O'Keeffe v. Snyder
Supreme Court of New Jersey
416 A.2d 862 (1980)

1 Pollock, J.

2 This is an appeal from an order of the Appellate Division granting summary judgment to plaintiff, Georgia O'Keeffe, against defendant, Barry Snyder, d/b/a Princeton Gallery of Fine Art, for replevin of three small pictures painted by O'Keeffe. O'Keeffe v. Snyder, 170 N.J. Super. 75 (1979). In her complaint, filed in March, 1976, O'Keeffe alleged she was the owner of the paintings and that they were stolen from a New York art gallery in 1946. Snyder asserted he was a purchaser for value of the paintings, he had title by adverse possession, and O'Keeffe's action was barred by the expiration of the six-year period of limitations provided by N.J.S.A. 2A:14-1 pertaining to an action in replevin. Snyder impleaded third party defendant, Ulrich A. Frank, from whom Snyder purchased the paintings in 1975 for $ 35,000.

3 The trial court granted summary judgment for Snyder on the ground that O'Keeffe's action was barred because it was not commenced within six years of the alleged theft. The Appellate Division reversed and entered judgment for O'Keeffe. O'Keeffe, supra, 170 N.J. Super. at 92. A majority of that court concluded that the paintings were stolen, the defenses of expiration of the statute of limitations and title by adverse possession were identical, and Snyder had not proved the elements of adverse possession. Consequently, the majority ruled that O'Keeffe could still enforce her right to possession of the paintings.

4 The dissenting judge stated that the appropriate measurement of the period of limitation was not by analogy to adverse possession, but by application of the "discovery rule" pertaining to some statutes of limitation. He concluded that the six-year period of limitations commenced when O'Keeffe knew or should have known who unlawfully possessed the paintings, and that the matter should be remanded to determine if and when that event had occurred. Id. at 96-97.

5 We granted certification to consider not only the issues raised in the dissenting opinion, but all other issues. 81 N.J. 406 (1979). We reverse and remand the matter for a plenary hearing in accordance with this opinion.

6 The record, limited to pleadings, affidavits, answers to interrogatories, and depositions, is fraught with factual conflict. Apart from the creation of the paintings by O'Keeffe and their discovery in Snyder's gallery in 1976, the parties agree on little else.

7 O'Keeffe contended the paintings were stolen in 1946 from a gallery, An American Place. The gallery was operated by her late husband, the famous photographer Alfred Stieglitz.

8 An American Place was a cooperative undertaking of O'Keeffe and some other American artists identified by her as Marin, Hardin, Dove, Andema, and Stevens. In 1946, Stieglitz arranged an exhibit which included an O'Keeffe painting, identified as Cliffs. According to O'Keeffe, one day in March, 1946, she and Stieglitz discovered Cliffs was missing from the wall of the exhibit. O'Keeffe estimates the value of the painting at the time of the alleged theft to have been about $ 150.

9 About two weeks later, O'Keeffe noticed that two other paintings, Seaweed and Fragments, were missing from a storage room at An American Place. She did not tell anyone, even Stieglitz, about the missing paintings, since she did not want to upset him.

10 Before the date when O'Keeffe discovered the disappearance of Seaweed, she had already sold it (apparently for a string of amber beads) to a Mrs. Weiner, now deceased. Following the grant of the motion for summary judgment by the trial court in favor of Snyder, O'Keeffe submitted a release from the legatees of Mrs. Weiner purportedly assigning to O'Keeffe their interest in the sale.

11 O'Keeffe testified on depositions that at about the same time as the disappearance of her paintings, 12 or 13 miniature paintings by Marin also were stolen from An American Place. According to O'Keeffe, a man named Estrick took the Marin paintings and "maybe a few other things." Estrick distributed the Marin paintings to members of the theater world who, when confronted by Stieglitz, returned them. However, neither Stieglitz nor O'Keeffe confronted Estrick with the loss of any of the O'Keeffe paintings.

12 There was no evidence of a break and entry at An American Place on the dates when O'Keeffe discovered the disappearance of her paintings. Neither Stieglitz nor O'Keeffe reported them missing to the New York Police Department or any other law enforcement agency. Apparently the paintings were uninsured, and O'Keeffe did not seek reimbursement from an insurance company. Similarly, neither O'Keeffe nor stieglitz advertised the loss of the paintings in Art News or any other publication. Nonetheless, they discussed it with associates in the art world and later O'Keeffe mentioned the loss to the director of the Art Institute of Chicago, but she did not ask him to do anything because "it wouldn't have been my way." O'Keeffe does not contend that Frank or Snyder had actual knowledge of the alleged theft.

13 Stieglitz died in the summer of 1946, and O'Keeffe explains she did not pursue her efforts to locate the paintings because she was settling his estate. In 1947, she retained the services of Doris Bry to help settle the estate. Bry urged O'Keeffe to report the loss of the paintings, but O'Keeffe declined because "they never got anything back by reporting it." Finally, in 1972, O'Keeffe authorized Bry to report the theft to the Art Dealers Association of America, Inc., which maintains for its members a registry of stolen paintings. The record does not indicate whether such a registry existed at the time the paintings disappeared.

14 In September, 1975, O'Keeffe learned that the paintings were in the Andrew Crispo Gallery in New York on consignment from Bernard Danenberg Galleries. On February 11, 1976, O'Keeffe discovered that Ulrich A. Frank had sold the paintings to Barry Snyder, d/b/a Princeton Gallery of Fine Art. She demanded their return and, following Snyder's refusal, instituted this action for replevin.

15 Frank traces his possession of the paintings to his father, Dr. Frank, who died in 1968. He claims there is a family relationship by marriage between his family and the Stieglitz family, a contention that O'Keeffe disputes. Frank does not know how his father acquired the paintings, but he recalls seeing them in his father's apartment in New Hampshire as early as 1941-1943, a period that precedes the alleged theft. Consequently, Frank's factual contentions are inconsistent with O'Keeffe's allegation of theft. Until 1965, Dr. Frank occasionally lent the paintings to Ulrich

Frank. In 1965, Dr. and Mrs. Frank formally gave the paintings to Ulrich Frank, who kept them in his residences in Yardley, Pennsylvania and Princeton, New Jersey. In 1968, he exhibited anonymously Cliffs and Fragments in a one day art show in the Jewish Community Center in Trenton. All of these events precede O'Keeffe's listing of the paintings as stolen with the Art Dealers Association of America, Inc. in 1972.

16 Frank claims continuous possession of the paintings through his father for over thirty years and admits selling the paintings to Snyder. Snyder and Frank do not trace their provenance, or history of possession of the paintings, back to O'Keeffe.

17 As indicated, Snyder moved for summary judgment on the theory that O'Keeffe's action was barred by the statute of limitations and title had vested in Frank by adverse possession. For purposes of his motion, Snyder conceded that the paintings had been stolen. On her cross motion, O'Keeffe urged that the paintings were stolen, the statute of limitations had not run, and title to the paintings remained in her. …

19 The Appellate Division accepted O'Keeffe's contention that the paintings had been stolen. However, in his deposition, Ulrich Frank traces possession of the paintings to his father in the early 1940's, a date that precedes the alleged theft by several years. The factual dispute about the loss of the paintings by O'Keeffe and their acquisition by Frank, as well as the other subsequently described factual issues, warrant a remand for a plenary hearing. …

21 Without purporting to limit the scope of the trial, other factual issues include whether (1) O'Keeffe acquired title to Seaweed by obtaining releases from the legatees of Mrs. Weiner; (2) the paintings were not stolen but sold, lent, consigned, or given by Stieglitz to Dr. Frank or someone else without O'Keeffe's knowledge before he died; and (3) there was any business or family relationship between Stieglitz and Dr. Frank so that the original possession of the paintings by the Frank family may have been under claim of right.

22 On the limited record before us, we cannot determine now who has title to the paintings. That determination will depend on the evidence adduced at trial. Nonetheless, we believe it may aid the trial court and the parties to resolve questions of law that may become relevant at trial.

23 Our decision begins with the principle that, generally speaking, if the paintings were stolen, the thief acquired no title and could not transfer good title to others regardless of their good faith and ignorance of the theft. Joseph v. Lesnevich, 56 N.J. Super. 340, 346 (App.Div.1959); Kutner Buick, Inc. v. Strelecki, 111 N.J. Super. 89, 97 (Ch.Div.1970); see Ashton v. Allen, 70 N.J.L. 117, 119 (Sup.Ct.1903). Proof of theft would advance O'Keeffe's right to possession of the paintings absent other considerations such as expiration of the statute of limitations.

24 Another issue that may become relevant at trial is whether Frank or his father acquired a "voidable title" to the paintings under N.J.S.A. 12A:2-403(1). That section, part of the Uniform Commercial Code (U.C.C.), does not change the basic principle that a mere possessor cannot transfer good title. 2 Anderson, Uniform Commercial Code (2d ed. 1971) § 2-403:6 at 41 (Anderson). Nonetheless, the U.C.C. permits a person with voidable title to transfer good title to a good faith purchaser for value in certain circumstances. N.J.S.A. 12A:2-403(1). If the facts developed at trial merit application of that section, then Frank may have transferred good title to

Snyder, thereby providing a defense to O'Keeffe's action. No party on this appeal has urged factual or legal contentions concerning the applicability of the U.C.C. Consequently, a more complete discussion of the U.C.C. would be premature, particularly in light of our decision to remand the matter for trial.

25 On this appeal, the critical legal question is when O'Keeffe's cause of action accrued. The fulcrum on which the outcome turns is the statute of limitations in N.J.S.A. 2A:14-1, which provides that an action for replevin of goods or chattels must be commenced within six years after the accrual of the cause of action.

26 The trial court found that O'Keeffe's cause of action accrued on the date of the alleged theft, March, 1946, and concluded that her action was barred. The Appellate Division found that an action might have accrued more than six years before the date of suit if possession by the defendant or his predecessors satisfied the elements of adverse possession. As indicated, the Appellate Division concluded that Snyder had not established those elements and that the O'Keeffe action was not barred by the statute of limitations. …

29 The purpose of a statute of limitations is to "stimulate to activity and punish negligence" and "promote repose by giving security and stability to human affairs". Wood v. Carpenter, 101 U.S. 135, 139, 25 L.Ed. 807, 808 (1879); Tevis v. Tevis, 79 N.J. 422, 430-431 (1979); Fernandi v. Strully, 35 N.J. 434, 438 (1961). A statute of limitations achieves those purposes by barring a cause of action after the statutory period. In certain instances, this Court has ruled that the literal language of a statute of limitations should yield to other considerations. Compare, e.g., Velmohos v. Maren Engineering Corp., 83 N.J. 282, 293 (1980) with Galligan v. Westfield Centre Service, Inc., 82 N.J. 188, 192-193 (1980).

30 To avoid harsh results from the mechanical application of the statute, the courts have developed a concept known as the discovery rule. Lopez v. Swyer, 62 N.J. 267, 273-275 (1973); Prosser, The Law of Torts (4 ed. 1971), § 30 at 144-145; 51 Am.Jur.2d, Limitation of Actions, § 146 at 716. The discovery rule provides that, in an appropriate case, a cause of action will not accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action. Burd v. New Jersey Telephone Company, 76 N.J. 284, 291-292 (1978). The rule is essentially a principle of equity, the purpose of which is to mitigate unjust results that otherwise might flow from strict adherence to a rule of law. Lopez, supra, 62 N.J. at 273-274. …

34 [W]e conclude that the discovery rule applies to an action for replevin of a painting under N.J.S.A. 2A:14-1. O'Keeffe's cause of action accrued when she first knew, or reasonably should have known through the exercise of due diligence, of the cause of action, including the identity of the possessor of the paintings. ….

36 In determining whether O'Keeffe is entitled to the benefit of the discovery rule, the trial court should consider, among others, the following issues: (1) whether O'Keeffe used due diligence to recover the paintings at the time of the alleged theft and thereafter; (2) whether at the time of the alleged theft there was an effective method, other than talking to her colleagues, for O'Keeffe to alert the art world; and (3) whether registering paintings with the Art Dealers Association of America, Inc. or any other organization would put a reasonably prudent purchaser of art on

constructive notice that someone other than the possessor was the true owner.

37 The acquisition of title to real and personal property by adverse possession is based on the expiration of a statute of limitations. R. Brown, The Law of Personal Property (3d ed. 1975), § 4.1 at 33 (Brown). Adverse possession does not create title by prescription apart from the statute of limitations. Walsh, Title by Adverse Possession, 17 N.Y.U.L.Q.Rev. 44, 82 (1939) (Walsh); see Developments in the Law -- Statutes of Limitations, 63 Harv.L.Rev. 1177 (1950) (Developments).

38 To establish title by adverse possession to chattels, the rule of law has been that the possession must be hostile, actual, visible, exclusive, and continuous….

41 [T]here is an inherent problem with many kinds of personal property that will raise questions whether their possession has been open, visible, and notorious….

42 For example, if jewelry is stolen from a municipality in one county in New Jersey, it is unlikely that the owner would learn that someone is openly wearing that jewelry in another county or even in the same municipality. Open and visible possession of personal property, such as jewelry, may not be sufficient to put the original owner on actual or constructive notice of the identity of the possessor.

43 The problem is even more acute with works of art. Like many kinds of personal property, works of art are readily moved and easily concealed. O'Keeffe argues that nothing short of public display should be sufficient to alert the true owner and start the statute running. Although there is merit in that contention from the perspective of the original owner, the effect is to impose a heavy burden on the purchasers of paintings who wish to enjoy the paintings in the privacy of their homes. …

45 The problem is serious. According to an affidavit submitted in this matter by the president of the International Foundation for Art Research, there has been an "explosion in art thefts" and there is a "worldwide phenomenon of art theft which has reached epidemic proportions".

46 The limited record before us provides a brief glimpse into the arcane world of sales of art, where paintings worth vast sums of money sometimes are bought without inquiry about their provenance. There does not appear to be a reasonably available method for an owner of art to record the ownership or theft of paintings. Similarly, there are no reasonable means readily available to a purchaser to ascertain the provenance of a painting. It may be time for the art world to establish a means by which a good faith purchaser may reasonably obtain the provenance of a painting. An efficient registry of original works of art might better serve the interests of artists, owners of art, and bona fide purchasers than the law of adverse possession with all of its uncertainties. L. DuBoff, The Deskbook of Art Law at 470-472 (Fed.Pub.Inc.197). Although we cannot mandate the initiation of a registration system, we can develop a rule for the commencement and running of the statute of limitations that is more responsive to the needs of the art world than the doctrine of adverse possession.

47 We are persuaded that the introduction of equitable considerations through the discovery rule provides a more satisfactory response than the doctrine of adverse possession. The discovery rule

shifts the emphasis from the conduct of the possessor to the conduct of the owner. The focus of the inquiry will no longer be whether the possessor has met the tests of adverse possession, but whether the owner has acted with due diligence in pursuing his or her personal property.

48 For example, under the discovery rule, if an artist diligently seeks the recovery of a lost or stolen painting, but cannot find it or discover the identity of the possessor, the statute of limitations will not begin to run. The rule permits an artist who uses reasonable efforts to report, investigate, and recover a painting to preserve the rights of title and possession.

49 Properly interpreted, the discovery rule becomes a vehicle for transporting equitable considerations into the statute of limitations for replevin, N.J.S.A. 2A:14-1. In determining whether the discovery rule should apply, a court should identify, evaluate, and weigh the equitable claims of all parties. Lopez, supra, 62 N.J. at 274. If a chattel is concealed from the true owner, fairness compels tolling the statute during the period of concealment. See Lopez, supra, 62 N.J. at 275 n. 2; Developments, supra, 1220 (1950). That conclusion is consistent with tolling the statute of limitations in a medical malpractice action where the physician is guilty of fraudulent concealment. See Tortorello v. Reinfeld, 6 N.J. 58, 67 (1950); Bauer v. Bowen, 63 N.J. Super. 225 (App.Div.1960).

50 It is consistent also with the law of replevin as it has developed apart from the discovery rule. In an action for replevin, the period of limitations ordinarily will run against the owner of lost or stolen property from the time of the wrongful taking, absent fraud or concealment. Where the chattel is fraudulently concealed, the general rule is that the statute is tolled. 51 Am.Jur.2d, Limitation of Actions, § 124 at 693; 54 C.J.S. Limitations of Actions, § 119 at 23; Annotation, "When statute of limitations commences to run against action to recover, or for conversion of, property stolen or otherwise wrongfully taken," 136 A.L.R. 658, 661-665 (1942); see Dawson, Fraudulent Concealment and Statutes of Limitation, 31 Mich.L.Rev. 875 (1933); Annotation, "What constitutes concealment which will prevent running of statutes of limitations," 173 A.L.R. 576 (1948); Annotation, "When statute of limitations begins to run against action for conversion of property by theft," 79 A.L.R.3d 847, § 3 at 853 (1975); see also Dawson, Estoppel and Statutes of Limitation, 34 Mich.L.Rev. 1, 23-24 (1935).

51 A purchaser from a private party would be well-advised to inquire whether a work of art has been reported as lost or stolen. However, a bona fide purchaser who purchases in the ordinary course of business a painting entrusted to an art dealer should be able to acquire good title against the true owner. Under the U.C.C. entrusting possession of goods to a merchant who deals in that kind of goods gives the merchant the power to transfer all the rights of the entruster to a buyer in the ordinary course of business. N.J.S.A. 12A:2-403(2). In a transaction under that statute, a merchant may vest good title in the buyer as against the original owner. See Anderson, supra, § 2-403:17 et seq. The interplay between the statute of limitations as modified by the discovery rule and the U.C.C. should encourage good faith purchases from legitimate art dealers and discourage trafficking in stolen art without frustrating an artist's ability to recover stolen art works.

52 The discovery rule will fulfill the purposes of a statute of limitations and accord greater protection to the innocent owner of personal property whose goods are lost or stolen. Accordingly, we overrule Redmond v. New Jersey Historical Society, supra, and Joseph v.

Lesnevich, supra, to the extent that they hold that the doctrine of adverse possession applies to chattels.

53 By diligently pursuing their goods, owners may prevent the statute of limitations from running. The meaning of due diligence will vary with the facts of each case, including the nature and value of the personal property. For example, with respect to jewelry of moderate value, it may be sufficient if the owner reports the theft to the police. With respect to art work of greater value, it may be reasonable to expect an owner to do more. In practice, our ruling should contribute to more careful practices concerning the purchase of art.

54 The considerations are different with real estate, and there is no reason to disturb the application of the doctrine of adverse possession to real estate. Real estate is fixed and cannot be moved or concealed. The owner of real property knows or should know where his property is located and reasonably can be expected to be aware of open, notorious, visible, hostile, continuous acts of possession on it.

55 Our ruling not only changes the requirements for acquiring title to personal property after an alleged unlawful taking, but also shifts the burden of proof at trial. Under the doctrine of adverse possession, the burden is on the possessor to prove the elements of adverse possession. Wilomay Holding Co. v. Peninsula Land Co., 36 N.J. Super. 440, 443 (App.Div.1955), certif. den. 19 N.J. 618 (1955). Under the discovery rule, the burden is on the owner as the one seeking the benefit of the rule to establish facts that would justify deferring the beginning of the period of limitations. See Lopez, supra, 62 N.J. at 276.

56 Read literally, the effect of the expiration of the statute of limitations under N.J.S.A. 2A:14-1 is to bar an action such as replevin. The statute does not speak of divesting the original owner of title. By its terms the statute cuts off the remedy, but not the right of title. Nonetheless, the effect of the expiration of the statute of limitations, albeit on the theory of adverse possession, has been not only to bar an action for possession, but also to vest title in the possessor. There is no reason to change that result although the discovery rule has replaced adverse possession. History, reason, and common sense support the conclusion that the expiration of the statute of limitations bars the remedy to recover possession and also vests title in the possessor. …

64 We next consider the effect of transfers of a chattel from one possessor to another during the period of limitation under the discovery rule. Under the discovery rule, the statute of limitations on an action for replevin begins to run when the owner knows or reasonably should know of his cause of action and the identity of the possessor of the chattel. Subsequent transfers of the chattel are part of the continuous dispossession of the chattel from the original owner. The important point is not that there has been a substitution of possessors, but that there has been a continuous dispossession of the former owner. …

69 For the purpose of evaluating the due diligence of an owner, the dispossession of his chattel is a continuum not susceptible to separation into distinct acts. Nonetheless, subsequent transfers of the chattel may affect the degree of difficulty encountered by a diligent owner seeking to recover his goods. To that extent, subsequent transfers and their potential for frustrating diligence are relevant in applying the discovery rule. An owner who diligently seeks his chattel should be entitled to the benefit of the discovery rule although it may have passed through many hands.

Conversely an owner who sleeps on his rights may be denied the benefit of the discovery rule although the chattel may have been possessed by only one person.

70 We reject the alternative of treating subsequent transfers of a chattel as separate acts of conversion that would start the statute of limitations running anew. At common law, apart from the statute of limitations, a subsequent transfer of a converted chattel was considered to be a separate act of conversion. … Adoption of that alternative would tend to undermine the purpose of the statute in quieting titles and protecting against stale claims. Brown, supra, § 4.3 at 38.

71 The majority and better view is to permit tacking, the accumulation of consecutive periods of possession by parties in privity with each other. Lesnevich, supra, 56 N.J. Super. at 357; see also O'Connell v. Chicago Park Dist., 376 Ill. 550, 34 N.E.2d 836 (1941); Brown, supra, § 18-39; Walsh, supra at 84; Comment, 14 Rut.L.Rev. 443, 444-445 (1960). …

82 We reverse the judgment of the Appellate Division in favor of O'Keeffe and remand the matter for trial in accordance with this opinion.

83 [The dissenting opinions by Justice Sullivan and Handler are omitted.]