raised.

The record also reflects that the idea of a memorial forest was that of the principal, teachers, and administrators from the school. As approved by the School Board, the principal purchased the real property and gave it to the School District for use as a memorial forest. The School District has owned and managed the property since 1944. The Cleveland students' assertions that the monies were collected for purchase of a memorial forest to be held in trust is not supported by the evidence. The complaint sets forth that the contributions included the gifts of the classes of 1943 and 1944 which were specifically raised to purchase a bronze memorial plaque. The Cleveland students have failed to produce evidence that the students intended the property be held in trust.
In Washington, settled law clearly establishes that the success of a party seeking to quiet title to property depends on the strength of his or her own title, not upon any alleged weakness of the opposing party's title.7 In its motion for summary judgment, the School District sought a determination as a matter of law that the Cleveland students or the foundation created by them had no cognizable legal interest in the property. The School District did not request a determination of its own interest and the Cleveland students did not make a countermotion for summary judgment seeking relief based on any other theory. Considering the record before the court, the former students are not entitled to any affirmative relief. However, as set forth in the trial court's order, the property was accepted by the School District on a 'gift basis,' 'as a perpetual memorial to the Cleveland boys who have lost their lives in the war.' In its order, the trial court recognized the conditional quality of this gift, while correctly holding that the Cleveland students have no cognizable right to quiet title in the subject property as a result of that condition. We note that there was no appeal by the School District of the provision of the order recognizing the limitation included in the gift and it would appear to be the law of the case.

Further review of the record shows that the remaining claims of the Cleveland students that the trial court erred by failing to make findings and conclusions to comply with CR 56(d); that the trial court erred in failing to grant relief requested by the Cleveland students; and that the trial court erred in considering exhibits annexed to the motion for summary judgment as not being properly identified are of no merit and require no discussion here.

The decision of the trial court is affirmed.

WE CONCUR:

1Trimble v. Washington State University, 140 Wn.2d 88, 93, 993 P.2d 259 (2000) (citing State v. White, 131 Wn.2d 1, 9, 929 P.2d 396 (1997)).
2On the same day, this group of former Cleveland students voluntarily dismissed an essentially identical quiet title action filed over two years earlier.
3The order on summary judgment entered February 2, 2000 states in pertinent part:
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the real property in question, deeded to the Defendant on a 'gift' basis, was accepted by the Defendant 'as a perpetual memorial to the Cleveland boys who have lost their lives in the war' (School Board Minutes dated May 12, 1944, . . .) and 'which would be a memorial to Cleveland Students who have lost their lives in military service' (School Board Minutes dated June 2, 1944, . . .). Notwithstanding the foregoing conditions on the uses to which the property may be put, taking the facts in a light most favorable to the non-moving party, Plaintiffs have no right to have quiet title to the subject property, and Defendant's Motion for Summary Judgment should be and hereby is granted, and Plaintiffs' Complaint herein is dismissed with prejudice.
4Trimble, 140 Wn.2d at 92 (citing Benjamin v. Wash. State Bar Ass'n, 138 Wn.2d 506, 515, 980 P.2d 742 (1999)).
5Trimble, 140 Wn.2d at 93.
6Meyer v. University of Wash., 105 Wn.2d 847, 852, 719 P.2d 98 (1986).
7Northlake Marine Works, Inc. v. City of Seattle, 70 Wn. App. 491, 499, 857 P.2d 283 (1993).