

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
DONALD K. KNOBLETT and) Bankruptcy Case No.
94-30477)
NANCY S. KNOBLETT,)
)
Debtors.)
)
-----)
MARATHON OIL COMPANY,)
)
Plaintiff,)
)
vs.) Adversary Case No. 96-3311
)
DONALD K. KNOBLETT,)
NANCY KNOBLETT, FARMER STATE)
BANK OF PALESTINE, FS CREDIT)
and BOB KEARNEY, Trustee,)
)
Defendants.)

OPINION

This matter having come before the Court for trial on a four Count Complaint filed by Plaintiff; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure in support of its Order entered in open court granting the Motion for Directed Verdict made by Defendants, Donald K. Knoblett and Nancy S. Knoblett, at the close of Plaintiff's evidence.

The instant adversary proceeding was filed by Plaintiff, Marathon Oil Company, on or about November 11, 1996, to determine the ownership of a certain 7.09 acre tract of land located in Crawford County, Illinois. Under Count I of the Complaint, Plaintiff

seeks ownership of the land pursuant to a 20 year adverse possession statute. In Count II, Plaintiff seeks ownership over the same acreage by alleging it paid taxes and adversely held the land for a period of 7 years and, thus, should be declared the owner pursuant to 735 ILCS 5/13-109. Count III of the Complaint seeks an injunction against the Defendants, Donald K. Knoblett and Nancy S. Knoblett, from entering upon the subject tract of land and interfering with Plaintiff's operations on that land. Count IV prays that the mortgages granted by the Defendants to the Farmer State Bank of Palestine and FS Credit Corporation be declared invalid. In order to succeed on Counts III and IV of the Complaint, Plaintiff must prove either adverse possession pursuant to the 20 year statute or the 7 year statute as alleged in Count II.

In order to establish title under adverse possession, whether the claim be under the 20 year statute or under the 7 year statute, the person claiming or asserting title by adverse possession has the burden of proving that the possession was continuous, hostile or adverse, actual, open, notorious, exclusive, and under claim of title inconsistent with that of the true owner for the requisite statutory period. Thomas v. Durchslag, 90 N.E.2d 200 (1950); Welliver v. Alberts, 663 N.E.2d 1094 (2nd Dist. 1996); and 735 ILCS 5/13-101. The burden of proof is upon the person claiming or asserting title by adverse possession with the standard of proof being clear, positive, and unequivocal evidence. See: Thomas v. Durchslag, *supra*, at 205; Peters v. Greenmount Cemetery Asso., 259 Ill.App.3d 566 (4th Dist. 1994); and Welliver, *supra*, at 1096. All presumptions are in favor of

the title owner and the adverse possessor has the burden of proof on each element of adverse possession as stated under 735 ILCS 5/13-101.

In considering the testimony of the witnesses both for the Plaintiff and for the Defendants in this adversary proceeding, the Court finds that all witnesses were credible. The decision in this matter is based upon the uncontroverted testimony of the Debtor/Defendant Donald K. Knoblett that he had personally been on the tract of land in question three or four times a year since the date when he originally purchased the subject real estate. Additionally, the Court finds that the Defendant's testimony that he and his son had hunted on this property since the date he had purchased it was credible and was supported by evidence from both the Defendant and the Plaintiff. In fact, Plaintiff's own witness testified that he had personally seen numerous shotgun shells and deer stands located on the subject property. This all in spite of the fact that it was Plaintiff's position that people were not allowed to hunt on the subject property. Plaintiff further admitted that the disputed property was not fenced in and that only approximately 2 to 2½ acres of the disputed 7.09 acre tract was mowed by the Plaintiff or otherwise had any indication that the Plaintiff was claiming an interest in the property.

It is undisputed that the Debtors/Defendants, Donald K. Knoblett and Nancy S. Knoblett, had a superior chain of title to that of the Plaintiff. As such, the Plaintiff had no alternative but to seek a declaration of adverse possession in order to obtain title to the tract of land in dispute. Regardless of whether the Plaintiff asserted

adverse possession under the 7 year statute or under the 20 year statute, the Court finds that the Plaintiff has failed to prove all of the elements necessary to establish a claim of adverse possession. The Court entered a directed verdict in favor of the Defendants based upon a finding that the Plaintiff had failed to show that it was in actual possession of the disputed property, failed to prove its possession was hostile or adverse to the interests of the Debtors/Defendants, and failed to prove that its possession was exclusive. Having failed to meet its burden of proof to establish all of the elements of adverse possession, the Plaintiff's request for relief under both Counts I and II must be denied. Given the denial of Counts I and II of the Complaint, the Court finds that the relief sought in Counts III and IV must be denied as the relief requested therein relies on a finding that the Plaintiff has become the true owner of the disputed property by adverse possession.

ENTERED: February 13, 1997.

/s/ GERALD D. FINES
United States Bankruptcy Judge