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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001720-MR

ESTATE OF LOLA BROWN — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 11-CI-02414

FRANKIE L. BROWN AND
LARRY J. SANDERS — APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, JONES, AND VANMETER, JUDGES.

VANMETER, JUDGE: The interpretation of a deed's contents is a matter of law, to be determined by a court. The issue we must resolve in this appeal is whether the Kenton Circuit Court erred in denying the Estate of Lola Brown's motion for summary judgment arguing that Lola Brown's deed conveying her residence to her grandson, Frankie L. Brown and his partner, Larry J. Sanders, was not supported

by consideration. We hold that the trial court did err and therefore vacate its judgment in favor of Brown and Sanders. We remand this matter to that court with instructions to enter judgment in favor of the Estate.

I. Facts and Procedure.

On August 9, 2010, Lola Brown signed a quitclaim deed conveying two tracts of property located in Covington to Brown and Sanders. The body of the deed recited the consideration as "One Dollar and Other Good and Valuable Consideration to her paid by the Grantees herein, the receipt whereof is hereby acknowledged." The deed's consideration certificate, required by KRS 382.135(1)(b), stated the following:

> **We, the undersigned, Grantor and Grantees hereby certify, swear and affirm that** $75,000.00 is the value of Parcel One [one-half which is exempt pursuant to KRS 142.050(7)(l)] and **$2,000.00 is the value of Parcel Two** [one-half which is exempt pursuant to KRS 142.050(7)(l)], **is the value of and is the full consideration paid for the property described above**. Grantee joins herein for the sole purpose of attesting to the value. KRS 382.135(1)(b).

(Emphasis added).

The record also contains a copy of a check in the amount of $2001 payable to Lola Brown, drawn on the account of Sanders and Brown. The memo line of the check states: "Paid in Full Purchase of 2979 Madison Ave., Covington, KY 41015[.]" Ms. Brown apparently negotiated the check, but it did not clear the payor bank, either because Brown and Sanders stopped payment on the check or the check was returned for insufficient funds. In either event, the record is clear

that Ms. Brown never received the bargained-for consideration recited in the deed and consideration certificate.

Both the Estate and Brown and Sanders filed motions for summary judgment. The trial court denied both motions and the case proceeded to trial on the issues of whether Ms. Brown intended to give her real estate to Brown and Sanders, and whether Brown and Sanders procured Ms. Brown's signature by undue influence. The jury, upon interrogatories, determined that Ms. Brown had intended a gift and that Brown and Sanders had not exercised undue influence. As a result, the trial court entered a judgment in favor of Brown and Sanders. The Estate appeals.

II. Standard of Review.

In *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985), the Supreme Court of Kentucky held that for summary judgment to be proper, the movant must show that the adverse party cannot prevail under any circumstances. The Court has also stated that "the proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Because factual findings are not at issue, the appellate court is not required to defer to the trial court. *Goldsmith v. Allied Bldg. Components, Inc.*, 833 S.W.2d 378, 381 (Ky.1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved

in his favor." *Steelvest*, 807 S.W.2d at 480; *Peoples Bank of N. Kentucky, Inc. v. Crowe Chizek & Co.*, 277 S.W.3d 255, 260 (Ky. App. 2008).

The interpretation of a deed is a matter of law, and thus our review of this case is *de novo*. *Morganfield Nat'l Bank v. Damien Elder & Sons*, 836 S.W.2d 893, 895 (Ky. 1992). In interpreting a deed, we look to the intentions of the parties, "gathered from the four corners of the instrument[,]*" Phelps v. Sledd*, 479 S.W.2d 894, 896 (Ky. 1972), using its words' common meaning and understanding. *Franklin Fluorspar Co. v. Hosick*, 239 Ky. 454, 457, 39 S.W.2d 665, 666 (1931). We will not substitute what was intended "for what was said." *Phelps*, 479 S.W.2d at 896. Further, a deed shall be construed based upon its provisions as a whole. *Brown v. Harlow*, 305 Ky. 285, 286, 203 S.W.2d 60, 61 (1947); *Florman v. MEBCO Ltd. P'ship*, 207 S.W.3d 593, 600 (Ky. App. 2006).

III. Analysis.

The Estate's first issue is that the trial court erred in failing to grant its motion for summary judgment on the basis that the deed failed for lack of consideration. Brown and Sanders argue that the summary judgment was inappropriate based on their argument that whether proper consideration was paid or whether the transfer was a gift was properly a factual issue for determination by the jury. We agree with the Estate that the trial court should have granted it summary judgment.

The deed is unambiguous, and reflects a transfer for consideration, $2,001. The check tendered to Ms. Brown by Brown and Sanders just as clearly

reflects payment for the property in the amount agreed upon by Ms. Brown, the grantor. The record also clearly reflects a charge-back to Ms. Brown's checking account when the check was not honored; whether the dishonor was due to insufficient funds or a stop payment is irrelevant. While the price was obviously on the low side given the values of the two tracts set out in the consideration certificate, Ms. Brown was within her rights to make a conveyance to her grandson and his partner for less than full market price. And while that decision might properly create a factual issue as to whether Brown and Sanders exercised undue influence on Ms. Brown to induce her to part with her property for such a low price, that issue seems to us to be separate and apart from whether Ms. Brown, in fact, received her bargained-for consideration. The record is clear, and no factual dispute exists, that the consideration recited in the deed was not paid. The trial court erred in not granting summary judgment in favor of the Estate by cancelling the deed. *See Nagle v. Wakefield's Adm'r*, 263 S.W.2d 127, 129 (Ky. 1953) (affirming trial court's cancellation of deed based on finding that "no money had in fact been for the conveyance"); *Westerfield v. Pendleton*, 45 S.W. 97, 98 (Ky. 1898) (holding that since grantee had not performed his part of the contract, the deed of conveyance from grantor should be cancelled).

Based on the foregoing holding, the Estate's argument regarding undue influence is moot.

IV. Conclusion.

The Kenton Circuit Court's judgment is vacated. This matter is remanded to that court with directions to enter a judgment in favor of the Estate of Lola Brown voiding the deed to Brown and Sanders.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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