19-P-1358 Appeals Court

IN THE MATTER OF THE ESTATE OF CARL MANNING WIDDISS.

No. 19-P-1358.

Dukes County. September 15, 2020. - November 18, 2020.

Present: Vuono, Sullivan, & Englander, JJ.

Devise and Legacy, Real property, Intestacy. Real Property, Life estate, Lease. Frauds, Statute of. Contract, Lease of real estate.

Petition for general probate filed in the Dukes County Division of the Probate and Family Court Department on February 25, 2019.

Motions to dismiss and for reconsideration were heard by Peter Smola, J.

Marilyn H. Vukota for the petitioner.
Dana Alan Curhan for the respondents.

ENGLANDER, J. For thirty-five years, the petitioner, Pamela Glavin, lived with her partner, Carl Manning Widdiss, in a home that he owned in Aquinnah. Two months before his death in 2014, while undergoing cancer treatment in Arizona, Widdiss handwrote his "last wishes and desires" with respect to the

disposition of his property (holographic will). Among other things, he stated that the petitioner was to have a life estate in the Aquinnah home. The holographic will was not witnessed, and the petitioner and Widdiss were never married under State law.

This case involves the petitioner's effort to obtain the life estate identified in the unwitnessed holographic will, in the face of intestacy proceedings that she herself initiated in the Probate and Family Court (intestacy case). In 2015, the judge in the intestacy case entered a decree and order determining that Widdiss died intestate, leaving his two siblings, a brother and sister, as his only heirs (2015 intestacy order). In 2019, Glavin filed this general probate petition (2019 petition), which sought to vacate the 2015 intestacy order and sought approval of the life estate. The 2019 petition claimed that the holographic will was valid under Arizona law and thus enforceable in Massachusetts, and that the petitioner and Widdiss were married as a matter of Wampanoag tribal law and thus she was lawfully his wife. The 2019 petition also stated that Glavin had lived in the Aquinnah home for four years since Widdiss's death, paying the taxes and maintenance costs, with the agreement of Widdiss's heirs.

The judge dismissed the 2019 petition, ruling that it was barred by G. L. c. 190B, § 3-412, which contains specific

provisions about when a formal testacy order may be reopened. For the reasons that follow, we affirm the judge's conclusions as to the petitioner's claims seeking to reopen the 2015 intestacy order. We conclude, however, that the 2019 petition states a viable claim that the petitioner and Widdiss's heirs subsequently agreed to a tenancy for the petitioner's lifetime, the partial performance of which could be sufficient to overcome the Statute of Frauds. We accordingly remand the matter for further proceedings as to that claim.

Background. This matter was decided on a motion to dismiss, so for present purposes we take the well-pleaded allegations in the 2019 petition as true.[1] Mulvanity v. Pelletier, 40 Mass. App. Ct. 106, 108 (1996).

Widdiss and the petitioner lived together at 5 Harpoon Hollow Road, Aquinnah, for thirty-five years. They were members of the Wampanoag tribe. Widdiss had no children and the two were not married through a civil marriage, although they lived

[1] The case initiated by the 2019 petition does not share the same Probate and Family Court docket number as the intestacy case, and the two matters have not been consolidated even though the 2019 petition seeks relief related to the intestacy case. In their brief to this court, the heirs suggest that as a result, there may be an issue as to this court's jurisdiction because the intestacy case is not yet closed. We disagree. The case before us is an appeal from a final judgment, so the appeal is proper. On remand, however, the court may wish to consolidate the two matters.

together and were considered to be husband and wife within the Wampanoag tribe.

In 2014, Widdiss and Glavin traveled to Arizona so that Widdiss could undergo cancer treatment. While there, Widdiss handwrote the holographic will. In that document, he appointed the petitioner and his nephew personal representatives. He wrote that the petitioner was to have a life estate in the Aquinnah home, that she could not sell the property, and that his life insurance proceeds should be used to pay off a mortgage and equity line of credit secured by the property. He signed and dated the document June 3, 2014.

Widdiss passed away in July of 2014. According to the petitioner's filings, she received advice from a lawyer that Widdiss's holographic will was not valid, because it was not witnessed. Believing that Widdiss accordingly had no will, in December of 2014 the petitioner filed a petition for formal adjudication of intestacy in the Probate and Family Court. The December 2014 filing stated explicitly that Widdiss died without a will, and listed Widdiss's siblings as his only heirs. The petitioner was identified as Widdiss's "life partner." Consistent with Widdiss's handwritten wishes, the petitioner and Widdiss's nephew sought appointment to administer the estate. In April of 2015, the judge entered the 2015 intestacy order

appointing the petitioner and the nephew, and confirming that Widdiss died without a will.

Meanwhile, the petitioner continued to live in the Aquinnah home from 2014 on. She allegedly paid the taxes and maintained the property. The 2019 petition also alleged that "[b]oth the decedent's brother and sister expressly acknowledged the validity of the life estate."

In 2019, the heirs filed a summary process complaint in Housing Court, seeking to evict the petitioner from the Aquinnah home. That action caused the petitioner to file the petition in Probate and Family Court that is at issue in this appeal. The 2019 petition states that it seeks "to distribute the real estate of Carl Manning Widdiss . . . subject to a life estate" or, alternatively, to vacate the 2015 intestate order because Widdiss died "with a spouse and a will." The 2019 petition accordingly advanced the following arguments, among others: (1) that Widdiss's handwritten holographic will was valid under Arizona law, and that Massachusetts would recognize such a will because it was valid in the jurisdiction in which it was executed, see G. L. c. 190B, § 2-506; (2) that the petitioner was Widdiss's wife under Wampanoag law, and thus a valid heir; and (3) that the petitioner has a leasehold interest in the

Aquinnah property for life, to which Widdiss's heirs have agreed.[2]

The Probate and Family court judge dismissed the 2019 petition based upon G. L. c. 190B, § 3-412, which governs the circumstances and timing under which formal testacy decrees can be reopened. The judge did not address the contention that the petitioner had a life tenancy pursuant to an agreement with the heirs. This appeal followed.[3]

Discussion. 1. The claims seeking to reopen the 2015 intestate order. The petitioner's claims that the 2015 intestate order should be reopened were correctly dismissed. The controlling statute is § 3-412 of the Massachusetts Uniform Probate Code (MUPC), G. L. c. 190B, which generally prohibits reopening a final testacy order, except under defined circumstances and within certain time limits. It provides, in pertinent part:

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[2] This third argument was fairly subsumed in the allegations of the petition. See Hobson v. McLean Hosp. Corp., 402 Mass. 413, 414-416 (1988). In any event, the argument as to the heirs' oral agreement was advanced expressly in the petitioner's opposition to the motion to dismiss, at the hearing on the motion, and in the petitioner's motion for reconsideration of the order dismissing the 2019 petition.

[3] Upon filing the 2019 petition, the petitioner sought to enjoin the summary process action in the Housing Court. That motion was denied, but the Housing Court proceedings have since been stayed pending resolution of this matter.

> "[A] formal testacy order under sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate . . . except that:
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> "(1) The court shall entertain a petition for vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding . . . .
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> "(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that 1 or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent . . . .
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> "(3) A petition for vacation under either clause (1) or clause (2) shall be filed prior to the earlier of the following time limits:
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> . . .
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> "(iii) Twelve months after the entry of the order sought to be vacated.
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> "(4) The order originally rendered in the testacy proceeding may be vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs."

To the extent the 2019 petition seeks to vacate the 2015 intestate order, those claims are barred by § 3-412. We discussed § 3-412 just recently, in Leighton v. Hallstrom, 94 Mass. App. Ct. 439 (2018), where we noted:

> "[T]he MUPC contains strict procedural constraints to which practitioners must pay careful attention. . . . [U]nder the statute, a motion to vacate a formal determination of heirs can be brought in only limited circumstances . . . [and] must be brought within certain deadlines, including

> in any event by '[t]welve months after the entry of the order sought to be vacated.'"

Id. at 444-445, quoting G. L. c. 190B, § 3-412 (3) (iii).

The plain language of § 3-412 controls here. The 2019 petition does not qualify under the exception of § 3-412 clause (1), because the petitioner concedes that she knew of the holographic will when the intestacy proceeding was instituted in 2014. Similarly, the petition does not qualify under the exception in clause (2), because the petitioner was also "aware of [her] relationship" to Widdiss at that time. In any event, even if the 2019 petition could qualify under either the clause (1) or (2) exceptions, it still would fail the timeliness requirements of clause (3), because the 2019 petition was not filed within twelve months of the 2015 intestacy order.

The petitioner suggests, however, that even if the clause (1) or (2) exceptions are not applicable, under clause (4) the judge can still vacate the 2015 intestate order, if the judge finds that such is "appropriate under the circumstances." We are not persuaded. The petitioner's reading of clause (4) would cut it loose from the "strict procedural constraints" of clauses (1)-(3), essentially creating an unbounded basis for vacating an intestacy order solely on a judge's determination that such is "appropriate." The statute cannot reasonably be construed in this fashion. Clauses (1)-(3) are strict, and for good reason -

- there is a need for finality in intestacy proceedings, so that the property may be distributed and the heirs may go on with their lives. See Cusack v. Clasby, 94 Mass. App. Ct. 756, 759 (2019), quoting G. L. c. 190B, § 1-102 (b) (3) ("[one] purpose of the MUPC . . . is to promote a 'speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors'"). Viewing the statute's structure as a whole, it is evident that clause (4) applies only if the requirements of clauses (1)-(3) have first been met. Indeed, the language of clause (4) refers back to the exceptions of clauses (1) and (2): it applies if there is an "order of probate of the later offered will" or an "order redetermining heirs."

Finally, the petitioner urges us to invoke "longstanding principles of equity and fairness," and to bypass the limitations of § 3-412 in order to correct a "mistake" that arose from the advice of counsel. The powers of an equity court, however, do not include the power to ignore statutory directives in pursuit of a particular result, even if that result might comport more closely with a judge's sense of fairness. See Freeman v. Chaplic, 388 Mass. 398, 406 n.15 (1983) ("[T]he Probate Court has broad equitable powers . . . [b]ut a grant of equitable powers does not permit a court to disregard statutory requirements"). The language of § 3-412 is

clear, as is its purpose to provide appropriate finality to formal testacy orders. The petition accordingly was properly dismissed, to the extent it sought to vacate the 2015 intestacy order.[4]

2. The life tenancy issue. The petitioner argues, alternatively, that after Widdiss's death, the heirs agreed that she would have the right to occupy the Aquinnah property for the rest of her life. In return, the petitioner agreed to pay the taxes and to maintain the property. And, she alleges, she has complied with her obligations for the more than four years since Widdiss's death.

This claim does not depend upon vacating the 2015 intestacy order, and it is not barred by § 3-412. Rather, the contention is grounded in contract, independent of any rights the petitioner claims by reason of the holographic will. And the claim is fairly subsumed in the relief sought in the 2019 petition, by which the petitioner, as personal representative of the estate, seeks to distribute the Aquinnah property, but subject to her right to occupy the property for life. G. L. c. 190B, § 3-107.

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[4] Deciding this issue as we do, we need not address whether the holographic will might have been honored in Massachusetts under the circumstances, had it been timely submitted, or whether the petitioner could have qualified as a rightful heir by marriage.

The claim that the petitioner has a long term, lifetime lease was not addressed in the judge's order, and it should not have been dismissed as a matter of law.[5] The law will recognize a lease with a term defined by a person's lifetime. See Mulvanity, 40 Mass. App. Ct. at 108-109. Such a lease is subject to the Statute of Frauds, G. L. c. 259, § 1 (Fourth), and ordinarily would have to be evidenced by a writing. See id.; Walsh v. Slater, 361 Mass. 875 (1972). There can be an exception to the Statue of Frauds, however, where the asserted agreement has been partially performed. See Nessralla v. Peck, 403 Mass. 757, 761 (1989) ("A plaintiff's detrimental reliance on, or part performance of, an oral agreement to convey property may estop the defendant from pleading the Statute of Frauds"). Moreover, partial performance by a tenant who occupies the premises can be sufficient to avoid the Statute, if the tenant also makes "improvements, repairs or expenditures in reliance on the contract." Walsh, supra at 876.

[5] Although not raised by either party, we note that the Probate and Family Court has jurisdiction over this claim. The court is granted equity jurisdiction under G. L. c. 215, § 6, and the petitioner's claim, in essence, seeks specific performance of her tenancy in land that is part of the probate estate. See Tetrault v. Bruscoe, 398 Mass. 454, 458 (1986); Wood v. Wood, 369 Mass. 665, 668-669 (1976). See also G. L. c. 215, § 3.

On the record before us, we express no opinion on whether there was an agreement for a lifetime tenancy, or whether such an agreement, assuming it was oral, nevertheless runs afoul of the Statute of Frauds. The cases establish that mere continued occupancy by a tenant, and the foregoing of opportunities to lease elsewhere, is not sufficient partial performance to avoid the Statute. See Walsh, 361 Mass. at 875-876; Chase v. Aetna Rubber Co., 321 Mass. 721, 724 (1947). This is a sound rule; one which, for example, prevents a holdover tenant without a written lease from merely claiming an alleged oral promise to continue the tenancy. On the other hand, a tenant who materially changes position in reliance on a landlord's promises, cf. Hurtubise v. McPherson, 80 Mass. App. Ct. 186, 189-190 (2011) (defendant estopped from pleading Statute of Frauds where plaintiff, in reliance on oral land swap agreement, "occupied [the] land and undertook the expense of construction"), or who otherwise invests substantially in a property, thereby conferring a benefit on the landlord while (potentially) evidencing an agreement to remain in the premises, may well be able to claim an estoppel. See, e.g., Chamberland v. Goldberg, 89 R.I. 223, 234 (1959). We take no position on what conduct will suffice, in terms of maintaining or improving

the property. These are matters for the judge to take evidence on, and to address, on remand.[6]

Conclusion. So much of the judgment as dismissed the 2019 petition's claim that the petitioner has a life tenancy arising from actions after the decedent's death is vacated, and the matter is remanded for further proceedings consistent with this opinion. In all other respects, the judgment is affirmed.[7]

So ordered.

[6] The petitioner also argues that if the document does not qualify as a will, it constituted an inter vivos grant to her of a life estate in the Aquinnah property. However, Widdiss's holographic will by its plain terms operated only after his death. It accordingly cannot be interpreted as an inter vivos grant of a life estate.

[7] The respondents' request for double costs and appellate attorney's fees is denied.