

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

JOE D. BROWN, in his Capacity as Successor Trustee of the GEORGE E. HEARD
REVOCABLE TRUST, Dated February 24, 2000,

Respondent,

v.

DOUGLAS LEE BARNES and KYLE BARNES,

Appellants.

DOCKET NUMBER WD84279

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 7, 2021

APPEAL FROM

The Circuit Court of Sullivan County, Missouri
The Honorable Terry A. Tschannen, Judge

JUDGES

Special Division: Pfeiffer, P.J., Ahuja, J., and Harris, Sp. J.

CONCURRING.

ATTORNEYS

Joshua P. Fay, Macon, MO, Attorney for Respondent.

Trentis E. Miller, Chillicothe, MO, Attorney for Appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JOE D. BROWN, in his Capacity as Successor Trustee of the GEORGE E. HEARD
REVOCABLE TRUST, Dated February 24, 2000, Respondent,**

v.

DOUGLAS LEE BARNES and KYLE BARNES, Appellants.

WD84279

Sullivan County

Before Special Division Judges: Mark D. Pfeiffer, Presiding Judge, Alok Ahuja, Judge,
and Jeff Harris, Special Judge

Mr. Douglas Barnes and Mrs. Kyle Barnes (the “Barneses”) appeal from the judgment entered by the Circuit Court of Sullivan County, Missouri (“trial court”), awarding Mr. Joe D. Brown, in his capacity as Successor Trustee (“Trustee”) of the George E. Heard Revocable Trust (“Trust”), possession of certain real property (the “Property”) on his Petition for Unlawful Detainer. The Barneses assert four points on appeal. They contend that the trial court erred in entering summary judgment because the Trustee failed to prove that the Trust was lawfully entitled to immediate possession of the Property, and the Barneses properly interjected issues with regard to their right of possession; the Trustee failed to prove that the Trust and the Barneses were in a landlord-tenant relationship and failed to prove that the Barneses were both served with demand for possession in accordance with section 534.050, RSMo; the Trustee failed to prove that the Trust properly terminated the landlord-tenant relationship with both of the Barneses in accordance with section 441.060, RSMo; and the Trustee’s claim for unlawful detainer is barred by the statute of limitations in section 534.300, RSMo.

AFFIRMED.

Special Division holds:

1. There was no written lease or rental agreement between the Trust and the Barneses regarding leasing or renting the Property; however, there was undisputedly an oral agreement that permitted the Barneses to occupy the Property in exchange for performing maintenance and upkeep on the Property. The record reflects that the Trust was the record owner of the Property, and the Barneses occupied the Property with the consent of the Trust; therefore, the Trust and the Barneses had a landlord-tenant relationship. The Trust withdrew its consent to the Barneses’ tenancy when on April 19, 2019, the Trust’s attorney sent to the Barneses’ attorney on behalf of the Trust a letter providing notice that the Barneses must vacate and surrender all real property owned by the Trust within thirty-one days from the date of the letter or on or before May 20, 2019. As of May 20, 2019, the landlord-tenant relationship terminated, bringing the Barneses within the holdover tenant class of section 534.030.1, RSMo.

2. Under section 441.060.3, RSMo, the parties' oral agreement created a tenancy from month to month, subject to one month's notice of termination. The Trust complied with the statute. The Barneses' attorney received a notice-to-vacate letter on April 19, 2019, and the Barneses concede that this letter was forwarded and received by Mrs. Barnes on April 22, 2019.

3. Sections 534.200 and 534.210, RSMo, prohibit a defendant from attacking the validity of a plaintiff's title, equitable or otherwise, whether the attack is by affirmative defense, counterclaim, or otherwise. The central issue in an unlawful detainer case is possession, not title. The general warranty deeds to the Trust evidence the Trust's ownership of the Property and its immediate right to possession, a right the Trustee is expressly permitted to enforce in an unlawful detainer action. The Barneses' claim that they were entitled to possession of the Property because Mr. Heard promised to gift, or orally did gift, them the Property due to the labor and funds they had expended is an assertion of a superior claim of title and a challenge to the Trust's title, which is not cognizable in an unlawful detainer action.

4. Section 534.300, RSMo, bars an unlawful detainer action against a person who has continuously occupied premises for three years. However, a landlord-tenant relationship makes section 534.300 inapplicable. The limitations clock does not run during a tenancy because such possession is not adverse to the landowner. The three-year statute of limitations was not triggered until the Barneses refused to vacate and surrender the Property on May 20, 2019. The Trust filed suit two days later on May 22, 2019, well within the three-year statute of limitations.

5. The trial court did not err in granting summary judgment because there were no genuine issues of material fact.

Opinion by: Mark D. Pfeiffer, Presiding Judge

December 7, 2021

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