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Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000381-MR

JOHN ROBERT MATHIAS; TRUSTEE OF THE JOSEPH V. MARTIN TRUST; LYNNE JANE MATHIAS; JOHN ROBERT MATHIAS, HER HUSBAND; ROXANNE JO MARTIN; JOHN GROVER MARTIN; AND ELIZABETH MARTIN, HIS WIFE — APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN R. ADAMS, JUDGE
ACTION NO. 97-CI-02790

LILLIAN G. MARTIN, INDIVIDUALLY AND LILLIAN G. MARTIN, ADMINISTRATRIX OF THE ESTATE OF JOSEPH V. MARTIN, DECEASED — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BARBER, JOHNSON AND SCHRODER, JUDGES.

BARBER, JUDGE: This is an appeal from a judgment of the Fayette Circuit Court setting aside transfers of property to a trust by Joseph V. Martin (Joe), immediately prior to his marriage to Lillian G. Martin, as a fraud on dower. Appellants are the trustee of the Joseph V. Martin Trust, and Joe's three children from a previous marriage and their spouses. Appellees are

Lillian G. Martin, individually, and as administratrix of Joe's estate.

Joe and Lillian were married on May 18, 1985. It was Joe's fourth marriage. He had three adult children from a previous marriage, Lynne Jane Mathias, Roxanne Jo Martin and John Grover Martin. The day before the wedding, Joe's children came to town and accompanied him to the office of attorney Jonathan Buckley, where he executed a trust agreement naming himself and his son-in-law, John Robert Mathias (Lynne's husband) as co-trustees. By deed executed May 17, 1985, Joe conveyed real estate known as the Highcroft Farm to the trust. According to the Fayette County Property Valuation Administrator, the farm had a fair market value of $764,400.00 as of January 1, 1985. The farm represented the bulk of Joe's assets. The trust agreement provided for net income to be distributed to Joe during his lifetime, and for undistributed income and corpus to be distributed to Joe's children after his death.

On the night of May 17, 1985, Lillian was informed Joe had signed the trust agreement, but Lillian did not see the document at that time. The same evening Lillian informed Joe that she had been advised by her attorneys not to sign the draft of a prenuptial agreement also prepared by attorney Jonathan Buckley. The next morning, prior to the marriage ceremony, Joe signed an addendum to the trust, prepared by daughter Lynne, "to add all of J.V. Martin's things into the Trust."

Joe and Lillian lived together on the farm until Joe's death on April 2, 1997. Lillian qualified as administratrix of

Joe's estate on July 31, 1997. She filed an action in Fayette Circuit Court on August 11, 1997. Cross-motions for summary judgment were filed – Lillian contending that the transfers to the trust constituted a fraud on dower and the trustee/children contending that the action was barred by the statute of limitations and/or laches. According to the defendants' supporting memorandum, Lillian had consulted an attorney, Natalie Wilson, about the trust shortly after the marriage. Attorney Wilson had contacted Attorney Buckley within thirty days of the marriage suggesting Joe had committed a fraud on Lillian by the conveyance.

An opinion and order was entered December 16, 1998. The court found:

> (1) This is an action by the Plaintiff against the Defendants alleging that they, along with her deceased husband, Joseph V. Martin, perpetrated a "fraud on the dower". The parties have taken considerable proof in this case and therefore the facts are essentially undisputed. The issue before this Court is whether "as a matter of law" the Plaintiffs are entitled to a finding by this Court that the facts constitute "a fraud on the dower".
>
> The pertinent facts not in dispute make it clear that on the eve of the marriage to Lillian Martin, Joseph Martin and his children by a previous marriage, engaged in certain activities in attempting to structure his estate and to place all of his property in a "trust". Various parties defendant have testified in deposition that the purpose of this transfer of property was so that he could pass all of his property to his children upon his death. It is also clear that Lillian knew of his actions, did not acquiesce in or approve his actions, but married Joseph the next day. The couple lived as husband and wife for some twelve

years prior to Mr. Martin's death in April of 1997.

* * *

This court finds based upon the facts and the law that will be discussed following that she is entitled to that relief and therefore, **SUSTAINS** the Plaintiff's motion.

* * *

The Court also finds that even though Lillian Martin may have been aware of these transfers and attempted transfers prior to her marriage to Mr. Martin that does not defeat her claim for a statutory interest. **See Anderson v. Anderson, Ky.**, [sic] App., 583 S.W.2d 504 (1979).

The most compelling law supporting the position of Mrs. Martin is found in the Supreme Court case of **Harris v. Rock**, [Ky.,] **799 S.W.2d 10 (1990),** and in citing **Martin v. Martin**, [282 Ky. 411] **138 S.W.2d 509 (1940)** says as follows:

We held that a widow is entitled to dower in property that her intended husband disposed of shortly before their marriage in an attempt to defeat a claim by his intended wife to dower.

Therefore, the fact that Mrs. Martin knew about the transfers prior to her marriage to Mr. Martin does not defeat her claim and is stated in the **Anderson**, **Supra**, decision, "**a man is presumed to intend the natural consequences of his acts, and where the effect of his acts were to disinherit his wife from such a substantial portion of his estate as the case here, it would be unreasonable to infer that the gift to the children was made without an intention to disinherit the wife. Where only one reasonable inference may be drawn from the indisputable fact, Summary Judgment is proper.** [Emphasis original.]

The court declined to rule on other issues concerning standing to set aside the marriage and taxes. The court directed the plaintiff to prepare a judgment in conformity with the court's findings. On December 22, 1998 defendants filed a CR 59.05 motion to alter, amend or vacate and/or for reconsideration of the opinion and order, contending that there was no fraud, that summary judgment was inappropriate because there was a material issue of fact regarding Joe's intent in executing the trust, that the court had failed to consider laches, unclean hands and equitable estoppel. The judgment, entered February 1, 1999, set aside all transfers and purported transfers of real and personal property to the Joseph V. Martin Trust as a fraud upon the dower rights of Lillian G. Martin. The trial court denied defendants' motion for summary judgment on grounds of laches, "unclean hands", and equitable estoppel. On January 29, 1999 an order was entered denying defendants' motion to alter, amend or vacate. On February 11, 1998 an order was entered that the "Highcroft Farm [bank] account," is an estate asset, to be administered accordingly. Notice of Appeal from the February 1, 1999 judgment and the January 29, 1999 and February 11, 1999 orders was filed on February 19, 1999.

On appeal, appellants contend that: (1) No fraud on dower was committed, because Lillian knew of the conveyance of the farm to the trust before marriage; (2) The claim of fraud on dower is barred by the statute of limitations; (3) The claim of fraud on dower is barred by laches; (4) There was a genuine issue of intent to

defraud, making summary judgment inappropriate; and (5) There were genuine issues for trial regarding the equitable defenses of estoppel and unclean hands, making summary judgment inappropriate.

In support of their argument that there was no fraud on dower, appellants rely upon Cheshire v. Payne, 55 Ky. 618 (16 B. Mon. 618) (1855). There, the husband and wife sought to set aside a deed executed by the wife before the marriage in consideration of promises by her father and brother that her father would convey other property to her. Plaintiffs alleged noncompliance by the father and brother. The husband was informed of the deed shortly before the marriage ceremony. The court held that in order to render such a disposition of property fraudulent against the husband, in derogation of his marital rights, the transfer must be made pending a treaty, in contemplation of marriage, and without the knowledge of the intended husband. The court noted that had the husband not been made aware of the conveyance before the marriage, it may have been valid, nevertheless, because there was adequate consideration, the deed was recorded before the marriage and there was no ill motive or prejudice.

Appellants also rely upon Murray v. Murray, 90 Ky. 1, 13 S.W. 244 (1890), which held that a conveyance upon the eve of marriage must be made without the wife's consent or knowledge to be considered a fraud upon the wife's marital rights. Appellants also cite Smith v. Erwin, 26 Ky. L. Rptr. 760, 82 S.W. 411 (1904), and Anderson v. Anderson, 194 Ky. 763, 240 S.W. 1061

(1922), for essentially the same proposition. Appellants contend that the rule of law in these cases has not been modified; we disagree.

In Rowe v. Ratliff, 268 Ky. 217, 104 S.W.2d 437 (1937), the husband made a trade for the purchase of two tracts of land before his marriage; however, the trade was not consummated until after the marriage. When the deed was tendered to the husband, he refused to sign it, and announced for the first time that he wanted the deed made to his mother. Another deed was prepared and executed to the mother. That deed was recorded. The consideration shown in that deed was one dollar, although the husband had actually paid $4,000.00 for the two tracts of land. The husband and wife took immediate possession of the land and lived on it until the husband's death. Judgment was entered for the widow in an action to set aside the deed to the mother. The court stated that the wife "at the time when the deed was made, had a potential right of dower in whatever lands her husband may have owned, which consummated into a right of dower at his death. This interest in said land cannot be taken from her without her consent." Id. at 438.

> There is no power on earth given to a husband by the exercise of which the inchoate right of dower of his wife could be taken from her without her consent. The right of dower has been recognized to be so sacred to the wife, even the potential right of dower, that the husband, or a prospective husband, cannot convey his real estate or even his personal property or give it to others for the purpose of taking from her rights. The only way that the wife can lose her dower is to either sell it, forfeit it, or die and leave it.

Id. at 439.

Three years later, Martin v. Martin, 282 Ky. 411, 138 S.W.2d 509 (1940), dealt with the issue of whether or not a man, in contemplation of marriage, could prevent an **intended** wife from obtaining an interest in personal property by making a gift which would prevent his widow from asserting her marital rights in the property in the hands of a donee. Martin involved transfers of bank deposits to the husband's sister prior to the marriage. In discussing whether or not there was a distinction between conveyances of real estate and personal property, the court noted that "a wife after marriage acquires an interest . . . [in real estate] in the way of inchoate dower of which she cannot be divested **by any act of her husband . . . .**" Id. at 514 (emphasis added). The court determined that the distinction between real and personal property was not a sound and rational one, and held that:

> [A] man may not make a voluntary transfer of either his real or personal estate with the intent to prevent his wife, **or intended wife**, from sharing in such property at his death **and that the wife, on the husband's death, may assert her marital rights in such property in the hands of the donee.** (Emphasis added).

Id. at 515.

In Anderson v. Anderson, Ky. App., 583 S.W.2d 504 (1979), the widow elected to renounce the will and take her statutory share of her husband's estate. During the marriage, the decedent had transferred approximately $47,000.00 into bank accounts held in joint tenancy with his children from a previous marriage. The widow sought to bring the $47,000.00 into the

estate, alleging that the transaction had defrauded her of her marital rights. The children contended that the inter vivos transfers were made in good faith, with no intent to defraud, and that the widow had known of the transfers at the time they were made. This Court rejected authority from other jurisdictions holding that a person may dispose of his property during his lifetime as he sees fit so long as the disposition was not solely to defeat the spouse's marital rights. The court explained that those decisions did not reflect the law "as it stands" in this Commonwealth, and followed Martin, supra.

The court held that:

> A man is presumed to intend the natural consequences of his acts, and where the effect of his acts is to disinherit his wife from such a substantial portion of his estate as was the case here, it would be unreasonable to infer that the gift to the children was made without an intention to disinherit the wife. Where only one reasonable inference may be drawn from the undisputed facts, summary judgment is proper.

Anderson, at 505.

The trial court found Harris v. Rock, Ky., 799 S.W.2d 10 (1990), to be compelling authority in support of Lillian's position. There the issue was whether deposits by a husband into accounts jointly held with his children defeated the widow's right under KRS 392.020 to receive half of his surplus personalty upon his death. During the course of the marriage, the husband had acquired numerous certificates of deposit; each bore only two names -- either the husband's and the name of one of his seven children from a prior marriage, or the husband's and the wife's. At the time of death, there was approximately $20,000.00 in each

of these joint accounts. The widow filed an action to recover her dower interest in one-half of the personalty, including the money in the various joint accounts.

Our Supreme Court cited Martin, supra, for the rule that a widow was entitled to dower in property that her intended husband disposed of shortly before their marriage, in an attempt to defeat her claim to dower. The court explained that KRS 391.315 provides that funds deposited into a joint account belong to the survivor as against the estate of the decedent, upon death of the other party to the account; however, there is a limitation necessarily implied in law. If the party who deposited the funds was not legally entitled to dispose of them in such a manner, then the survivor does not become the owner of the funds in the account upon the death of the other party. The court held that:

> [I]t has long been the law of Kentucky by virtue of KRS 392.020 that a husband has no legal right to dispose of more than one-half of his property with intent to defeat a dower claim by his widow . . . .
>
> . . . .
>
> **Absent an agreement** of the parties, a disposition of property with the intent to defeat the right of dower creates a presumption of fraud upon the surviving spouse. (Emphasis added).

Harris, at 12. The court concluded that the deposit of approximately seven-eighths of the personal estate into a joint account with his children left no doubt of the decedent's intent

to defeat his wife's dower interest and raised a presumption of fraud which was not rebutted. As noted in the dissent, there was no finding in Harris that any of this was done surreptitiously or within intent to defraud or without the wife's knowledge and consent.

We agree with the trial court that the fact Lillian knew about the transfers does not defeat her claim. Joe could not take Lillian's dower right from her without her consent. Lillian did not release her potential right of dower, and the (purported) conveyance of property into the trust on the eve of marriage did not extinguish her inchoate interest in Joe's property. Lillian is entitled to assert her marital interest in the property in the hands of the donees.

We disagree that Lillian's claim is barred by the statute of limitations or laches. As noted in the authority cited above, the **right** of dower is not consummate and does not become a chose in action until the husband dies. Only by outliving her husband, did Lillian's inchoate interest ripen into a right of dower.

We are not persuaded by appellants' argument that there was a genuine issue for trial regarding the intent to defraud. The trial court found that the "pertinent facts, not in dispute" were that on the eve of his marriage to Lillian, Joe and his children, by a previous marriage, "engaged in certain activities in attempting to structure his estate and to place **all of his property** in a 'trust'." (Emphasis added). The court found that

various party defendants had testified that the purpose of this transfer was "so that he could pass all of his property to his children upon his death."

In Anderson, 583 S.W.2d at 505, this court stated that:

> Appellants insist that the transfers [of $47,000 into bank accounts held in joint tenancy with children from a previous marriage] may be set aside only upon a showing that the motive for the transaction was to defeat . . . [the wife's] marital right to a statutory share in the property. **We are convinced that such a motive must be inferred from the circumstances of this case.** (Emphasis added).

Here, Joe attempted to transfer **all** of his property to a trust. The intent and purpose of one performing an act may be established by his acts and deeds. Id. Where the effect of the decedent's acts was to disinherit his wife from such a substantial portion of his estate, "it would be **unreasonable** to infer that the gift to the children was made without an intention to disinherit the wife. Where only one reasonable inference may be drawn from the undisputed facts, summary judgment is proper." Id. (Emphasis added).

Appellants also argue that there were genuine issues for trial regarding "unclean hands" and equitable estoppel. Appellants provide ample authority explaining these doctrines, but do not persuade us that the trial erred in this regard. Appellants do not explain how they, as the parties claiming the estoppel, may have been prejudiced by any action on Lillian's part. Instead, appellants assert that Joe had no way of knowing Lillian's "intentions and desires" regarding his assets. It is

uncontroverted that Joe married Lillian after she had refused to sign the antenuptial agreement. Moreover, the nature of an inchoate dower interest is a far cry from any "intention or desire." As stated in Rowe, supra, at 439, "The right of dower has been recognized to be so sacred to the wife, even the potential right of dower, that the husband, or a prospective husband, cannot convey his real estate or even his personal property or give it to others for the purpose of taking from her rights." We affirm.

JOHNSON, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTING: I believe the wife's knowledge of the conveyance before marriage is a bar to a claim of fraud on dower.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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