

RENDERED: July 23, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000146-MR

LISA MEYER

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEVEN A. HAYDEN, JUDGE
ACTION NO. 97-CI-00129

DARRELL BENNETT

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, GUIDUGLI AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Lisa Meyer (Meyer) appeals from the order of the Henderson Circuit Court which adopted the Deputy Master Commissioner's report awarding Meyer a 49% interest in the proceeds from the sale of a house and lot that she owned as a joint tenant with the appellee, Darrell Bennett (Bennett). Since the trial court's findings are not clearly erroneous, we affirm.

Prior to the filing of this lawsuit, Meyer and Bennett had been involved in a romantic relationship. While the parties lived together as "husband and wife", they never married.

According to Meyer, she and Bennett "had cohabited a number of years", and had accumulated various jointly owned property, including their residence that is at issue in this case. This

type of "relationship is one from which the common law of Kentucky implies no contractual rights or obligations. Were it otherwise, the courts, in effect, would be reinstating by judicial fiat common law marriage which by expressed public policy is not recognized." Murphy v. Bowen, Ky.App. 756 S.W.2d 149, 150 (1988) (citations omitted). However, the courts have recognized the property rights of cohabitants in property that is either held by the cohabitants as a partnership or which is jointly owned by them.

While Meyer and Bennett were cohabitating, Bennett conveyed to Meyer and himself the real property that is the subject of this dispute in order to establish a joint tenancy in real property. After Meyer and Bennett parted ways, Meyer filed a complaint on February 18, 1997, asking the trial court to make an equitable disposition of the parties' respective property interests.¹ Bennett filed an answer and counterclaim on March 11, 1997.² The trial judge referred the matter to the Deputy Master Commissioner, who conducted a hearing and issued a report on September 19, 1997. Meyer filed exceptions to the Commissioner's recommendations. Following a hearing on October 27, 1997, during which both parties presented arguments concerning the Commissioner's recommended findings, the trial court on November 3, 1997, overruled the exceptions to the

¹ Meyer also alleged fraud by Bennett and claimed damages, but none was awarded.

² Bennett counterclaimed for damages for his labor spent in improving other properties owned by Meyer, but none was awarded.

Commissioner's report. Applying this Court's holding in Glidewell v. Glidewell, Ky.App., 790 S.W.2d 925 (1990), to the instant case, the trial court computed the parties' respective interest by considering the capital contributions made by each party. The trial court determined Meyer's interest in the property to be 49% and Bennett's to be 51%. After the Commissioner's sale of the property was approved by the trial court, Meyer appealed.

Meyer claims that the trial court erroneously applied Glidewell, thereby miscalculating her and Bennett's capital contributions to the property. While the parties and the trial court all rely upon Glidewell, we note that in Glidewell this Court determined that the parties were associated as co-owners for the purpose of carrying on a business for profit; and accordingly, relied upon partnership law in deciding that case.³ Furthermore, while the opinion in Glidewell is unclear, it appears that the 100-acre farm at issue was not held by the parties as joint tenants. Accordingly, the law of joint tenancy was not applicable in Glidewell. Conversely, in the case sub judice, we do not believe the evidence established that the parties were associated to carry on as co-owners a business for profit; however, they did own the property as joint tenants.

Since this action was brought by Meyer to obtain the

³'Partnership' is defined by Kentucky Revised Statutes (KRS) 362.175(1) as follows: "A partnership is an association of two (2) or more persons to carry on as co-owners a business for profit and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership."

court-ordered sale or division of real estate, we believe it is controlled by Kentucky Revised Statutes (KRS) 389A.030. The parties were in agreement that the property could not be divided "without materially impairing the value of any interest therein." KRS 389A.030(3). Thus, the relief available was to "sell[] the property through court and divid[e] up the proceeds according to each party's interest." McKinney v. McKinney, Ky.App., 888 S.W.2d 332, 333 (1994). While the trial court applied partnership law, as this Court had done in Glidewell, we believe the better approach would have been to apply the law relating to partition of a joint tenancy. Regardless, the principles were the same since each party was awarded an interest based on his or her contribution to the real estate. See 20 Am.Jur.2d Cotenancy and Joint Ownership § 71 (1995).

Upon the sale of the property, the parties were entitled to recover their respective interest in the real estate, including their respective contribution through improvements. 41 Am.Jur.2d Improvements § 1-41 (1995). While the evidence presented by the parties as to the various expenditures made by each was rather detailed, the evidence presented by the parties as to the actual value to the real estate of their respective expenditures was scant. The evidence would support findings by the trial court of great variance, and certainly support its finding of a 51%/49% division, whereby we cannot say these findings were clearly erroneous. Kentucky Rules of Civil Procedure 52.01. Thus, whether the law of partnerships or the

equitable principles related to the division of jointly held property are applied, the trial court was correct in assigning each of the parties an interest for their respective contribution to the property. Accordingly, we affirm the order of the Henderson Circuit Court.

GUIDUGLI, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Hon. Zack N. Womack
Henderson, KY

BRIEF FOR APPELLEE:

Hon. Kenneth S. Kasacavage
Henderson, KY