

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000653-MR

JOHNNIE SHARON PATRICK

APPELLANT

v. APPEAL FROM KNOTT CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 73-CI-03330

YVONNE CORNETT; CAROLYN
BRONGER; ROY D. CORNETT; BETTY
FORD; SHERRY HAFFNER; SCOTTY
ROGERS; BEVERLY CAHOE; JERRY
ROGERS; GLORIA FOSTER; PAMELA
ELLISON; PHYLLIS CHILDERS; CHARLES
CHILDERS; AND KIM CHILDERS

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: WINE, JUDGE; BUCKINGHAM AND HENRY,¹ SENIOR JUDGES.

WINE, JUDGE: Johnnie Sharon Patrick (“Patrick”) appeals an order entered by the
Knott Circuit Court in 2006 appointing commissioners to partition some property that

¹ Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

was ordered to be divided pursuant to a judgment entered in 1975, and then again pursuant to an order entered in 1983, neither of which occurred.

Appellees, Charles Childers and Kim Childers (“the Childerses”), do not present any additional arguments or facts as they adopt the arguments of Appellee, Yvonne Cornett (“Yvonne”), in her arguments presented in her brief. For the reasons stated herein, we affirm.

The facts of this case are not generally in dispute. Neil and Maggie Cornett (“Neil”) (“Maggie”) were married and owned the property at issue. When Maggie became ill, the couple’s daughter, Yvonne, began taking care of her. In 1960, Neil retired so he was able to spend more time taking care of Maggie, but Yvonne continued to manage all of the cooking and cleaning for her parents. In return for all her care and sacrifice, Neil conveyed to her all the land upon which the family home sat. In 1971, following Neil’s death, Maggie conveyed to Yvonne the property which she had inherited from Neil, including the mineral rights in that property.

Patrick’s predecessors in interest, Dorothy Everage, Bruce Cornett, Ruth Teeters, and Glenna Short, the children of Neil and Maggie, as well as Orka Everage, husband of Dorothy, filed an action in 1973, after Maggie’s death, to settle Maggie’s and Neil’s estates. As part of this proposed settlement, they requested that the conveyances to Yvonne be set aside and the property be returned to the estate. In 1975, the court entered a judgment finding that Neil and Maggie were of sound mind when they made the land conveyances to Yvonne. In addition, the court held that Yvonne gave sufficient

consideration for the conveyances by paying off the mortgage on the family home, by building a bridge to the home so that her mother could get to and from the car, by installing a new furnace, and by living with, caring for, and financially supporting her parents in the early 1970s. Thus, the trial court found that the two deeds conveying the property to Yvonne were valid, and ordered that commissioners be appointed to make a division of the remaining land.

The court's division of the property, ordered in its 1975 judgment, never occurred. Subsequently, in 1983, Appellees petitioned the court for the appointment of commissioners. The court entered an order on October 3, 1983, appointing commissioners and detailing how the property was to be divided. Again, the division never occurred.

Finally, in 2005, Yvonne once more sought to have the property partitioned in an amended complaint filed October 20, 2005, in which she requested the court again appoint commissioners to carry out the partitioning. On January 10, 2006, the court entered another order appointing commissioners to partition the property pursuant to the 1975 judgment. But since some of the parties in this action were no longer living, the court detailed the new interests of the parties so that the commissioners could effectively distribute the property. The court further articulated in its order that Yvonne holds the mineral rights deeded to her by her mother in July 1971. Patrick filed a motion to void the court's January 10, 2006 order, claiming the court lacked jurisdiction to change the

division of the mineral rights as described in the 1983 order. The trial court denied his motion in an order on February 27, 2006. This appeal followed.

Patrick asserts that the trial court lacked the authority to alter or amend the 1983 order pursuant to CR 59.05. Specifically, Patrick contends that the 2006 order is inconsistent with the 1983 order in that the latter set out that the minerals were to be held jointly, but the former divides them up. CR 59.05 requires that “[a] motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment.” Since Yvonne’s 2006 motion to enforce the judgment was made more than ten days after entry of the prior order, Patrick contends that the trial court lacked jurisdiction to modify the 1983 order.

In response, Yvonne argues CR 59.05 is not applicable because her 2006 motion was not pursuant to that rule. Rather, she states that her most recent motion was simply to enforce the 1975 and 1983 orders, which the trial court retains the jurisdiction to do. In addition, she asserts the trial court’s 2006 order is not inconsistent with the 1975 judgment or 1983 order. We agree.

In the 1983 order, the court states that “the minerals owned by the heirs shall remain undivided” In the 2006 order, the court takes note that, prior to her death, Maggie deeded mineral rights to Yvonne, of which she was entitled, and left the remaining minerals owned by the heirs undivided. However, the 1983 order stating that the minerals owned by the heirs were to remain undivided was issued twelve years after Maggie had conveyed her entire interest in the property to Yvonne through a deed issued

in 1971. Further, two years prior to the 1983 order being entered, Yvonne disclaimed her one-ninth share in all property that would have passed to her from the decedent through intestacy. Thus, she was not an heir when the 1983 order was entered, but a grantee. And since Yvonne received Maggie's entire interest in the land, which was in fee simple at the time of the conveyance, Yvonne obtained the mineral rights too, as they were not excepted from the deed. *See Richards v. Potter*, 124 S.W. 850 (Ky. 1910). As a result, the 1983 order, stating that the mineral rights pass to the heirs by intestate succession remain undivided, did not include the rights previously deeded to Yvonne in 1971.

A court always has jurisdiction to enforce its own orders. Further, the 2006 order is consistent with both the 1975 judgment and the 1983 order. Thus, the trial court had jurisdiction to enter the 2006 order directing the appointment of commissioners and the partition of the property. Therefore, we affirm the decision of the Knott Circuit Court.

ALL CONCUR.

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CORNETT:

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CHILDERS AND KIMBERLEY
CORNETT CHILDERS:

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