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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2009-2010

2080942

Robert R. Bowers

v.

Brian Keith Bell, as personal representative of the estate of Keith Bell, deceased

Appeal from Etowah Circuit Court
(CV-08-31)

BRYAN, Judge.

Robert R. Bowers, the defendant below, appeals from a judgment in favor of Keith Bell, the plaintiff below.[1] We

[1]Following the entry of the judgment in favor of Keith Bell, he died and his personal representative, Brian Keith

affirm.

On January 16, 2008, Bell sued Bowers, stating a claim of ejectment. As the factual basis of his claim, Bell alleged that he owned a parcel of land located on Tom Cat Road in Piedmont ("the land"); that Bowers, Bell's first cousin, was in possession of the land; and that Bowers had refused to surrender possession of the land to Bell. As relief, Bell sought a judgment ejecting Bowers from the land.

Answering, Bowers denied the material allegations of Bell's complaint and averred that he and Bell had entered into an oral contract, that the oral contract had vested him with an equitable interest in the land, and that he was entitled to possession of the land by virtue of that equitable interest. Specifically, he averred that Bell had orally agreed to allow Bowers to operate his junkyard and used-automobile-parts business on the land and to devise the land to Bowers at Bell's death in exchange for Bowers's agreeing to keep Bell's automobiles running for the rest of Bell's life and to bequeath Bowers's business and equipment located on the land

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Bell, was substituted as the plaintiff/appellee in this action.

to Bell and certain other individuals specified by Bell if Bowers predeceased Bell. Bowers further averred that Bell had subsequently placed him in possession of the land, that Bowers had operated his business on the land, that Bell had executed a will devising the land to Bowers at Bell's death, that Bowers had executed a will bequeathing his business and equipment to Bell and the other persons specified by Bell if Bowers predeceased Bell, and that Bowers had kept Bell's automobiles running from the date of the oral agreement until Bell stopped bringing his automobiles to Bowers for repair in 2006.

Thereafter, the trial court held a bench trial at which it received evidence ore tenus. At trial, Bell asserted that he owned the land by virtue of his mother's conveying it to him in a deed dated December 4, 1995, and that the Statute of Frauds barred Bowers from establishing that he owned an interest in the land by virtue of the oral contract. Bowers, on the other hand, asserted that the Statute of Frauds did not bar him from establishing that he owned an interest in the land by virtue of the oral contract because, he said, Bell had placed him in possession of the land and Bowers had partially

performed the oral contract by repairing Bell's cars whenever they needed it from the date of the oral contract until Bell stopped bringing his cars to Bowers for repair in 2006.

Bell introduced into evidence a deed executed by his mother on December 4, 1995, in which she had conveyed title to the land to Bell. Bell testified as follows. In approximately 1999, he and Bowers had entered into an oral contract in which Bell promised to allow Bowers to operate his junkyard and used-automobile-parts business on the land without paying rent and to devise the land to Bowers at Bell's death and Bowers had promised to keep Bell's automobiles running for the rest of Bell's life and to bequeath Bowers's business and equipment to Bell and certain other individuals specified by Bell if Bowers predeceased Bell. Bowers later wrote two wills, one for Bell to sign and the other for Bowers to sign. The will that Bowers had written for Bell to sign devised the land to Bowers while the will that Bowers had prepared for himself bequeathed his business and equipment to Bell and the other persons Bell had specified if Bowers predeceased Bell. Bell and Bowers signed the wills that Bowers had prepared, but they did not sign them in the presence of witnesses or a notary public. In

2006, Bowers sold some dirt he had taken from the land without Bell's permission, and Bell sent Bowers two written notices to vacate the land; however, Bowers did not vacate the land. Bell took his cars to Bowers when they needed repairs from the date Bell and Bowers entered into the oral contract until Bell learned in 2006 that Bowers had sold dirt he had taken from the land without Bell's permission. Bowers repaired Bell's automobiles when Bell brought them to him.

Bowers's testimony coincided with Bell's except that he testified that he and Bell had signed their wills in the presence of two witnesses who subscribed their names to the wills as witnesses and that he, Bell, and the witnesses had signed their names in the presence of a notary public who acknowledged their signatures. However, Bowers did not introduce executed wills into evidence. Instead, explaining that he could not find the executed wills or copies of the executed wills, he introduced unsigned copies of the wills.

Jean Eubanks, a friend of Bowers's who performed some of his bookkeeping work, corroborated Bowers's testimony regarding the execution of the wills.

After the trial, the parties submitted briefs.

Thereafter, the trial court entered a judgment in favor of Bell. In pertinent part, the judgment stated:

> "1. The Court finds in favor of the Plaintiff, Keith Bell and against Defendant, Robert R. Bowers.
>
> "2. Defendant, Robert R. Bowers failed to show ... to the Court that he is entitled to receive the property located [on] Tom Cat Road [in] Piedmont ....
>
> "3. Plaintiff, Keith Bell is hereby awarded his property located [on] Tom Cat Road [in] Piedmont ....
>
> "4. Defendant, Robert R. Bowers is to immediately vacate the premises without in any way damaging or destroying any buildings or other tangible or intangible objects located thereon belonging to the Plaintiff."

Bowers subsequently filed a postjudgment motion, which the trial court denied. Bowers then timely appealed to the supreme court, which transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

Because the trial court received evidence ore tenus, our review is governed by the following principles:

> "'"'[W]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust.'"' Water Works & Sanitary Sewer Bd. v. Parks, 977 So. 2d 440, 443 (Ala. 2007) (quoting Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005), quoting in turn Philpot v.

> State, 843 So. 2d 122, 125 (Ala. 2002)). '"The presumption of correctness, however, is rebuttable and may be overcome where there is insufficient evidence presented to the trial court to sustain its judgment."' Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005) (quoting Dennis v. Dobbs, 474 So. 2d 77, 79 (Ala. 1985)). 'Additionally, the ore tenus rule does not extend to cloak with a presumption of correctness a trial judge's conclusions of law or the incorrect application of law to the facts.' Waltman v. Rowell, 913 So. 2d at 1086."

Retail Developers of Alabama, LLC v. East Gadsden Golf Club, Inc., 985 So. 2d 924, 929 (Ala. 2007).

On appeal, Bowers reiterates the arguments he made in the trial court, i.e., that the oral contract vested him with an equitable interest in the land entitling him to possess it and that the Statute of Frauds did not bar him from establishing his equitable interest in the land by virtue of the oral contract because Bell had placed him in possession of the land and he had partially performed the oral contract by repairing Bell's cars from the date of the oral contract until Bell stopped bringing his cars to Bowers for repair in 2006.

However, we do not reach those arguments because the trial court's judgment is due to be affirmed on the ground that Bowers failed to satisfy the requirements of § 43-8-250, Ala. Code 1975. In pertinent part, § 43-8-250 provides:

> "A contract to make a will or devise, ... if executed after January 1, 1983, can be established only by:
>
> > "(1) Provisions of a will stating material provisions of the contract;
> >
> > "(2) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or
> >
> > "(3) A writing signed by the decedent evidencing the contract."

(Emphasis added.)

Bowers did not establish Bell's agreement to devise the land to Bowers pursuant to § 43-8-250(1) or (2) because he did not introduce into evidence a written will executed by Bell in accordance with the requirements of § 43-8-131, Ala. Code 1975.[2] Bowers did not establish Bell's agreement to devise the land to Bowers pursuant to § 43-8-250(3) because he did not introduce into evidence a writing signed by Bell evidencing Bell's agreement to devise the land to Bowers. Accordingly,

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[2]In pertinent part, § 43-8-131 provides:

> "[E]very will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his discretion, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature of the will."

Bowers failed to establish the agreement upon which he based his claim to an interest in the land. Consequently, the trial court did not err in entering a judgment in favor of Bell. Although the trial court did not expressly state that it based its judgment on Bowers's failure to satisfy the requirements of § 43-8-250, we may affirm a trial court's judgment on any valid legal ground regardless of whether that legal ground was presented to, considered by, or even rejected by the trial court. See Ex parte Ryals, 773 So. 2d 1011, 1013 (Ala. 2000). Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Thompson, P.J., and Pittman, Thomas, and Moore, JJ., concur.