

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000106-MR

ANTHONY J. GREGORY;
LILLIE GREGORY; MICHAEL J.
GREGORY; AND BRENDA GREGORY

APPELLANTS

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 05-CI-00228

DEBORAH G. JOHNSON;
WILLIAM R. JOHNSON; SAMUEL JAY
GREGORY; BARBARA GREGORY;
RUBY G. ALEXANDER; AND
ROBERT ALEXANDER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

THOMPSON, JUDGE: The appellants, Anthony J. Gregory and Lillie Gregory, husband and wife, and Michael J. Gregory and Brenda Gregory, husband and wife, appeal from a judgment of the Knox Circuit Court granting summary judgment to

the appellees, William R. Johnson and Deborah G. Johnson, husband and wife, Samuel Jay Gregory and Barbara Gregory, husband and wife, and Robert Alexander and Ruby G. Alexander, husband and wife. For the reasons stated herein, we affirm.

The facts of this case are undisputed. Five siblings and their father possessed complete ownership of a 52 acre property. The father possessed an undivided five-sixths ($5/6$) interest, and each of his five children possessed an undivided one-thirtieths ($1/30$) interest. On September 18, 1999, by deed, Lloyd conveyed his entire five-sixths undivided interest in a 25.11 acre portion of the property to his daughter, Ruby G. Alexander. In approximately two acres of Ruby's tract of land, Lloyd conveyed a life estate interest to his son, Anthony J. Gregory. In another deed, he conveyed his entire five-sixths undivided interest in a 2.5 acre portion of the property to his daughter, Deborah G. Johnson. Deeding away his remaining interest in the property, he conveyed his entire five-sixths undivided interest in a 24.39 acre portion of the property to his son, Samuel Jay Gregory.

After these deeds were recorded, each of the five siblings owned different percentage shares in three unique tracts of land. After the siblings failed to agree on the division of the property, the appellees filed a partition action seeking the individual sale of the three tracts of land pursuant to Kentucky Revised Statutes (KRS) 389A.030. Thereafter, the appellees filed a motion for summary judgment for the partition of the property.

The appellees contended that each of the three tracts of real property could not be divided without materially impairing the property's value or their individual interests. Thus, they contended that each of the three tracts should be sold separately by the Master Commissioner. The appellants contended that dividing and selling the 52 acre property would materially impair their undivided interest in the property. They further contended that Anthony's life estate could not be sold because it would frustrate the intent of the grantor of the life estate.

On October 30, 2006, the trial court issued an order granting summary judgment to the appellees. In its order, the trial court ruled that each of the three tracts of property should be sold separately and that the life estate of Anthony Gregory was also subject to the sale. This appeal followed.

The appellants contend that the trial court erred when it ruled that the 52 acre property could be sold in three separate tracts. Specifically, the appellants argue that there is a statutory presumption of indivisibility regarding the 52 acre property and that the appellees failed to rebut the presumption by establishing that the property could be divided without impairing the appellants' interests. Thus, the appellants contend that summary judgment was improper. We disagree.

A partition action such as the one in this case is governed by KRS 389A.030. Subsection one of the statute provides that "when two (2) or more persons . . . share title to real estate in such manner that a conveyance by them jointly would pass a fee simple title, any one (1) or more of them may bring an action for the sale or division thereof in the Circuit Court of the county in which

the land, or the greater part thereof, lies” Subsection three establishes a presumption that the property is indivisible but provides that “if the court is satisfied from the evidence that the property is divisible, without materially impairing the value of any interest therein, division thereof pursuant to KRS 381.135 shall be ordered.”

After reviewing the record, the trial court correctly ruled that the three tracts of land should be sold separately and intact. Prior to the filing of this action, the father created three individual tracts of property by deeding substantial portions of the property to three of his children in specific deeds. Accordingly, the trial court was faced with a case involving three unique tracts of property rather than one piece of property. Therefore, the statute applied to presume that each of the three unique tracts of property were separately indivisible rather than applying to the 52 acre property in its entirety. Thus, the trial court properly ruled that the three tracts of property should be sold separately without further division.

Moreover, if the 52 acre property was sold in its entirety, the statute in question here would be frustrated. Selling the 52 acre property in its entirety would make an accurate distribution of the parties’ interests in the property almost impossible due to the intensely commingled nature of their interests. After such a sale, a real estate property appraiser would necessarily have to determine the value of the three tracts to accurately distribute each party’s proper interest. However, if the three separate tracts are sold separately, each party’s interest will be more

readily ascertainable. This outcome is in accordance with the intent of the legislature.

Appellants next contend that Anthony's life estate could not be sold because KRS 389A.030(6) prevents the frustration of a grantor's intent. Specifically, appellants contend that Lloyd's intention of providing his son a permanent home would be frustrated if his life estate interest was sold along with the entire property. We disagree.

The appellants correctly contend that a partition action may be stopped if a party objects and the trial court determines that the partition would defeat a grantor's intent. However, even if these two elements have been established, the trial court can "still review the evidence to see if partition is still desirable and order either a sale or division with the proceeds distributed accordingly." *McKinney v. McKinney*, 888 S.W.2d 332, 333 (Ky.App. 1994). Essentially, pursuant to KRS 389A.030(6), the statute instructs courts to use the grantor's intent as a guide for distribution rather than a consideration for denying the partition. *Id.* Thus, KRS 389A.030(6) did not preclude the sale of Anthony's life estate through the partition action. After the sale, Anthony will receive a distribution for his life estate interest.

For the foregoing reasons, the judgment of the Knox Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Thor H. Bahrman
Corbin, Kentucky

BRIEF FOR APPELLEES:

Samuel E. Davies
Barbourville, Kentucky