



POOR LITTLE BUTTERCUP

By W. Christopher Barrier

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Ashley Chester's father died before Ash finished his first year in law school, which meant that he had to drop out and manage the family's properties. That tenure had continuing repercussions. Ashley Chester felt that it did indeed help him spot potential legal problems in his business. On the other hand, the members of his extended family thought of him as their almost lawyer. Which sometimes sent him to see his own genuine counselor J. Noble Portis for less conjectural answers to family inquiries.

Sometimes the problems were genuine. One snowy morning, Chester brought to Portis's office a sack of hickory nuts and a half-rick of white oak firewood, as partial recompense for his occasional requests for free answers to family questions.

Work with the chain gang...

As Portis laid a log on the fire, Chester explained that his niece Buttercup and her husband Gilbert N. Sullivan had lived for years in a cottage on the outskirts of Pike City that Buttercup's mother Nadine had given to them. After getting their children raised, they decide to do some overdue major remodeling. But Substandard Title discovered a problem in the chain of title.

The cottage had been purchased by Buttercup's grandmother Maude and her older sister Vashti as their joint home at a time when both had been widowed. They had no other siblings and several years thereafter, Vashti passed away, leaving no will. Maude continued to live there and the family thought of it as her house, as did she, until she deeded it to Buttercup's mother Nadine.

Close but no cigar...

But, their collective understanding of the laws of descent and distribution was off just a little---Vashti had two children who were somewhat older than Nadine. They had left Pike City decades before in search of bright lights and big cities and had not maintained contact with their country cousins at all, not even by Face Book. But, when Vashti had died, they became half-owners of the cottage, which meant that Maude had only a half interest to deed to Nadine and she to Buttercup.

Ashley remembered from First Year Property class (or maybe a *Daily Record* column) that co-tenants could NOT take against other co-tenants by **adverse possession**, so what to do? Portis threw an Advance Sheet on the fire and allowed as how the facts and the law just might provide a solution, by way of a statutory tweak to the common law for just such situations (although it would require what Portis called “a small lawsuit.”

Facts and steps...

He recited the required facts and steps:

1. No actual possession by the absent cousins;
2. Holding by one co-tenant (Buttercup) pursuant to a deed from an earlier owner;
3. No known addresses for the city cousins;
4. No demand by them for rents, profits and so on;
5. Publication of a notice two times in the newspaper telling the world suit was going to be filed;
6. A 90-day wait, and then commencement of the quiet title action, reciting the facts;
7. Presentation of written proof (by affidavits) of the lack of demand and publication of the notice. (There were actually several different scenarios in the statute, dependant on tax payments and adjacent properties, but Portis stuck with the facts he had.)

An obvious What-If...

Portis anticipated the obvious question: what if the cousins read the notice or otherwise showed up? Well, they could present their claim and Buttercup and Gilbert would just have to deal with them. And they would get dispossessed of the surface rights only---minerals rights just don't get vacated by adverse possession ever.

On the other hand, with a little effort and a few months waiting, Buttercup and Gilbert could clear up their title. “Could be stickier,” said Portis. “Sometimes in cases such as this, property passes through several generations, with no deeds, no probate, just family ‘understandings,’ which, as I said, are frequently wrong! Let’s set this one right.” And throw another log on the fire...

CHRIS BARRIER practices real estate law at Mitchell Williams in Little Rock.