

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001217-MR

JARRETT WOOD, JR. AND
CAROLYN WOOD, HIS WIFE

APPELLANTS

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 09-CI-00264

WALTER BRUGH, SR.; NANCY L.
BRUGH, HIS WIFE; AND
ALYCE BRUGH SLONE

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Jarrett and Carolyn Wood, Jr. appeal from the findings of fact, conclusions of law, and judgment of the Johnson Circuit Court dismissing their complaint seeking to be awarded ownership to a parcel of real property

located in Johnson County, Kentucky or, alternatively, to recover the consideration paid for the property. For the following reasons, we affirm.

The parcel of property at the center of this dispute consists of three adjoining lots in the Messer Subdivision in the town of Van Lear in Johnson County, Kentucky. The property was conveyed by Family Federal Savings Bank (“Bank”) to Hershel and Jeanne Blair as joint tenants with right of survivorship by deed dated February 11, 1992 and recorded in the Johnson County clerk’s office (“clerk’s office”). At some point thereafter, the home located on the property burned and was destroyed.

In 1996, Jarrett and Hershel set out an agreement on the back of an envelope whereby Jarrett agreed to buy, and Hershel agreed to sell, the property “where the Blair’s house burned for \$5,000.” The agreement was executed by both Jarrett and Hershel, and witnessed by Robert Marshall. Jeanne did not sign the document, and nothing in the record indicates she consented to, or knew anything about, the document. Hershel’s signature was not notarized and the document was not recorded with the clerk’s office. From August 1997 through December 1997, the Woods paid a total of \$5,000 to Hershel. On March 18, 1998, the Woods filed a document titled “Claim of Lien” in the Miscellaneous Instruments Book with the clerk’s office, which purported to show the Woods held a lien over the property. The document was signed by Jarrett, but was not signed by Hershel or Jeanne.

Hershel passed away, and some years later Jeanne also passed away. Upon Jeanne’s death, Carl Blair inherited Jeanne’s interest in the property, and along

with his wife, Kristen Blair, executed and delivered a quitclaim deed to Walter and Nancy Brugh, and Alyce Brugh Slone (hereinafter collectively referred to as “Appellees”) conveying the property in dispute. The deed was recorded in the clerk’s office. Appellees paid \$7,500 for the purchase of the property, \$1,576.15 in past due property taxes, \$3,000 to clean the property, and \$7,250 for improvements to the property.

Upon Carl’s conveyance of the property to Appellees, the Woods filed the underlying action seeking to be declared the owners of the property, or alternatively, to recover the \$5,000 paid to Hershel. In lieu of a bench trial, the parties submitted briefs to the trial court, which held that the agreement between Jarrett and Hershel was not a valid contract for the purchase of the property. The court additionally held the purported lien filed by the Woods was invalid under Kentucky law. The court dismissed the Woods’ complaint. This appeal followed.

On appeal, the Woods argue the trial court erred by finding the agreement executed by Jarrett and Hershel was not a valid contract for the sale and purchase of the property. We disagree.

As an initial matter, we note that the Woods mistakenly contend the trial court granted summary judgment in favor of Appellees. Rather, the record shows that after submission of briefs in lieu of a trial, the trial court entered findings of fact, conclusions of law, and a judgment dismissing the Woods’ complaint. A trial court’s findings of fact are reviewed under a clearly erroneous standard. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005) (citations omitted). Such findings are

not clearly erroneous if supported by substantial evidence. *Id.* (citations omitted). Substantial evidence is evidence that “has sufficient probative value to induce conviction in the mind of a reasonable person.” *Id.* (citations omitted). The trial court’s conclusions of law are reviewed *de novo*. *Id.* (citations omitted).

Kentucky law recognizes the estate known as tenancy by the entirety. *Sanderson v. Saxon*, 834 S.W.2d 676, 678 (Ky. 1992). A tenancy by the entirety is an estate in real property that is owned by a husband and wife; when at the death of either spouse, the survivor is entitled to a fee simple ownership of the property. *Id.* A conveyance of real property to a husband and wife which establishes a right of survivorship creates a tenancy by the entirety. *Campbell County Bd. Of Educ. v. Boulevard Enter’s., Inc.*, 360 S.W.2d 744, 745 (Ky. 1962). Notably, tenants by the entirety hold “one indivisible estate . . . which neither can destroy by any separate act.” *Hoffman v. Newell*, 249 Ky. 270, 274, 60 S.W.2d 607, 609 (1932) (citing *Bernatavicius v. Bernatavicius*, 259 Mass. 486, 156 N.E. 685, 686, (1927)).

In this case, the property was conveyed by the Bank to the Blairs to hold as joint tenants with the right of survivorship, thereby establishing the Blairs as tenants by the entirety. Since Hershel and Jeanne held the property as tenants by the entirety, their interest in the property was not severable by any separate act by either spouse. No evidence was presented that Jeanne consented to, or knew of, the agreement. Thus, the agreement executed by Hershel alone is ineffective to convey the property and sever the tenancy by entirety. Accordingly, the trial court did not err by finding the agreement to be invalid.

Assuming, *arguendo*, that the contract was valid, the Woods failed to record it with the clerk's office so as to provide notice to future potential buyers. KRS¹ 382.270, the Kentucky recording statute, provides that superiority of title is achieved by being the first to record without notice. *See Minix v. Maggard*, 652 S.W.2d 93, 96 (Ky.App. 1983) (holding that KRS 382.270 incorporates notice into the recording statute). The Woods maintain that the claim of lien filed with the clerk's office in 1998 provided notice to Appellees of the agreement between Jarrett and Hershel per KRS 382.100, which provides, in part:

Any contract for the sale of real property . . . may be recorded in the county in which the property is situated, in the same offices and books in which deeds are recorded, and the record of any such contract recorded shall, from the time of lodging the contract for record, be notice of the contract to all persons.

However, here, the Woods did not record the contract for the sale of real property, but rather recorded a document the Woods purported to be a claim of lien that was neither signed nor granted by Hershel. The Woods fail to provide any authority establishing that recordation of such a document serves as notice to potential purchasers of property. Therefore, we find no error in the trial court's determination that the claim of lien document failed to provide notice to Appellees of an encumbrance on the property.

The judgment of the Johnson Circuit Court is affirmed.

ALL CONCUR.

¹ Kentucky Revised Statutes.

BRIEF FOR APPELLANT:

Donald W. McFarland
Salyersville, Kentucky

BRIEF FOR APPELLEE:

Marvin B. Walker
Paintsville, Kentucky