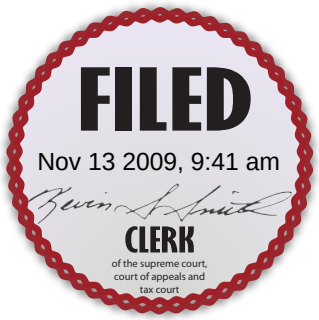

ATTORNEY FOR APPELLANT:

JOHN T. CASEY
Rensselaer, Indiana

ATTORNEYS FOR APPELLEE:

GORDON E. GOUVEIA
CATHERINE MOLNAR-BONCELA
Gouveia & Associates
Merrillville, Indiana

IN THE COURT OF APPEALS OF INDIANA

JAMES L. LYNN,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 56A03-0905-CV-191
	)	
THE ESTATE OF JON L. LYNN, Deceased, by ORA D. LYNN, Personal Representative,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE NEWTON CIRCUIT COURT
The Honorable Jeryl F. Leach, Presiding Judge
Cause No. 56C01-0807-CT-9

November 13, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

James L. Lynn ("James") appeals the trial court's judgment in favor of the Estate of Jon L. Lynn, deceased, by Ora D. Lynn ("Ora"), Personal Representative ("the Estate"), on the Estate's complaint for declaratory judgment. James presents a single dispositive issue for our review, namely, whether the trial court erred when it found that a Family Settlement Agreement giving James a right of first refusal to buy certain real estate was unenforceable.

We affirm.

FACTS AND PROCEDURAL HISTORY

At the time of his death, Irl V. Lynn, James and Jon's father, owned several acres of real estate in Newton County.[1] Following Irl's death, on April 11, 2002, James and Jon signed a document, entitled "Family Settlement Agreement" ("FSA"), which provided as follows:

> 1. That Jon L. Lynn shall end up with 74.6 acres, more or less, which includes the house and all buildings.
>
> 2. James L. Lynn will have the remainder of the Farm.
>
> 3. In the event that Jon L. Lynn would choose to sell his said property, he would grant to James L. Lynn the right of first refusal.
>
> 4. That this transaction shall be closed not later than the closing of the estate of Irl V. Lynn.

Appellant's App. at 81. The FSA was never filed with the probate court or recorded in the county recorder's office.

[1] The parties do not include a copy of Irl's will in the appendix on appeal or otherwise explain how Irl's property was to be distributed under his will. Regardless, it is not disputed that the Family Settlement Agreement was intended to divide the property in a manner different from that set out in Irl's will.

In February 2008, Jon died, and his wife, Ora, was appointed personal representative of his estate. In May 2008, Michael and Deborah Wiseman entered into a purchase agreement with Ora to buy approximately three acres of the Newton County real estate owned by Jon at his death ("the property"). The agreement provided that the parties would close on the sale on or before July 31, 2008.

Prior to closing, on July 22, James filed a Notice of Acceptance of Right of First Refusal with the trial court. And on July 30, the Estate filed a complaint for declaratory judgment seeking a determination whether James had a right of first refusal with respect to the property. Following a bench trial, the trial court entered judgment in favor of the Estate, finding and concluding as follows:

> 1. On April 11, 2002, Jon L. Lynn and James L. Lynn executed a document entitled "FAMILY SETTLEMENT AGREEMENT" (FSA) that was captioned "IN THE MATTER OF THE SUPERVISED ADMINISTRATION OF THE ESTATE OF IRL V. LYNN, DECEASED".
>
> 2. The Lynns' FSA was not filed with any court of record.
>
> 3. Indiana Code [Section] 29-1-9-1 et. [s]eq. provides a mechanism by which such an agreement can become lawful and binding on the parties thereto.
>
> 4. The "Commission Comments" for Indiana Code [Section] 29-1-9-1 state that such agreements are looked upon with favor and can be legally made and will, when judicially approved by the court, be binding upon all interested parties.
>
> 5. Since the Lynns' FSA was never filed with the Court in the Irl Lynn Estate, it could not be judicially approved pursuant to the provisions of Indiana Code [Section] 29-1-9-1 and therefore could not be binding on Jon L. Lynn, James L. Lynn, or the estates of either party.
>
> 6. This Court cannot justify attempting to legitimize the FSA by any means outside of Indiana Code [Section] 29-1-9-1.

> 7. It is clear from the words used to create the FSA that Jon L. Lynn and James L. Lynn intended that the document they signed on April 11, 2002, constitute a resolution to ownership issues involving property involved in the Estate of Irl V. Lynn filed in the Newton Superior Court under Cause Number 56D01-0104-ES-12.
>
> 8. There could be many reasons why the agreement was not carried to completion and made formal and final in the Newton Superior case. It could have been as simple as the parties changed their minds and decided to resolve their disputes in a similar manner but without the right of first refusal. This Court cannot be sure of why the FSA was not formalized with the Superior Court, but it can be sure that it was not formalized. Since the Court is sure of that fact, it would be improper for the Court to try to formalize the agreement of the parties under some other provision when it was obviously intended to be created pursuant to Indiana Code [Section] 29-1-9-1.
>
> * * *
>
> IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the alleged Family Settlement Agreement between Jon L. Lynn and James L. Lynn is invalid and that James L. Lynn has no right of first refusal in relation to the subject property. . . .

Appellant's App. at 5-7. This appeal ensued.

DISCUSSION AND DECISION

The standard for reviewing a trial court's findings of fact and conclusions of law is a two-tiered process:

> "When the trial court has entered findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We neither reweigh the evidence [n]or assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. We review conclusions of law de novo."

Spacey v. State Farm Fire & Cas. Co., 878 N.E.2d 297, 301 (Ind. Ct. App. 2007) (quoting Tompa v. Tompa, 867 N.E.2d 158, 163 (Ind. Ct. App. 2007) (citations omitted)).

Our tax court has explained the nature of a family settlement agreement as follows:

> a family settlement agreement is a contract to transfer property from one living person to another, subsequent to the transfer of property made by the decedent under his Will. In other words, "property passing under a family settlement agreement is not inherited, but passes by an assignment from living persons of their rights under the will."

Indiana Dep't of State Revenue v. Pickerill, 855 N.E.2d 1082, 1085 (Ind. Tax Ct. 2006) (quoting Estate of McNicholas v. State of Indiana, 580 N.E.2d 978, 983 n.9 (Ind. Ct. App. 1991), trans. denied) (emphasis original).

Here, James contends that the trial court erred when it concluded that the FSA executed by James and Jon was invalid. James does not dispute that Indiana Code Section 29-1-9-2 requires that an FSA be filed with the probate court, and he does not dispute that the FSA in this case was not filed with any court. Instead, James asserts that the FSA is not necessarily a family settlement agreement under the statute, but that it is, "perhaps," a "side agreement" between James and Jon. Brief of Appellant at 31.

Assuming James is correct that the FSA should be treated as a side agreement, outside the purview of Indiana Code Section 29-1-9-1, the Family Settlement Agreement is unenforceable under general contract principles.[2] In order to be enforceable, a contract must be reasonably definite and certain in its material terms so that the intention of the parties may be ascertained. Wenning v. Calhoun, 827 N.E.2d 627, 629 (Ind. Ct. App.

[2] For purposes of this appeal, we need not decide whether the FSA between James and Jon would have been a valid side agreement, were it valid under general contract principles, despite its noncompliance with Indiana Code Section 29-1-9-1. We leave that issue for another day.

2005), trans. denied. And equity will not decree specific performance of a contract that is vague, indefinite, and uncertain. Id.

Here, the Family Settlement Agreement does not identify the real estate subject to the right of first refusal with sufficient specificity to make it enforceable. There is no legal description of the 74.6 acres allegedly obtained by Jon, and there is no way to determine from the FSA whether the real estate subject to the alleged right of first refusal includes the approximately three acres that is the subject of the Wisemans' purchase agreement. See id. Accordingly, the FSA is not enforceable against the Estate, see Johnson v. Sprague, 614 N.E.2d 585, 588 (Ind. Ct. App. 1993) (holding enforceable contract for sale of land must describe the land with reasonable certainty), and James cannot prevail on appeal.

Affirmed.

KIRSCH, J., and BARNES, J., concur.