

RENDERED: NOVEMBER 30, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001715-MR
AND
NO. 2011-CA-001786-MR

NANNIE AMMONS CLARK

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM MEADE CIRCUIT COURT
v. HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 09-CI-00272

BETTY SUE FARMER

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KELLER, AND MAZE, JUDGES.

CLAYTON, JUDGE: This appeal and cross-appeal arise from a judgment rendered by the Meade Circuit Court wherein the trial court granted Betty Sue Farmer's motion for a directed verdict thereby dismissing Nannie Ammons Clark's amended complaint to quiet title. On direct appeal, Clark contends that the court erred as a matter of law when it determined that a deed created a life estate when the deed, by its terms, did not. On cross-appeal, Farmer contends that the trial

court erred when it excluded certain evidence propounded by Farmer at the trial.

After careful consideration, we affirm.

In the case herein, Nannie Clark originally filed a complaint against her daughter, Betty Sue Farmer, alleging misrepresentation, breach of good faith and fair dealing, breach of contract, and conversion. Subsequently, Clark filed an amended complaint and reframed the original allegation of “misrepresentation” as an action to quiet title to real estate. Specifically, she alleged that the deed between the parties, executed on November 19, 1998, was invalid as a matter of law because it did not convey a present interest.

A perusal of the deed shows that its granting and addendum clauses grant fee simple to Farmer. The deed, however, contained the following clause after the source of title:

**ARNOLD CLARK AND NANNIE CLARK
EXPRESSLY RETAIN AND RESERVE UNTO
THEMSELVES THE EXCLUSIVE USE, CONTROL
AND ENJOYMENT OF THE ABOVE-DESCRIBED
SUBJECT REAL PROPERTY DURING THE
REMAINDER OF THEIR NATURAL LIFE, AND
THAT THIS CONVEYANCE IS NOT TO TAKE
EFFECT UNTIL THE DEATH OF ARNOLD
CLARK AND NANNIE CLARK.**

Because of this clause, Clark contends that the deed does not convey a present interest in the real property but rather is a springing executory interest, that is, merely the conveyance of a future interest. Moreover, Clark argues that the language was a conditional promise to make a gift. The condition, according to Clark, is that her daughter, Farmer, was to take care of her mother in order to

receive the real property. Farmer disagrees with this assessment. She argues that the language of the general warranty deed is a transfer of the real property, which is subject to the Clarks' retention of a life estate.

Farmer then filed a motion to dismiss Count I of the complaint. She maintained that Clark is collaterally estopped from challenging the validity of the deed. Farmer's argument is based on the fact that ten years ago in another lawsuit in Meade County, Clark defended the validity of the deed that she is now attacking. Conversely, Clark filed a motion for a partial summary judgment because, according to her, the deed is invalid.

The trial court addressed both these motions in an order entered on May 19, 2010, which denied both Farmer's and Clark's motions. First, it was noted that the case referenced by Farmer as collaterally estopping this action was ultimately dismissed for want of prosecution. As the trial court observed "[a] dismissal for lack of prosecution is not 'judicial acceptance' of anyone's position." With regard to Clark's summary judgment motion, the trial court cited two cases, *Spicer v. Spicer*, 314 Ky. 560, 236 S.W.2d 474 (Ky. 1951), and *Riley v. Riley*, 2011 WL 744553(Ky. App. 2011)(2010-CA-001066-ME). The trial court observed that in *Spicer*, a deed similar to the one herein was determined by the Court to be testamentary in nature. But, conversely, in *Riley*, another case involving a similarly worded deed, the Court held that only the enjoyment of the property was postponed until the grantor's death and that the grantees took a present estate vesting at the time of the deed but possession was conveyed upon the death of the

grantor. After considering the reasoning in these two prior cases, the trial court concluded that genuine issues of material fact exist here as to whether the deed was valid.

A trial was held to determine the intent of the parties when the deed was created. Clark produced a copy of the deed at the trial and, while not directly testifying as to her intent regarding the deed, explained that she transferred this property to her daughter so that her daughter would take care of her. Evidence was also provided that Farmer paid the real estate taxes. When Clark closed her case, Farmer made a motion for a directed verdict, which was denied by the trial court but reserved for its consideration at the close of all proof.

Farmer provided the testimony of Steven Crebessa, the attorney who drafted the deed, and Mary Lee Ernest, the notary. They testified that the parties' intent, and therefore the intent of the deed, was to transfer ownership to Farmer while maintaining a life estate for Clark and her now deceased husband. Besides this testimony, Clark proposed that the deed was not ambiguous, that its intent could be ascertained from the contract, and was clearly revealed by the aforementioned cited language in the deed. At the close of her evidence, Farmer renewed her motion for a directed verdict. The grounds for the motion were that insufficient evidence existed to prove any intent other than the intent to create a deed retaining a life estate. The trial court granted the motion pursuant to Kentucky Rules of Civil Procedure (CR) 50.01. In its directed verdict order, it noted that even drawing all fair and reasonable inferences from the evidence in

favor of Clark, it still could only conclude that Farmer was entitled to a verdict. Additionally, the trial court elucidated that Clark failed to offer any proof that she did not intend to transfer the real estate by the deed in question.

In this appeal, Clark's major arguments are that her motion for partial summary judgment should have been granted. She makes no arguments regarding the granting of the directed verdict motion. On cross appeal, however, Clark claims that if a new trial is granted, the trial court erred in excluding certain evidence at trial.

We do not believe that the trial court erred in denying Clark's summary judgment motion because there was a genuine issue of a material fact. Regarding the review of a grant of a motion for a directed verdict, Kentucky law states that a "directed verdict is appropriate when, drawing all inferences in favor of the nonmoving party, a reasonable jury could only conclude that the moving party was entitled to a verdict." *Buchholtz v. Dugan*, 977 S.W.2d 24, 26 (Ky. App. 1998). Additionally, a reviewing court may not disturb a trial court's decision on a motion for directed verdict unless that decision is clearly erroneous. *Bierman v. Klapheke*, 967 S.W.2d 16, 18 (Ky. 1998).

"The construction of a deed is a matter of law, and [absent any ambiguity,] the intention of the parties is to be gathered from the four corners of the instrument. *Phelps v. Sledd*, 479 S.W.2d 894, 896 (Ky. 1972). In order to ascertain the intent of parties when executing a deed, "courts look at the whole deed, along with the circumstances surrounding its execution, and courts may also

consider the acts of the parties following the conveyance.” *Arthur v. Martin*, 705 S.W.2d 940, 942 (Ky. App. 1986). Further, a deed “is ambiguous when its language is reasonably susceptible of different constructions.” *Blevins v. Riedling*, 289 Ky. 335, 158 S.W.2d 646, 648 (Ky. App. 1942).

So that, if a deed is ambiguous, the court may look to extrinsic evidence to determine the intent of the parties. Hence, in the case at hand, where the wording in the deed is disputed, and the court is unable to construe the parties’ intent from only the document, the court looks to the circumstances surrounding the execution and may, if necessary, “consider the acts of the parties following the conveyance.” *Arthur*, 705 S.W.2d at 942. Here, we agree with the trial court’s careful and conscientious decision regarding the parties’ intent. After listening to the parties’ evidence, even giving all credence to Clark’s arguments, the trial court held that the intent of the parties was to convey the real property to Farmer and create a life estate for the Clarks. The trial court did not abuse its discretion in granting the motion for a directed verdict.

Regarding Farmer’s issue involving the admission of certain evidence at the trial, it is not necessary for us to consider this issue because based on our decision regarding the efficacy of the grant of the directed appeal, the evidentiary question on cross-appeal is moot.

Therefore, we affirm the judgment of the Meade Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-
APPELLEE:

Rick Hardin
Brandenburg, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT:

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