

LINDA BRANT NELSON AND RONALD E. BRANT, EXECUTORS OF THE ESTATE OF CENTHA M. BRANT, Plaintiffs,
v. WARREN E. KRINER AND LINDA R. KRINER, EDWARD L. ERNST AND THERESA R. ERNST, HIS WIFE, WILLIAM
K. ERNST AND JOYCE E. ERNST, HIS WIFE, AND ESTHER I. ERNST, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 1996-226

*Ejectment; Prima Facie Title; Naked Possession; Possession of Real Property; Actual Possession of Unenclosed,
Uncultivated Woodland; Color of Title*

1. An action in ejectment is the appropriate action for the recovery of land when the plaintiff is out of possession, yet has the right to immediate possession against a defendant in actual possession.
2. To recover in an ejectment action, the plaintiff must rely on the strength of his own title and not on the weakness of the defendant's title.
3. A plaintiff's right to immediate possession in an ejectment action is established upon proof of prima facie title, which is met when the plaintiff presents evidence sufficient to identify the land in dispute.
4. The burden of persuasion in an ejectment action is the preponderance of the evidence, which the plaintiff meets when the court can accept that the greater weight of the evidence could persuade a fair and impartial person to side with the plaintiff.
5. The lowest and weakest form of title is the mere naked possession of real estate vested in one who occupies real estate without any right or pretense of right to hold and continue possession.
6. Actual possession means dominion over the land.
7. The possession of real property is determined by the facts of each case and to a large extent upon the character of the land in question.
8. In order to establish an ownership interest in undeveloped woodland, the occupier must either erect a residence or enclose and cultivate the land; entries onto the land for activities such as hunting, berry picking, timber removal, hiking and the cutting of a road through the land, regardless of duration or frequency, will not give title.
9. Defendants' naked possession of undeveloped woodland is merely that of a trespasser when the possession is not such as will afford them an ownership interest.
10. An occupier of undeveloped woodland whose possession does not afford him an ownership interest cannot bring an ejectment action against another in possession nor prosecute an action to quiet title to compel another out of possession to bring an ejectment action against him; therefore, such an occupier would lack standing to defend against such an action.
11. An entry onto land is made under color of title when the occupier makes the entry under a bona fide belief in the ownership of the land in another. Typically, such an entry is made under an invalid deed or other invalid instrument that the trespasser truly believes to be valid.
12. Evidence of defendants' activities concerning undeveloped woodland land that included blazing trees, cutting timber, clearing a road, conducting recreational activities, as well as paying taxes, is clearly suggestive of their desire to establish an ownership interest in the land rather than from a bona fide belief in their ownership.
13. The payment of taxes on land by one in possession of it will not establish any ownership rights if the possessor appears to have no title at all.

Appearances:

Thomas Steiger Jr., Esq., *Counsel for Plaintiffs*

Joseph Macaluso, Esq., *Counsel for Defendant, Warren Kriner*

Tyrone Johnson, Esq., *Counsel for Defendants William and Joyce Ernst*

Philip Levine, Esq., *Counsel for Defendants Linda Kriner, Teresa Ernst and Esther Ernst*

OPINION

Van Horn, J., November 17, 2004

Statement of Facts^[1]

This is an action in ejectment. Plaintiffs, Linda Brant Nelson and Ronald E. Brant, are the executors of the estate of Centha M. Brant. Plaintiffs assert that they have good title to a parcel of land comprised of 43.913 acres in Montgomery Township, Franklin County, Pennsylvania. Plaintiffs trace their title from an original warrant to Mary McFarland in 1794. Subsequent transfers by unrecorded and recorded deeds led to title in the Brant family in 1922 and ultimately to G. Earl Brant and Centha M. Brant, Plaintiffs' parents, in 1990.

Defendants claim real estate west of Plaintiffs' land. Defendants' real estate had its origin by warrant in 1794 to Richard Todd. No subsequent transfer occurred from this original warrant. In 1951, Charles Glazer, a local timber dealer, began paying the taxes on the land in the hope of ultimately acquiring it from the Todd heirs. Mr. Glazer continued to pay the taxes on and off for more than 20 years while attempting to locate the Todd heirs. Finally, in 1975 having been unsuccessful, Mr. Glazer made a statement of claim by adverse possession. After Mr. Glazer's death in 1976, his widow, Mrs. Glazer, decided to abandon his attempt to secure a claim to the Todd lands and stopped paying the taxes. She returned the unpaid notices to the local tax collector, Kenneth W. Ernst, father-in-law of defendant, Warren E. Kriner, and father of defendants, Linda R. Kriner, Edward L. Ernst and William K. Ernst. In 1976, Kenneth W. Ernst began to pay the taxes on the real estate and to make use of the land. Later, in 1981, Defendants executed a series of quitclaim deeds between themselves and straw men in an apparent attempt to develop a claim to the Todd lands.

The land in question consists of 7.816 acres resulting from an overlap of Plaintiffs' western boundary and Defendants' eastern boundary. Surveys conducted by the parties dispute the location of this boundary known as the McFarland Warrant line. Plaintiffs point to an unrecorded survey by Ira Lake dated March 29, 1959 and a survey by Timothy Witter dated December 1, 1994 as correct representations of the McFarland Warrant line. Defendants point to a survey of their land by John R. Kissinger dated March 17, 1987 and a survey of the land of Oscar Lowman by Thomas Englerth as marking the correct location of the McFarland Warrant line. Plaintiffs included drafts of the Mary McFarland warrant surveyed April 24, 1794 and August 25, 1847 which both show the western boundary between the Mary McFarland and Richard Todd warrants.

Plaintiffs initiated this action for ejectment asserting that they have good title to the land in question as evidenced in their chain of title and based upon the Lake and Witter surveys. Plaintiffs claim that Defendants have no title to the land because there is no record of a conveyance from any Todd heir to Defendants. Therefore, Plaintiffs assert that Defendants are trespassers who ousted Plaintiffs from their rightful possession of the land making an action in ejectment appropriate.

Defendants counter by claiming that they have title based on naked possession or color of title giving them standing to challenge Plaintiffs' ejectment. Defendants argue that it is Plaintiffs who cannot prove title to the disputed land and until superior title can be shown Plaintiffs have no right to ejectment.

Procedural History

Plaintiffs initiated this ejectment action on June 14, 1996. Defendants responded with preliminary objections on June 23, 1997. After stipulations by the parties, Plaintiffs filed an amended complaint on December 21, 1999 to which Defendants again filed preliminary objections on February 7, 2000 and February 22, 2000.^[2] Of the four preliminary objections raised by Defendants, two were withdrawn at Oral

Argument, and this Court denied the remaining two by Opinion and Order of Court dated May 24, 2000. Defendants filed Answer, New Matter, and Counterclaim to Plaintiffs' Amended Complaint on July 14, 2000, October 5, 2000 and November 21, 2000.[3] Plaintiffs submitted Reply to New Matter and Answer to Counterclaim to each defense counsel on November 15, 2000 and November 28, 2000.

After lengthy discovery proceedings, Plaintiffs filed a Motion for Summary Judgment on February 6, 2003 as directed by Court Order. Defendants answered Plaintiffs' motion, but, because Plaintiffs never filed a brief on the motion, it was not scheduled for oral argument. Instead, Defendants filed a Praecipe to list the case for trial during the March 2004 trial term. Plaintiffs filed a Motion in Limine on February 11, 2004 seeking this Court's ruling on three evidentiary issues and four legal issues raised by Defendants. Defendants' Brief in Opposition to Plaintiffs' Motion in Limine, filed March 24, 2004, suggested a stipulation to each of the evidentiary issues and to two of the four legal issues. The remaining two legal issues go to whether Defendants have standing to continue this case under the doctrines of Naked Possession or Color of Title. On April 1, 2004 argument was held on the issue of standing. From argument, it was determined that the parties had not disposed of the non-standing related issues by stipulation. Additionally, this Court determined that neither party provided sufficient facts to support their positions on the issue of standing. An Order followed on June 9, 2004 in which this Court required that any stipulations of the parties would be filed within 30 days and that a hearing would be held on August 2, 2004 to allow counsel to present testimony under oath on unresolved issues. At the conclusion of the hearing, Plaintiffs requested that the Court view the land in question and a time was scheduled for a view to occur on October 4, 2004. Counsel withdrew the request for a view before its scheduled occurrence, and the matter is now ripe for decision.

Discussion

Introduction

Before beginning the discussion as to standing, it is important to first note that the parties stipulate that Defendants have no claim to the land by adverse possession. Despite Defendants' claim that they have been in possession of the disputed land since 1976, the parties agree that no claim to unenclosed woodland by adverse possession can be supported by the facts in this case. This Court adopted the argument of the parties by Order of Court dated July 8, 2002 and Defendants have no present or future claim of title to the Richard Todd warrant by adverse possession. Additionally, although it is true that Mr. Glazer filed a statement of claim by adverse possession to the Richard Todd warrant on June 16, 1975, his claim did not vest in him any title or right to convey said land. In fact, this Court finds that no conveyance of the Richard Todd warrant has taken place since warranted on March 18, 1794.

Second, Defendants filed demurrers as part of their Preliminary Objections dated February 7, 2000 and February 22, 2000. Defendants' demurrers asserted that Plaintiffs' cause of action should be one to Quiet Title rather than Ejectment. This Court denied Defendants' demurrers finding Plaintiffs' ejectment action to be the appropriate action in this case. A more complete explanation of the Court's reasoning follows under the Ejectment subsection to this discussion.

Third, this Court required Plaintiffs by Order of Court dated January 24, 2003 to file a Motion for Summary Judgment. Plaintiffs' motion and Defendants' answer contest whether no genuine issue of any material fact exists as to a necessary element of the cause of action or defense particularly as regards Plaintiffs' ability to prove paramount title. As indicated in the Procedural History above, events to date have precluded a ruling on this motion. This Court now finds that in light of its decision regarding this Motion in Limine, the matter regarding Plaintiffs' Motion for Summary Judgment is also ripe for decision.

Lastly, the parties' briefs reference Ladner on Conveyancing in Pennsylvania[4] when discussing naked possession and color of title. The explanations provided in Ladner are helpful to a clear understanding of each doctrine. Therefore, this Court provides a full quote of the relevant sections (footnotes omitted) prior to its discussion of the doctrines of naked possession and color of title.

Ejectment

"Ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it, against a defendant who has actual possession." Siskos v. Britz, 567 Pa. 689, 790 A.2d 1000, 1006 (2002), citing Soffer v. Beech, 487 Pa. 255 (1979). The plaintiff in ejectment has the burden of establishing a right to immediate possession. Hallman v. Turns, 482 A.2d 1284, 1287 (Pa. Super. 1984), citing Harbor Marine Co. v. Nolan, 366 A.2d 936, 939 (Pa. Super. 1976). This burden is satisfied when the plaintiff proves a prima facie title. Id. The plaintiff establishes prima facie title when the evidence is sufficient to identify the land in dispute. Id. at 1288. A preponderance of the evidence is the standard of proof in an ejectment action. Id. "[A]n ejectment action seeks to determine the immediate rights between plaintiff and defendant." Siskos v. Britz, 790 A.2d at 1006, citing Burnett v. Mueller, 48 Pa. D.&C.2d 165,

171-72 (1969); 22 Standard Pennsylvania Practice 2d § 120:2.

This case does not require the Court to determine the absolute accuracy of Plaintiffs' evidence, the exact location of the boundary line, or the true owner of the disputed property. This Court only need determine the immediate rights between the parties. Here, we have already determined that ejectment is the appropriate action by Plaintiffs because they have a prima facie title based on a preponderance of the evidence. That is, this Court accepts that the greater weight of the evidence could persuade a fair and impartial person to side with Plaintiffs. For example, Plaintiffs have put forth evidence sufficient to adduce the following:

1. Plaintiffs are the executors of the estate of their mother, Centha Brant;
2. Centha Brant died seized of the property that contains the disputed boundary line;
3. Plaintiffs' family obtained the property by deed dated November 25, 1922;
4. Deeds in Plaintiffs' chain of title adequately describe the land;
5. Surveys exist that depict Plaintiffs' version of the disputed boundary; and
6. Plaintiffs are out of possession.

Therefore, Plaintiffs have the immediate right to proceed with an action in ejectment. All that remains is to determine whether the Defendants have a legal basis to defend under either of the doctrines asserted.

Naked Possession

Ladner on Conveyancing in Pennsylvania § 2.02. Naked Possession.

Of course, a title which is absolutely bad is no title at all. The lowest and weakest form of title is the mere naked possession or actual occupation of real property without any right or pretense of right to hold and continue possession. This, it might be thought, is really no title. Yet the mere possession without right is something more than neither possession nor right, for, as will be shown later, continuance of such possession adversely to the owner may ultimately ripen into an absolutely good title. And as indicated above, possession alone, though the lowest type of title, is good as against anyone who has not a better title. So, if A, without a shadow of right, occupies a piece of land, and B, who also has no right, nor possession, seeks to eject him, he cannot succeed; for not only is A's title better than B's (because of A's possession), but B can neither benefit from nor argue A's lack of right. The law is settled that one seeking to eject another must rely on the strength of his own title. He cannot succeed on the mere weakness of his adversary's title. Naked possession alone thus is of some value as evidence of title.

"In Shumway v. Phillips, 10 Harris 151, the actual possession of land was held sufficient to protect the defendant in error against all but the owner of the legal title." Fisher v. Philadelphia, 75 Pa. 392, 397 (1874). "Possession then is title, and the one having such title can be ousted only by him who shows superior to it." Id. In an action in ejectment, the plaintiff must recover on the strength of his own title and not on the weakness of the defendant's title. Artz v. Meister, 278 Pa. 583, 586 (1924), citing Adams v. Johnson, 227 Pa. 454 (1910).

Defendants rely on these well-established legal principles to carry their assertion that they have standing to defend against Plaintiffs' ejectment action. Defendants argue that although naked possession provides only a scintilla of title it is nonetheless sufficient until Plaintiffs show better title. This would be true if Defendants' naked possession bestowed upon them the right to ownership of the property. However, in this case, Defendants' possession fails to vest in them any title whatsoever. Despite possession, Defendants' lack of title gives them no rights regarding the subject property; therefore, no standing to defend against Plaintiffs' ejectment action where Plaintiffs have shown a right through title.

Possession of real property has no precise definition; instead, possession is determined by the facts of each case, and to a large extent upon the character of the land in question. Moore v. Duran, 687 A.2d 822, 827 (Pa. Super. 1996). Actual possession means dominion over the land. Id. One establishes actual possession of undeveloped woodland by either erecting a residence or enclosing and cultivating the land. Bride v. Robwood Lodge, 713 A.2d 109, 112 (Pa. Super. 1998), citing Niles v. Fall Creek Hunting Club, Inc., 545 A.2d 926, 930 (Pa. Super. 1988). Claims based on adverse possession require a plaintiff's actual possession as a jurisdictional prerequisite. Id. at 111-112.

Both Moore and Bride arose from actions to quiet title in which the courts had to determine

whether plaintiffs' claims of adverse possession resulted from their actual possession. In Bride, the land in question was undeveloped woodland. Bride could only establish title by adverse possession if he had erected a residence on the land or cultivated an enclosed portion. Bride presented evidence that he used the land for timber, hunting, and berry picking. He also claimed to have planted saplings on the disputed land. The court found that since Bride never cultivated an enclosed portion nor lived on the land, he did not obtain title by adverse possession. Therefore, he did not possess the land in such a way that would allow an action to quiet title.

In the case at bar, Defendants claim to have used the land in question since 1976 for essentially the same purposes as the plaintiff in Bride. They hunt, pick berries and mushrooms, remove timber, hike, picnic, and have even cut a road through the land for ease of ingress and egress. However, like the plaintiff in Bride, nothing Defendants have done establishes actual possession, which may ripen into good title by adverse possession. So, where Ladner suggests mere naked possession is something more than neither possession nor right, Defendants' naked possession is not. This is true because Defendants' possession does not grant them an ownership right based on adverse possession.

Defendants' naked possession is not such possession as will grant them the right to prosecute an action to quiet title. Pa.R.C.P. 1061(b)(1) states that '(b) [t]he action [quiet title] may be brought (1) to compel an adverse party to commence an action of ejectment.' "Taking timber from unenclosed woodland, and even constructing roads to facilitate its removal, does not constitute actual possession." Seven Springs Farm, Inc. v. King, 344 A.2d 641, 645 (Pa. Super. 1975), citing Henry v. Huff, 143 Pa. 548, 22 A. 1046 (1891). "[I]t is well settled that occasional entries on uninclosed woodland will not give title." Henry v. Huff at 1047, citing Burke v. Hammond, 76 Pa. St. 172.

In Seven Springs Farm, Inc., plaintiff, Seven Springs, alleged that they were in possession of the disputed land either by conveyance or by adverse possession. Defendant, on appeal, alleged that plaintiff failed to prove actual possession; thereby, denying them relief from an action to quiet title. Plaintiff indicated that the land was used as a source of timber and for recreational purposes such as hunting and fishing. Despite evidence of such continuous use over many years, the court found for defendants.

Bride and Seven Springs Farm, Inc. clearly define what circumstances do or do not establish possession of unenclosed woodland in actions involving adverse possession and quiet title. As stated above, the parties in this case stipulated that the circumstances preclude any claim of adverse possession on the part of Defendants. This Court goes further by finding that the circumstances surrounding Defendants' possession bar an action on their part to quiet title. What right, then, does Defendants' naked possession bestow?

This Court realizes that this case involves neither adverse possession nor quiet title. What this case does involve is title, a right to ownership. If this Court cannot find under the circumstances that Defendants' naked possession bestows upon them any right to ownership such that they may claim by adverse possession or prosecute an action to quiet title, how can it find any right to defend a legitimate ejectment action? In short, it cannot. This is because Defendants' possession, naked or otherwise, is merely that of a trespasser. A trespasser's possession comes with no rights. Henry, supra.

Defendants' naked possession will not give them adverse possession, whereas, even if they were out of possession, they could not prosecute an ejectment action against any possessor. Additionally, they may not, being in possession, prosecute an action to quiet title, thereby, compelling Plaintiffs to initiate an ejectment action. Yet, they argue their mere naked possession gives them the right to defend an action that they can neither bring themselves nor compel of others. Defendants, with this argument, are practicing sophistry.

As previously stated, this Court does not need to determine the rightful owner of the disputed property. However, if it did, it could only choose between Plaintiffs or the Richard Todd heirs because the facts make it clear that only they, and not Defendants, have any legitimate claim. Therefore, this Court concludes that Defendants have no title resulting from naked possession such that they have standing to defend against Plaintiffs' ejectment action. All that Defendants' possession provides is Plaintiffs' right to exercise such an action.

Color of Title

Ladner on Conveyancing in Pennsylvania § 2.03. Color of Title.

Color of title is the appearance of title in one who, in good faith, believes he has title but actually does not. It has been said to differ from mere naked possession only in the state of mind of the holder. While this is true in the sense that neither has actual title, and the difference is that one knows it and the other does not, there are at least two differences in

result. As suggested above, continuance of mere possession adversely to the owner may ripen into an absolutely good title. This is so regardless of whether such possession is under color of title or without a shadow of right. In the former case, however, the good title ultimately acquired will be co-extensive with the boundaries designated in the evidence of apparent title, even though only a part of the tract is actually occupied, whereas the ultimate good title based upon possession only, without color to title, will include only so much of the property as the possessor actually occupied. Consequently possession under color of title is slightly better or stronger than possession alone. It follows that one having actual possession of only a part of a tract to which he has color to title (as, for example, under a deed from the former owner which, unrealized by the grantee, is void), can eject one who, having no right or color of title, occupies another part of the tract.

Defendants in their brief assert that, "And in Green v. Kellum, 11 Harris 254, it was ruled that one who enters and claims lands as his own, improves it and maintains the possession, must be presumed to have entered by color of title, and must be so treated until a superior right is shown against him." Fisher, 75 Pa. at 397. Again, Defendants point to a well-established legal principle to assert standing. But, this Court finds that the notion of color of title requires more explanation than that provided by Defendants from Fisher. "An entry is by color of title when it is made under a bona fide and not pretended-to claim to a title existing in another. In other words, the occupier of land under 'color of title' differs from an avowed squatter on land only in his state of mind." Dice v. Reese, 342 Pa. 379, 21 A.2d 89, 91 (1941), citing Chief Justice Gibson in McCall v. Neely, 3 Watts 69, 72 (Pa. 1834). "'Color of title' is merely the appearance of title without its reality. It saves its possessor only from the imputation of being a naked trespasser." Id. In Dice, Mrs. Lyme attempted to convey a deed to her husband, Mr. Lyme. Because he did not join in the deed, it was void. Mr. Lyme continued to remain on the property after his wife's death and eventually conveyed it to another who conveyed to defendant. After Mr. Lyme's death, his daughter, Mrs. Dice brought an ejectment action against defendant. Defendant claimed that the void deed gave Mr. Lyme color of title. The Court found otherwise stating that even if Mr. Dice believed he owned the property, 'color of title' gave him no ownership rights.

Plaintiffs, in this case, suggest that "color of title" may be invalid given the Supreme Court's dismissal of the notion in Dice. Even if the doctrine lives on today, it is not supportive of Defendants' cause. First, Defendants' claim does not arise from an invalid instrument believed to be valid. "Where an entry is made under an invalid deed or other written instrument, which the trespasser believes is valid, he is deemed to have 'color of title.'" Beck v. Beck, 648 A.2d 341 (Pa. Super. 1994) (appellee's claim based on invalid warrant for land already allocated by Commonwealth). Here, there is no warrant issued by the Commonwealth or evidence of a conveyance from either the Richard Todd heirs, Plaintiffs, or Glazers that purports to contain the land in question, and after having fallen into the hands of Defendants, is found to be invalid. Such an instrument, if it existed, could be evidence of Defendants' bona fide belief in another's ownership. Or, as suggested in Dice, it may not. In any event, no such instrument exists. Therefore, Defendants' claim can only be said to stem from a pretended-to belief in ownership of the land in question in another.

Second, Defendants' good faith belief in ownership cannot be evidenced from their payment of taxes since 1976. Defendants would have this Court believe that Mrs. Glazer's act of delivering the unpaid tax bills and her words in conjunction with that act somehow conveyed an interest in the land to Kenneth W. Ernst. If such were the case, the post of tax collector would be the most sought-after employment in the Commonwealth. This Court cannot accept that the local tax collector would have such a sincere belief no matter what transpired between him and Mrs. Glazer. It stands to reason that the payment of taxes along with all the other actions Defendants took in relation to the land was done in an effort to establish an ownership right rather than from a belief in such a right. This Court's reasoning is clearly supported from Defendant, William K. Ernst's, testimony under direct examination.

By Mr. Macaluso:

Q. Were you present with the consultation with Forest Myers the attorney?

A. Yeah.

Q. Whose idea was it to go see an attorney?

A. Ours. Joyce and I go to them.

Q. And whose idea was it to post the property?

A. Forest Myers - well, he told us we had to post it.

Q. Whose idea was it to blaze the trees?

A. Ours.[5]

By Mr. Macaluso:

Q. I have one final question. I want to see how I can word it that won't invoke an objection. In your mind, what was the significance of the actions you took after meeting with the attorney? In other words, the posting and the blazing of the trees and the advertising in the newspapers and the quitclaim deeds, the things that your wife testified to. In your mind, did that have any significance?

A. I don't understand what -

Q. Well, why did you do all those things? Maybe I'll ask, Why [sic] did you blaze the trees, post the property, and put ads in the paper?

A. Hoping we could own it some day.[6]

Clearly, from this testimony it is evident that Defendants did not have a good faith belief that they owned the land. Additionally, they could not have believed that by simply paying the taxes they would acquire an ownership interest. Otherwise, they would not have consulted an attorney to discover what other steps were necessary to secure their claim. Regardless of their belief, the law is clear that "The mere payment of taxes upon land by a man in possession of it will not establish a right by prescription, or any other right, if he appears to have no title in it at all." Jenkins v. McMichael, 21 Pa. Super. 161, 1902 WL 3860 at 2 (1902). As the law is clear and the evidence is to the contrary, this Court cannot presume that Defendants' entry onto the land, payment of taxes, or subsequent improvements were done under color of title.

Conclusion

Where, as here, there are only two possible parties in the entire world who could be the true owners of the land in dispute, and Defendants are not one of them, no public policy interest can be served by allowing Defendants to stand in the way of the true owners' rights to resolve their dispute or accept the status quo. Nor can any interest be served by allowing Defendants, whose possession affords them no ownership, to assert the rights of the Richard Todd heirs if, in fact, any exist. Any such action by this Court may set a dangerous precedent; whereby, indiscriminate trespassers may remain in possession while unsuspecting property owners are forced to seek ejectment actions.

Because Defendants' naked possession is not such possession as affords them an ownership interest in the disputed land, and because the evidence indicates that Defendants did not enter the disputed land under color of title, this Court finds that Defendants do not have standing to defend against Plaintiffs' ejectment action. Therefore, this Court finds that without standing on the part of Defendants, no genuine issue of any material fact exists as to a necessary element of the cause of action or defense. Plaintiffs' Motion for Summary Judgment is granted.

ORDER OF COURT

And now this 17th day of November, 2004, after review of the pleadings and briefs filed in this case and the taking of testimony, it is hereby ordered that Plaintiffs' Motion for Summary Judgment is granted.

[1] The facts are derived from documents submitted to the court including the pleadings and exhibits of both the Plaintiffs and Defendants.

[2] At this time, Tyrone G. Johnson, Esquire represents Defendants, William K. Ernst and Joyce E. Ernst. Philip Levine, Esquire, represents Esther I. Ernst, Linda Kriner and Theresa R. Ernst. Edward L. Ernst is deceased and Teresa R. Ernst is the sole owner of his interest in this matter. As of February 22, 2002, no attorney has entered an appearance or filed a pleading on behalf of Warren E. Kriner. All Defendants represented have filed Preliminary Objections.

[3] Joseph A. Macaluso, Esquire, now represents defendant Warren E. Kriner. Philip Levine, Esquire represents, Ronald Ernst and Doris Hunsberger, Executors of the Estate of Esther I. Ernst, Linda R. Kriner and Theresa R. Ernst. Tyrone G. Johnson continues to represent William K. Ernst and Joyce E. Ernst.

[4] Ladner on Conveyancing in Pennsylvania vol. 1, 2(John Makdisi et al. eds., 4th ed., Geo. Bisesel Co., 1979)

[5] Hrg. Tr. Excpt. 9:1-9 (Aug. 2, 2004).

[6] Hrg. Tr. Excpt. 9:25-10:11 (Aug. 2, 2004).