

RENDERED: JULY 22, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001434-MR

BESSIE HORN and LARRY HORN, her husband;
ANNETTE SALVADORI and PATRICK
SALVADORI, her husband

APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 10-CI-01417

ERNEST BRYAN and PAMELA BRYAN, his wife;
PATRICIA BLAKEMAN and DOUG BLAKEMAN,
her husband; MARSHALL BRYAN; and
ELIZABETH BRYAN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, KELLER AND VANMETER, JUDGES.

DIXON, JUDGE: This appeal concerns the interpretation of language contained in the holographic will of Vernon Bryan. The Fayette Circuit Court granted judgment

on the pleadings in favor of Appellees, finding the will devised fee simple title in certain property to Ernest Bryan. Finding no error, we affirm.

Vernon Bryan's will devised a 7.5-acre parcel of land located at 1810 Bryant Road in Lexington, Kentucky, as follows:

Jamie Bryan his life time as a home not to be sold to keep as a home and at his death go to his son Ernie Bryan as a home to be kept in the family.¹

Jamie Bryan and his wife, Elizabeth Bryan, had five children: Ernest Bryan, Marshall Bryan, Patricia Blakeman, Bessie Horn, and Annette Salvadori.²

Following Jamie Bryan's death in May 2000, title to the property passed to Ernest Bryan pursuant to Vernon's will. Thereafter, Elizabeth served as a co-guarantor on a mortgage on the property and obtained an interest in the property with Ernest by virtue of a quit claim deed executed in October 2005. When Ernest and Elizabeth prepared to sell the property, Annette and Bessie filed a declaratory judgment action seeking construction of Vernon's will, alleging Ernest was precluded from transferring the property to a non-family member. Ernest filed a motion for judgment on the pleadings, asserting that title had passed to him in fee simple upon Jamie's death with the expiration of the life estate.

The court held the will devised an estate entailed, which was converted to a fee simple estate pursuant to KRS 381.070, and the language posed an

¹ Spelling errors have been corrected.

² Marshall Bryan and Patricia and Doug Blakeman did not participate in this action and did not allege an ownership interest in the property.

unreasonable restraint on alienation. The court rendered an order granting judgment on the pleadings in favor of Ernest. This appeal followed.

On review, we treat the trial court's decision as a summary judgment since the court considered matters outside the pleadings in resolving the dispute. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000). "Because summary judgments involve no fact finding, this Court reviews them *de novo*, in the sense that we owe no deference to the conclusions of the trial court." *Id.* "We must review the record in a light most favorable to the party that opposes the motion and resolve all doubts in his favor, and the movant must have shown that the party opposing the motion could not have prevailed under any circumstances." *Angel v. McKeehan*, 63 S.W.3d 185, 190 (Ky. App. 2001).

Appellants assert two arguments on appeal. First, Appellants contend the language of the will devised a life estate to Ernest and precluded him from transferring the property outside of the family. Second, Appellants argue the will placed reasonable restrictions on alienation of the property.

We are mindful, when interpreting a will, courts must give effect to the testator's intent as set forth within the four corners of the document. *Hanks v. McDanell*, 307 Ky. 243, 210 S.W.2d 784, 785 (1948). Accordingly, "the intent of the maker of the instrument shall prevail and be enforced, unless it antagonizes a statute or is against public policy." *Id.*

Appellants argue the language indicated Vernon's intent for Ernest to take a life estate by using words of purchase to limit the remainder of the estate to members of the family.

After reviewing the instrument, we conclude the plain language of the will refutes Appellants' theory. A common sense reading of the document indicates Vernon intended that Ernest take the property in fee simple upon Jamie's death.³

The plain language also indicates that Vernon sought to restrain the alienability of the land by devising it to Ernest "as a home to be kept in the family." Restraints on alienation are not viewed favorably, as public policy in Kentucky supports "the right of a person to be free and uninhibited in the disposition of his property[.]" *Three Rivers Rock Co. v. Reed Crushed Stone Co., Inc.*, 530 S.W.2d 202, 205 (Ky. 1975).

Appellants correctly point out that, in *Melton v. Melton*, 221 S.W.3d 391, 393 (Ky. App. 2007), a panel of this Court noted that a restraint may be enforceable if it is for a reasonable period of time. Appellants assert the restraint on alienation in the case at bar is reasonable because it is limited to the life of Ernest. We disagree.

As mentioned previously, there is no language in the document indicating the devise to Ernest was limited to a life estate; likewise, it appears the restraint

³ Appellees argue the devise created an entailed estate; we disagree, as technical language, such as "the word 'body,' or some other words of procreation, are necessary to make it a fee tail, and ascertain to what heirs in particular the fee is limited." *Simpson v. Adams*, 32 Ky. L. Rptr. 617, 106 S.W. 819 (1908).

imposed by Vernon, that the land be “kept in the family,” was of unlimited duration. In *Courts v. Courts' Guardian*, 230 Ky. 141, 18 S.W.2d 957 (1929), the Court interpreted the language of a will in which the testator, Malon Courts, devised property to his great-nephew, Malon Clay Courts, and indicated “that the homestead was not to be sold ‘out of the name Courts.’” *Id.* at 957. In concluding that the restraint on alienation was void, the Court explained:

It is clear in this case that the attempted limitation on the power of disposition is not confined to a definite and reasonable time, but continues during the entire life of the devisee, extends to all persons not bearing the name of Courts, and seems to contemplate that it should run with the land and extend to all vendees of the devisee, immediate and remote. Such a restraint is clearly unreasonable, not only because of its reaching beyond a reasonable time, but also because it limits the right to sell to a class so small as to amount to a denial of the right to sell at all.

Id. at 958.

After careful review, we agree with the trial court that the restraint imposed on the property is unreasonable, as it is of unlimited duration and limits the right to transfer the property to anyone outside of the family. We conclude the restraint on alienation is void as against public policy and fee simple title is vested in Ernest.

See Id.

For the reasons stated herein, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

David A. Holladay
Lexington, Kentucky

BRIEF FOR APPELLEES:

Shannon Vibbert
Lexington, Kentucky