

NOT DESIGNATED FOR PUBLICATION

**SUCCESSION OF RUTH B.
ROSENBLUM AND HENRY
ROSENBLUM**

* **NO. 2002-CA-1766**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

**

**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 87-16167, DIVISION "K"
Honorable Louis A. DiRosa, Judge Pro Tempore**

Judge Max N. Tobias, Jr.

(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, Judge
Max N. Tobias, Jr.)

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AFFIRMED.

Appellants, Philip Roman (“Roman”) and Barry Ira Rosenblum (“Rosenblum”), appeal from a trial court judgment authorizing their sister, Linda R. Brown (“Brown”), executrix of the Succession of Ruth B. Rosenblum and Administratrix of the Succession of Henry Rosenblum, to sell immovable succession property at a private sale. We affirm.

On 15 October 1985, Ruth B. Rosenblum, died testate, bequeathing the balance of her estate, which consisted of the Rosenblum family home located at 1628 Killdeer Street in New Orleans and the furniture therein, to her three children, Roman, Rosenblum, and Brown. Henry Rosenblum, Ruth’s husband, died intestate on 1 September 1987. Following Henry’s death, Rosenblum lived in the Killdeer Street house until sometime in 2000 when he became ill and moved to Roman’s home.

In April 2002, Brown contacted Joan Album (“Album”), a real estate agent at Latter & Blum, Inc., Realtors, to sell the Killdeer Street property.

On 7 May 2002, Album listed the property for \$199,000.00. The following week a prospective purchaser offered to buy the property for \$170,000.00. However, after an inspection disclosed that extensive plumbing repairs were needed, the parties agreed to a reduced price of \$160,000.00 and signed a purchase agreement conditioned on the court's approval of the proposed sale.

On 5 June 2002, Brown petitioned the district court for authority to sell the Killdeer Street property for \$160,000.00 in cash. Roman and Rosenblum opposed the sale on the grounds that it was not in the best interests of the succession. They alleged in their opposition memorandum that Brown failed to pay an estimated \$40,000.00 in property taxes and wanted to sell the property to satisfy the debt. They further alleged that they were willing to pay all past due taxes, penalties, and interest in order to avoid the sale. Following a hearing on 12 July 2002, the trial court rendered judgment authorizing the sale. This appeal followed.

A succession representative may sell succession property in order to pay debts and legacies, or for any other purpose, when authorized by the court. La. C.C.P. art. 3261. A succession representative has a legal and

fiduciary obligation to secure the best price reasonably available as consideration for the conveyance of the succession property. La. C.C.P. art. 3191; *Succession of Lawson*, 408 So.2d 992 (La. App. 2 Cir. 1981). Actual value of a piece of property is the value at which the property could reasonably be expected to sell at the time of the proposed sale. *Middle Tennessee Council, Inc. v. Ford*, 274 So.2d 173 (La. 1973).

In considering the executrix's application for authority to sell succession property, the trial judge must give due consideration to any opposition and the reasons for the same. La. C.C.P. arts. 3283 and 3284; *Succession of Tagliavore*, 500 So.2d 393, 396 (La. 1987). If the trial court considers the sale to be in the best interest of the succession, the court may authorize either the private or public sale of the succession property. *Id.* In either case, the succession property should be sold for the best price reasonably obtainable. *Id.*

On appeal, appellants argue that the trial court erred in granting Brown authority to sell the house because she has not satisfied her fiduciary obligations to the succession. Specifically, they contend that she neither obtained a professional appraisal of the property nor the best price

reasonably obtainable for the sale, citing the fact that the proposed sale price of \$160,000.00 was \$39,000.00 less than Latter & Blum's original listing price.

Brown acknowledged at the hearing that past taxes were owed and no other succession assets were available to satisfy that debt, but insisted that that was not her primary reason in wanting to sell the property. She testified that she petitioned the court to sell the house because it was in very poor condition and she had received a notice from the Lake Terrace Property Owners' Association stating that the city was going to condemn the property. Brown also testified that in 1987, after her father's death, she had petitioned the court for authority to execute a mortgage on the property to obtain funds needed to repair the house and list it for sale. Roman and Rosenblum objected and, following a hearing, the trial court rendered judgment authorizing her to borrow \$16,000.00 from Hibernia National Bank to make the repairs and list the property for sale. Despite the judgment, in light of her brothers' strong objections, Brown neither made the loan nor made any repairs. As to her failure to pay the property taxes, she explained that Roman had told her over the years that he was paying the

taxes while Rosenblum lived in the house.

Album testified at the hearing that the Killdeer Street property was in deplorable condition and uninhabitable. A site inspection revealed substantial water and termite damage to the interior of the house, a heavily damaged roof, damaged floors, a nonfunctional swimming pool, and unsalvageable plumbing. Album testified that due to the condition of the property, she had reservations about showing it to prospective buyers. She described the house as a “tear down.”

As to the selling price, Album testified that Brown and her husband contacted her about selling the house, and she initially listed it at \$199,000.00 based on the location. The following week the prospective purchaser offered to pay \$170,000.00 for the house, subject to an inspection. When the inspection revealed the main water line had to be replaced at an estimated cost of \$7,500.00 to \$9,800.00, the parties agreed to reduce the price to \$160,000.00. Album also testified that after Brown accepted on behalf of the succession the initial \$170,000.00 conditional offer, a real estate agent from another company submitted an offer of \$70,000.00. Because she did not want it to be considered as a back up offer, Album never

presented it to the succession. Album further explained that vacant lots in the Lake Terrace subdivision, the location of the Killdeer Street property, were selling at the time for \$125,000.00 to \$170,000.00. When asked by the trial court whether she thought \$160,000.00 was a fair offer, Album replied, “I think it’s a great offer.”

Frances A. Courtenay (“Courtenay”), president of the Lake Terrace Property Owners’ Association, corroborated Ms. Album’s testimony that the house was in deplorable condition. He testified that a putrid odor emanated from the backyard swimming pool, which attracted mosquitoes and rodents. Because the property posed a nuisance to the neighbors, Courtenay contacted the city to have the property declared blighted.

Objecting to the proposed sale, Roman testified that if the sale were to take place, Rosenblum would be without a home. Although appellants introduced no appraisal into evidence, Roman opined that the house was worth \$200,000.00 in its present state and \$300,000.00 to \$350,000.00 if renovated. Roman admitted that the house had deteriorated over the years, but he did nothing to stop it. He testified that he and his brother wanted to buy the property, pay the past due taxes, and make the necessary repairs.

However, when asked by the trial judge whether they ever had attempted to buy out his sister's share or negotiate a price with her, Roman responded, "No."

Contrary to appellants' claim, La. C.C.P. art. 3284 makes no provision for an appraisal in those cases where an opposition to the sale has been filed. Rather, when an opposition to a proposed sale is filed, La. C.C.P. art. 3248C provides that a summary proceeding shall be had, at which the interested parties may introduce evidence as to the value of the property. Although neither party submitted into evidence a professional appraisal, photographs introduced by Brown support the testimony of Album, Courtenay, and Roman that the house and swimming pool were heavily damaged and in need of extensive repairs. Also, the trial court had the benefit of testimony from Album, an experienced, professional, and licensed real estate agent familiar with the properties in the Lake Terrace area. After reviewing the evidence in this record, we do not find that the trial court abused its vast discretion by authorizing the sale of the succession property, particularly in the absence of an appraisal to indicate that the property had a value greater than \$160,000.00.

Appellants also argue that trial court abused its discretion in approving the sale of the house where Brown, as the succession representative, failed to maintain the property and pay the taxes. We find no merit to this argument, as the only issue before the trial court was whether the purchase price offered for the sale of the property was a fair and reasonable one. Any objection to Brown's maintaining of the succession property is properly addressed by filing a motion to remove her as the succession representative.

Accordingly, for the above reasons, the judgment of the trial court authorizing Brown to sell the immovable property at the private sale is affirmed.

AFFIRMED.