IN THE SUPREME COURT OF MISSISSIPPI

NO. 2017-CT-01641-SCT

IN RE ESTATE OF HARRY J. GREEN, DECEASED: ELIDE CRISTINA GARRIDO GREEN

v.

SHIRLEY COOLEY AND WILFORD GREEN

ON WRIT OF CERTIORARI

DATE OF JUDGMENT:	04/11/2018
TRIAL JUDGE:	HON. C. MICHAEL MALSKI
TRIAL COURT ATTORNEYS:	MARK NOLAN HALBERT J. ANDREW HUGHES KEITH CURTIS KANTACK STEPHEN TRAVIS BAILEY
COURT FROM WHICH APPEALED:	LEE COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	MARK NOLAN HALBERT CYNTHIA TRANELL LEE
ATTORNEY FOR APPELLEES:	CHRISTOPHER G. EVANS
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
DISPOSITION:	AFFIRMED IN PART, REVERSED AND RENDERED IN PART, AND REMANDED - 10/01/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

KING, PRESIDING JUSTICE, FOR THE COURT:

¶1. Harry Green owned multiple properties at the time of his death, eight of which are at issue in this appeal. Several years prior to his death, Harry conveyed these properties to his sister Shirley Cooley, and then later had Shirley reconvey six of the properties back to him. The reconveyance deeds were not notarized or recorded. Years later, Harry executed a will

that divested the properties to his wife, Cristina Green, and to his grandchildren. The chancery court and the Court of Appeals found that Harry never accepted the reconveyance deeds and declined to impose a constructive trust, holding that Shirley owned all eight properties. Because the evidence clearly indicates that Harry accepted the six reconveyance deeds, we reverse the judgments of the Court of Appeals and the chancery court as to the ownership of the six reconveyed properties. However, Cristina did not establish by clear and convincing evidence that a constructive trust is warranted. We therefore affirm the judgments of the Court of Appeals and the chancery court regarding the ownership of the two properties not subject to reconveyance deeds.

FACTS AND PROCEDURAL HISTORY[1]

¶2. At the time of his death on July 6, 2010, Harry owned multiple properties. Eight of these properties are the subject of this appeal:

1. 1201 Nixon Drive, Tupelo, MS
2. The "Main Street Warehouse," Shannon, MS
3. The Monroe County Land, Nettleton, MS
4. The "Shannon Lot"
5. Temple Circle, Shannon, MS
6. The "White Lane Property," Nettleton, MS
7. The "Two Houses and Green Valley Lab," Shannon, MS
8. The Plantersville Property

[1]The facts and procedural history are taken largely from the Court of Appeals' opinion.

"On December 31, 2003, Harry had his attorney draft eight deeds that conveyed the following properties to his sister Shirley:

1. 1201 Nixon Drive, Tupelo, MS
2. The "Main Street Warehouse," Shannon, MS
3. The Monroe County Land, Nettleton, MS
4. The "Shannon Lot"
5. Temple Circle, Shannon, MS
6. The "White Lane Property," Nettleton, MS
7. The "Two Houses and Green Valley Lab," Shannon, MS
8. The Summit

Shirley was not present when these deeds were signed." ***Green v. Cooley***, No. 2017-CA-01641-COA, 2019 WL 4694136, at *1 (Miss. Ct. App. Sept. 26, 2019) (footnote omitted). The Summit property is not at issue in this appeal.[2] The record contains no indication that Shirley even "knew that the transaction occurred in December 2003. After the deeds were properly acknowledged before a notary public, Harry took the deeds with him for safe keeping. Harry did not deliver the deeds to Shirley at that time, nor did he file them in the county clerk's office." ***Id.***

[2]Shirley reconveyed the Summit property back to Harry in 2004, and reconveyed it to him again in 2009, because Harry wanted to claim the homestead exemption on the Summit. The Summit property was unequivocally in Harry's name at the time of his death. However, the chancellor looked at the 2009 reconveyance as a sign of Harry's intent to convey the other properties to Shirley.

¶3. On January 15, 2004, at Harry's attorney's office and upon Harry's request, Shirley reconveyed the following six properties back to Harry via warranty deed:

1. 1201 Nixon Drive, Tupelo, MS
2. The "Main Street Warehouse," Shannon, MS
3. The Monroe County Land, Nettleton, MS
4. The "Shannon Lot"
5. Temple Circle, Shannon, MS
6. The "White Lane Property," Nettleton, MS

Harry took these deeds with him when he left his attorney's office, but the originals were never found. "Copies of the signed, non-acknowledged, unfiled deeds were later found in the attorney's office . . . ." ***Id.*** at *1 n.3. The record indicates that the January 15, 2004 deeds were never properly acknowledged or filed. No signed reconveyance deed for the Green Valley Lab and Two Houses was found.

¶4. "On November 26, 2004, Harry conveyed [to Shirley] by quitclaim deed . . . the Plantersville Property . . . . Like the deeds signed on December 31, 2003, Shirley was not present and the deed was properly acknowledged." ***Id.*** at *2. No reconveyance deed for the Plantersville Property was located.

> A few days later, on December 3, 2004, Harry traveled to Texas and delivered all of the December 31, 2003 warranty deeds and the November 26, 2004 quitclaim deed to Shirley. Shirley testified that she "put the deeds away," and that Harry told her that if something happened to him, she would "know what to do." The December 31, 2003 deeds were recorded on December 4, 2004, except for . . . the White Lane [P]roperty and the Monroe County [L]and[]. Shirley actually filed the White Lane [P]roperty and the Monroe County [L]and warranty deeds after Harry's death in 2010.

> Harry continued to pay taxes on the properties, do routine maintenance, and collect rent. When Harry went to borrow money against the Plantersville Property in 2010, however, he asked Shirley to sign the papers required to do so. Shirley testified that Harry had also borrowed against the home at 1201 Nixon Drive twice before. These transactions also required her signature for approval. The chancellor's opinion noted these facts to support his factual determination that Harry intended to transfer the properties to his sister . . . .

Id.

¶5. Harry had met Cristina in 2003, and they married on January 31, 2004.

> Cristina testified at trial that Harry "never told [her]" that Shirley owned any of his properties, including the home on Nixon Drive that the newlyweds were living in. Likewise, Cristina testified that her husband kept his business affairs secret. However, Lisa Diallo, a deputy clerk for Lee County, testified that Harry told her his properties were in Shirley's name because he trusted her and his "wife [was] from across the water," and he did not want her to take the property. The chancellor specifically cited this fact in his opinion.

Id. (alterations in original).

¶6. In 2007, Harry updated his will to devise the subject properties to Cristina and his grandchildren. "The property listed in the will included the properties deeded to Shirley on December 31, 2003." ***Id.*** It also included the Plantersville Property. "Harry died on July 6, 2010." ***Id.*** "Shirley took control of the properties after Harry's death . . . ." ***Id.*** Cristina consequently "filed a complaint for an accounting of the estate and a declaratory judgment as to the owner of the property at issue. Cristina argued that the deeds signed on January 15, 2004, were properly accepted by Harry, and the properties were to pass as dictated by Harry's will." ***Id.***

¶7. "The chancellor found that, after reviewing all of Harry's actions, he intended for Shirley to possess the properties." ***Id.*** The trial court specifically found that Harry physically

received and carried away the January 15, 2004 deeds, and that he initiated the reconveyance. The trial court also noted that "[t]he evidence supports a finding that Harry's day-to-day behavior with regard to the property was consistent with ownership, insofar as he paid the taxes on the properties and he, rather than Shirley, provided maintenance for them." Harry also regularly checked on the records for the properties. However, the chancery court also speculated that Harry could have destroyed the original January 15, 2004 deeds since they were not found after his death. The chancery court further found that having Shirley sign financial documents was inconsistent with ownership, as was the fact that Harry had notice of ownership of the properties, yet he never recorded the January 15, 2004 deeds. The chancery court noted that Harry had the Summit property reconveyed again in 2009, which the chancellor felt indicated a lack of acceptance of all the 2004 deeds. The chancery court also found that Harry paid rent on one of his properties because some testimony indicated that Harry may have paid rent to a Larry Williams on his Nixon Drive property. The chancery court ultimately concluded that "[g]iven Harry's words, acts and the circumstances surrounding the transaction,[] it appears that he did not intend to, and thus did not accept, the conveyance of the six properties in issue. Acceptance must be mutual, and thus, cannot be equivocal." Regarding the two properties for which no reconveyance could be produced, the chancellor found that the Green Valley Lab and Two Houses and the Plantersville Property belong to Shirley.

¶8. Cristina appealed, arguing that Harry did accept the January 15, 2004 deeds, and, alternatively, that the properties were held in a constructive trust. The Court of Appeals

affirmed the chancery court's judgment, finding that the chancery court did not abuse its discretion and that its findings were not manifestly wrong. Presiding Judge Jack Wilson dissented, arguing that Harry had accepted the six January 15, 2004 deeds. ***Id.*** at *7 (J. Wilson, P.J., dissenting). However, he agreed that the chancery court did not err by failing to find a constructive trust regarding the Green Valley Lab and Two Houses and Plantersville Property. ***Id.*** Cristina filed a petition for writ of certiorari, which this Court granted. She argues that Harry accepted the January 15, 2004 deeds and that a constructive trust should be established with regard to the properties.

ANALYSIS

1. Standard of Review

¶9. This Court will reverse a chancery court only if it "abused its discretion," if it "applied an erroneous legal standard," or if "its findings are manifestly wrong or clearly erroneous." ***In re Estate of Smith v. Boolos***, 204 So. 3d 291, 305 (Miss. 2016) (citing ***In re Estate of Baumgardner***, 82 So. 3d 592, 598 (Miss. 2012)). However, the application of a constructive trust is a question of law that we review do novo. ***Joel v. Joel***, 43 So. 3d 424, 429-30 (Miss. 2010).

2. Acceptance of the Six Reconveyed Properties

¶10. It is undisputed that the January 15, 2004 deeds were not properly acknowledged and recorded. As a general matter, deeds that are not properly acknowledged and recorded are not valid. Miss. Code Ann. § 89-5-3 (Rev. 2011). However, "as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration,

said instruments shall nevertheless be valid and binding." *Id.* Thus, as between Shirley and Harry and his heirs, the lack of acknowledgment and recording do not affect the validity of the deeds. The central issue is, as the chancellor and the Court of Appeals dissent correctly identify, whether Harry accepted the six deeds.

¶11. The grantee's acceptance of a deed is essential to its validity. ***Odom v. Forbes***, 500 So. 2d 997, 1001 (Miss. 1987). The intent to accept the deed is manifested by the grantee's "words, acts and the circumstances surrounding the transaction." ***Id.*** (citing ***McMillan v. Gibson***, 76 So. 2d 239 (Miss. 1954)). "Whilst no specific formalities are necessary, the grantor must consent that the deed shall pass irrevocably from his control, and the grantee must accept it." ***Harkreader v. Clayton***, 56 Miss. 383, 390 (1879). Thus, if the words, acts, and circumstances surrounding the deed transaction evince that the grantee accepts control of the deed, acceptance is complete.[3]

¶12. Harry's words, acts, and deeds surrounding the actual reconveyance transaction were that Harry requested that Shirley go to his lawyer's office to sign the deeds that reconveyed the six properties to him (thus initiating the transaction), that Harry took possession of the deeds and left the lawyer's office with them, and that Harry "continued to pay taxes and insurance on the properties, continued to make repairs and improvements on the properties, and continued to collect rent on the properties." ***Green***, 2019 WL 4694136, at *7 (J. Wilson,

[3]"The prime requisites of such acceptance, in the legal sense, are the grantee's knowledge of such delivery or tender, an intention to take the legal title to the property which the deed purports to convey, and the manifestation of such intention by some act, conduct, or declaration." C.R. McCorkle, Annotation, *What constitutes acceptance of deed by grantor*, 74 A.L.R.2d 992 (footnotes omitted).

P.J., dissenting). The chancellor specifically found that "Harry's day-to-day behavior with regard to the property was consistent with ownership." The evidence strongly indicates that, at the time of the transaction, Harry accepted the reconveyance deeds, as he intended to, and did, control the deeds, and the manifestation of his intent to accept was demonstrated by his exclusive control of both the deeds and the property.

¶13. Shirley offers no evidence surrounding the reconveyance transaction that indicates a lack of acceptance. Instead, she offers evidence regarding some of Harry's actions years later, some of Harry's inactions, and speculation. But, "[t]he relevant issue is whether Harry accepted the deeds when they were executed and delivered to him in January 2004 — not what he may have done with them sometime later." ***Green***, 2019 WL 4694136, at *8 (J. Wilson, P.J., dissenting). "The rule has generally been adhered to in this jurisdiction that where a deed has once been signed and delivered, a subsequent surrender and destruction of it does not divest the grantee of title to the land." ***Wood v. Johnson***, 108 So. 2d 202, 204 (Miss. 1959). Once acceptance has been made, only when the grantee's later action surrounding the deed evinces an entirely new conveyance transaction back to the original grantor would the prior transaction be invalidated. *See* ***id.*** Shirley offers no evidence that Harry conveyed these properties back to her subsequent to January 2004.

¶14. Instead, Shirley asserts that Harry asked her to sign deeds of trust for the Nixon Drive Property,[4] that Harry regularly reviewed the land records that showed her as the owner of

[4]"[I]t is hardly surprising that the bank wanted Shirley — the record owner of the property — to sign the deed of trust." ***Green***, 2019 WL 4694136, at *7 (J. Wilson, P.J., dissenting).

record,[5] that the original deeds were not located,[6] that Harry paid Larry Williams "rent" on the Nixon Drive Property,[7] and that Harry had Shirley execute not only the January 15, 2004 deed reconveying the Summit Property, but also a 2009 deed reconveying it as well.[8] None of these later acts is sufficient to revoke Harry's original acceptance of the January 15, 2004 deeds.[9]

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[5]"[T]hat simply shows that Harry knew that the Lee County land records showed that Shirley was the owner of record, which is not in dispute." ***Green***, 2019 WL 4694136, at *7 (J. Wilson, P.J., dissenting).

[6]Shirley speculates that Harry may have lost or destroyed the deeds; however, such an assertion is mere speculation, Shirley offers no evidence regarding what actually happened to the deeds. Regardless, the subsequent loss or destruction of the deeds would not revoke Harry's acceptance.

[7]The evidence that Harry and Cristina paid "rent" to Larry Williams on the Nixon Drive Property is vague, at best. No evidence exists that Williams owned the property or collected rent on behalf of Shirley. Further, "Shirley fails to explain why Harry would have been paying rent to Larry Williams or how that would tend to prove that she owned the property." ***Green***, 2019 WL 4694136, at *8 (J. Wilson, P.J., dissenting).

> [8] The chancellor suggested that the 2009 deed 'may have been unnecessary if Harry had truly accepted the 2004 conveyance.' However, the much simpler explanation for Harry's request for a second deed is just what he told Shirley: he needed an acknowledged, recorded deed to file for his homestead exemption. Harry's request regarding the Summit property should not be interpreted as evidence of what he did or did not believe about the six other properties.

Green, 2019 WL 4694136, at *8 (J. Wilson, P.J., dissenting) (footnote omitted).

[9]Moreover, much of his later action also contrasted any assertion that he revoked his acceptance. Harry drafted a will that specifically devised several of the properties at issue, Harry borrowed money on the Nixon Drive Property, and Harry continued to pay the costs of and collect rents on the properties.

¶15. The chancery court abused its discretion and manifestly erred by finding that Harry failed to accept the six January 15, 2004 reconveyance deeds when Harry took the deeds into his physical possession and controlled both the deeds and the subject properties. The six reconveyed properties therefore properly belonged to Harry at the time of his death, and this Court reverses the chancery court regarding these six properties.

3. Constructive Trust

¶16. Cristina argues that Shirley will be unjustly enriched if a constructive trust is not established, and further that a constructive trust should be established to effectuate Harry's intent. Because we find the six reconveyed properties belonged to Harry, we address this argument only as to the Green Valley Lab and Two Houses and the Plantersville Property.

¶17. "This Court has defined a constructive trust as follows":

> A constructive trust is one that arises by operation of law against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy.

McNeil v. Hester, 753 So. 2d 1057, 1064 (Miss. 2000) (quoting ***Saulsberry v. Saulsberry***, 223 Miss. 684, 78 So. 2d 758, 760 (1955)). "Clear and convincing proof is necessary to establish a constructive trust." ***McNeil***, 753 So. 2d at 1064 (citing ***Planters Bank & Tr. Co. v. Sklar***, 555 So. 2d 1024, 1034 (Miss. 1990)). The chancery court did not err by finding that Cristina failed to provide clear and convincing evidence establishing a constructive trust. Cristina has not put forth evidence that Shirley obtained the properties by any wrongdoing or abuse of relationship. Indeed, Harry transferred the properties to Shirley apparently

without her knowledge and seemingly for his own purposes, whatever those may have been. The chancery court therefore did not abuse its discretion by failing to establish a constructive trust and finding that Shirley properly owned the Green Valley Lab and Two Houses and the Plantersville Property.

CONCLUSION

¶18. Because Harry accepted the six January 15, 2004 reconveyance deeds, as between him and Shirley and their heirs, he was the rightful owner of the six properties at the time of his death. This Court reverses the judgments of the Court of Appeals and the chancery court that 1201 Nixon Drive, Tupelo, Mississippi, the "Main Street Warehouse," Shannon, Mississippi, the Monroe County Land, Nettleton, Mississippi, the "Shannon Lot," Temple Circle, Shannon, Mississippi, and the "White Lane Property," Nettleton, Mississippi, belong to Shirley, renders judgment that these properties belonged to Harry at the time of his death, and remands the case with instructions that the chancery court distribute these properties according to Harry's will. We affirm the judgments of the Court of Appeals and the chancery court that the Green Valley Lab and Two Houses and the Plantersville Property belong to Shirley.

¶19. **AFFIRMED IN PART, REVERSED AND RENDERED IN PART, AND REMANDED.**

KITCHENS, P.J., MAXWELL, CHAMBERLIN AND GRIFFIS, JJ., CONCUR. RANDOLPH, C.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY COLEMAN, BEAM AND ISHEE, JJ.

RANDOLPH, CHIEF JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

¶20. "[A] chancellor's findings of fact are unassailable on appeal unless those findings are manifestly wrong." ***McCoy v. McCoy***, 611 So. 2d 957, 960 (Miss. 1992).

> [W]here the chancellor was the trier of facts, his findings of fact on conflicting evidence cannot be disturbed by this Court on appeal unless we can say with reasonable certainty that these findings were manifestly wrong and against the overwhelming weight of the evidence. Even if this Court disagreed with the lower court on the finding of fact and might have arrived at a different conclusion, we are still bound by the chancellor's findings unless manifestly wrong . . . .

Richardson v. Riley, 355 So. 2d 667, 668 (Miss. 1978). Furthermore, "[i]t is outside the purview of this Court's authority to reweigh evidence. We are to accept the chancellor's findings of facts and ensure that those findings are supported by the evidence that was before him." ***Elchos v. Haas***, 178 So. 3d 1183, 1191 (Miss. 2015) (citation omitted).

¶21. I would find that the chancellor's findings are supported by today's record. I disagree that we should overturn the chancellor's ruling, substitute our own judgment, and find that the property belonged to Harry at the time of his death. The chancellor, who had previously denied summary judgment so that the parties could develop and present evidence and testimony, heard all of that evidence and testimony and determined that Shirley owned the properties in question.

¶22. Mississippi law is well settled as to delivery and acceptance of deeds.

> [A] deed is not effective to transfer title unless and until it is delivered to the grantee. Delivery has been defined as "a transfer of [a deed] from the grantor to the grantee or his agent or to some third person for the grantee's use, in such manner as to deprive the grantor of the right to recall it at his option, and with intent to convey title." "The intent to deliver a deed must be mutual with the intent to accept the deed in order for the delivery and acceptance to be complete." And before delivery, a deed is without force or effect and is merely a "scroll under control of the grantor who is free to withdraw it, destroy it, or

> complete its execution by delivery." Indeed, this Court has held that a deed which was undisputedly "signed and acknowledged," with an acknowledgment reciting "that the same was 'signed, sealed and delivered,'" but was in fact never delivered, "never became effective." Likewise, we have held that a deed that was executed and recorded, but which the grantee declined to accept upon attempted delivery, was not delivered and was void. Therefore, even if a deed is properly acknowledged, the deed does not become effective to transfer title until delivery and acceptance are completed.

Morrow v. Morrow, 129 So. 3d 142, 146-47 (Miss. 2013) (alteration in original) (citations omitted).

¶23. The chancellor found that Harry intended to transfer the properties to Shirley and that he did not accept the January 2004 deeds. This finding is supported by Harry's own knowledge and actions.

> Given Harry's words, acts, and the circumstances surrounding the transaction, it appears that he did not intend to, and thus did not accept, the conveyance of the six properties in issue. Acceptance must be mutual, and thus, cannot be equivocal. Harry may have intended to receive the deeds, but there is no good evidence that he meant them to be operative. Harry's behavior was equivocal throughout—his behavior seems to signify that he wanted the ability to own or not own at his pleasure. On the whole, however, this equivocation undermines his claim for the property. It is true Harry had a continual, personal interest in this property and took responsibility by way of maintenance and paying taxes for it, and, as to one piece of property, listed it as a specific devise in his will; however, his other actions were at odds with actual acceptance. Paying rent for property he owned, having a non-owner sign with him on multiple deeds of trust, expressing his reasons for wanting the property out of his name, and failing to take steps to have the deeds properly authenticated or recorded (despite his past experience and knowledge) demonstrate that he did not "assent that it will be operative as a contract." [***Salmon v. Thompson***, 391 So. 2d 984, 986 (Miss. 1980).] Further, when he did want to have property placed in his name—the Summit property—he had his sister re-convey it. As such, this Court denies the Complaint for Declaratory Judgment, instead finding that these six properties were transferred to Shirley in 2003, and remain her real property.

¶24. Today's record supports the chancellor's conclusion that Harry intended for Shirley to remain the owner of these properties. Harry failed to properly accept the January 2004 deeds signed by Shirley. He never filed the deeds, and the originals were never found. I would affirm the chancellor's decision, and the affirmance of that decision by the Court of Appeals, that the properties belong to Shirley.

COLEMAN, BEAM AND ISHEE, JJ., JOIN THIS OPINION.