

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000120-MR

BEN A. REID, JR., INDIVIDUALLY AND  
AS FORMER ATTORNEY-IN-FACT OF BEN A. REID, SR.,  
AND AS GENERAL PARTNER OF BEN A. REID, SR.,  
FAMILY LIMITED PARTNERSHIP, AND AS EXECUTOR  
OF THE ESTATE OF BEN A. REID, SR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ANN O'MALLEY SHAKE, JUDGE  
ACTION NO. 99-CI-004206

MICHAEL WAYNE REID

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: KNOPF, TACKETT, AND VANMETER, JUDGES.

TACKETT, JUDGE: Ben Reid, Jr. (Ben) et al. appeal from a judgment of the Jefferson Circuit Court ordering their family limited partnership to re-convey a piece of property, situated in Indiana, to Michael Reid (Michael). Ben argues that the jury instructions failed to require Michael to prove all of the elements of his fraud claim, that the trial court had no subject matter jurisdiction over the property, and that he was

erroneously prevented from introducing evidence of undue influence. After considering all of these arguments, we affirm the judgment of the trial court.

Dr. Ben Reid, Sr. (Dr. Reid) was the original owner of the property in question. Dr. Reid and his wife, Dorothy, had eight children, six of whom were still living at the time of this action. Dorothy died in the late 1970's and Michael continued to live with his father, Dr. Reid. In 1996, Michael began discussing a gift of 60 acres (the Arrowhead Lake property) which he wished his father would convey to him. This parcel of land was part of a much larger dairy farm located in Indiana. On March 5, 1996, Dr. Reid deeded the Arrowhead Lake property to Michael clandestinely and Michael's siblings were not informed that their father had given him the property until after it was done. Shortly thereafter, Michael asked his father to convey the condo in which they lived to him, but Dr. Reid refused.

That same year, Dr. Reid's mental and physical well being began to decline. His ability to manage his financial affairs suffered and he began to liquidate assets and to make questionable investments. From September through December 1996, a springing power of attorney was in effect due to Dr. Reid's inability to handle his affairs. After undergoing gallbladder surgery, Dr. Reid's health improved. During this time, plans

for a family limited partnership to benefit all of the Reid children were being implemented. On December 16, 1996, Dr. Reid revoked his earlier power of attorney and signed a new one appointing Ben as attorney-in-fact. He subsequently signed a new will and, as part of his estate planning strategy, executed the family limited partnership naming himself and Ben as general partners. Dr. Reid was the sole limited partner, owned most of the shares, and had control of the partnership until his death. From January through April of 1997, several properties were transferred into the partnership. It was during this time, that Ben persuaded Michael to re-convey the Arrowhead Lake property to his father for inclusion in the partnership where Michael would share in it equally with his siblings. The Indiana farm is the largest asset contained within the partnership.

Dr. Reid died in April 1997, and the shares in the partnership were evenly distributed among his children. On July 21, 1999, Michael filed suit against Ben, individually and in his former capacity as Dr. Reid's attorney-in-fact, and against one of their sisters, Deborah Menefee (Debbie) alleging that they fraudulently induced him to re-convey the Arrowhead Lake property to the family limited partnership. The case was tried in February 2002, and the jury found for Michael. This appeal followed.

Ben first argues that Michael failed to prove the requisite elements of fraud. In order to prove fraud, Michael was required to demonstrate that there was (1) a material representation, (2) which was false, (3) was known to be false or made recklessly, (4) made with inducement to be acted upon, (5) acted in reliance thereon, and (6) which caused injury. Wahba v. Don Corlett Motors, Inc., Ky. App., 573 S.W.2d 357 (1978). When Michael's siblings found out that Dr. Reid had conveyed the Arrowhead Lake property to him, Ben began his attempts to persuade Michael to re-convey the property to Dr. Reid for inclusion in the partnership. Ben and Debbie argued that it would be the only fair thing to do so that all of Dr. Reid's children could share equally in the land. At this time, Debbie was living in a \$275,000.00 house which her father had purchased in joint tenancy with her. Debbie represented to Michael that she intended to either re-convey the house to the partnership or to offset its value against her share of the inheritance. However, it was revealed she in fact had no intention of doing so and had informed another of their sisters of this fact. Michael argued that both Debbie and he should keep the land which their father had given them, but Ben and Debbie eventually prevailed on Michael to agree to re-convey the Arrowhead Lake property. Nevertheless, before the end of 1996, Michael changed his mind and refused to re-convey the property.

In December, Debbie called Michael and once again urged him to give the Arrowhead Lake property back to the partnership and restated her intention to re-convey her house or offset its value against her inheritance. On January 2, 1997, Ben called Michael with his attorney on the phone and told him that the Arrowhead Lake property was necessary to fund the family limited partnership. In addition, Ben told Michael that he was preparing a gift of some of Dr. Reid's stock which was to be divided among all of his children. However, according to Ben, Michael would not receive any of the stock unless he re-conveyed his property to their father. When Ben made this representation to Michael, Ben had already signed a stock transfer certificate which included Michael in the gift. Nevertheless, relying on Ben's representation that he would otherwise get no stock, Michael re-conveyed the Arrowhead Lake property to Dr. Reid. Two weeks later, he found out that Debbie had no plans to re-convey her house or offset its value. Further, Michael never received any of the stock until after this action was filed.

These facts, introduced to the jury, demonstrate that Debbie and Ben made false representations to Michael to persuade him to divest himself of the Arrowhead Lake property and that he, in fact, did re-convey the property to Dr. Reid in reliance on his siblings' representations. However, Ben contends that

the trial court erred by failing to instruct the jury that it had to find that Michael was injured by his action. The trial court refused to include an instruction to the jury that it must find injury in order to determine fraud because it believed such an instruction would be a source of confusion. Moreover, the trial court determined that, as a matter of law, Michael suffered an injury because he gave up sole title to the Arrowhead Lake property and now has only the same rights toward it as each of his siblings. We are unable to conclude that the trial court acted incorrectly in making this determination. The trial court's actions are also in accordance with Palmore's handbook on Kentucky jury instructions.

Ben next contends that the trial court lacked jurisdiction to enter a judgment affecting title to the Arrowhead Lake property because it is situated in Indiana. Campbell v. W.M. Ritter Lumber Co., Ky., 131 S.W. 20 (1910). We note that Ben raises this issue for the first time on appeal. The deeds conveying the property from Dr. Reid to Michael and from Michael back to Dr. Reid were executed in Kentucky. Likewise, the fraudulent representations made by Ben and Debbie to Michael to induce him to re-convey the property to their father also occurred in Kentucky. The trial court entered a judgment ordering Ben to re-convey the Arrowhead Lake property to Michael. In doing so, the trial court relied on its personal

jurisdiction over the parties and the equitable powers to indirectly affect title to real estate located in another state as set forth in Fall v. Eastin, 25 U.S. 1, 30 S.Ct. 3, 54 L.Ed. 65 (1909). The Supreme Court in Fall was faced with a dispute involving real estate located in Nebraska which had been awarded to one of the parties pursuant to her divorce in the state of Washington. The Court analyzed the issue of whether a court in Washington could affect title to property located in Nebraska and stated as follows:

"by means of its power over the person of a party, a court of equity may, in a proper case, compel him to act in relation to property not within its jurisdiction; its decree does not operate directly upon the property nor affect the title, but is made effectual through the coercion of the defendant; as, for instance, by directing a deed to be executed or canceled by or on behalf of the party. . ."

Fall at 10 (citing Hart v. Sansom, 110 U. S. 151, 155, 28 L. ed. 101, 103, 3 Sup. Ct. Rep. 596). The trial court correctly realized that it could not annul or rescind the deed re-conveying the Arrowhead Lake property; however, the trial court acted properly under Fall v. Eastin by ordering Ben to re-convey the property to Michael.

Finally, Ben argues that the trial court erred in excluding evidence offered to prove its affirmative defense of undue influence. Ben asserted, as a defense against fraud, that

Michael had used undue influence to pressure Dr. Reid into deeding him the Arrowhead Lake property. Michael presented deposition testimony from their youngest sister, Mary Jo Reid, in an attempt to bolster his credibility. She testified that Michael had given bone marrow to another sibling who was dying of cancer. The next day, Ben produced her as a witness to testify that Michael had been paid \$10,000.00 for his bone marrow. However, Michael objected, and the trial court excluded the evidence. This is a collateral issue having no real relevance to Michael's possible use of undue influence on Dr. Reid and, as such, the trial court properly denied Ben's attempt to use it to impeach Michael.

For the forgoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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