

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF ELIZABETH
RODGERS, DECEASED,

Appellee

APPEAL OF: MARK D. BRADLEY,
EXECUTOR OF THE ESTATE OF
ELIZABETH J. RODGERS, DECEASED,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 825 WDA 2012

Appeal from the Order Entered April 16, 2012
In the Court of Common Pleas of Westmoreland County
Orphans' Court at No(s): 65-09-00250

IN RE: ESTATE OF VINCENT V.
RODGERS, DECEASED,

Appellee

APPEAL OF: MARK D. BRADLEY,
EXECUTOR OF THE ESTATE OF
ELIZABETH J. RODGERS, DECEASED,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 826 WDA 2012

Appeal from the Order April 16, 2012
In the Court of Common Pleas of Westmoreland County
Orphans' Court at No(s): 65-09-02133

BEFORE: BOWES, LAZARUS, and COLVILLE,* JJ.

* Retired Senior Judge assigned to the Superior Court.

MEMORANDUM BY BOWES, J.:

FILED AUGUST 21, 2013

Appellant Mark D. Bradley, in his capacity as executor under the will of the estate of Elizabeth J. Rodgers, has appealed from two orders entered on April 16, 2012 that dismissed his exceptions to orders entered in these matters on August 30, 2011. One order was entered at orphans' court division action number 65-09-00250, regarding the estate of Elizabeth J. Rodgers, deceased, and the other order was entered at orphans' court division action number 65-09-02133, regarding the estate of Vincent V. Rodgers, deceased. We affirm.

Elizabeth J. Rodgers ("Elizabeth") died testate on January 19, 2009, her will was admitted to probate, and letters testamentary were granted to Appellant herein. Vincent V. Rodgers ("Vincent") was Elizabeth's brother, and he died testate on October 24, 2009. His will was probated and letters testamentary as to his estate were granted to Gregory V. Rodgers, who is the Appellee herein. The present appeal concerns two petitions, which were filed at the respective estates by Appellant.

In those petitions, Appellant asked the orphans' court to reform four deeds executed on March 17, 1997, and to quiet title to the land described in those deeds. Two deeds were executed by Elizabeth, and they transferred her interest in two parcels of real estate to a limited partnership that was not formed on the date in question. The other two deeds were executed by Vincent, and they transferred his interest in the same two pieces of land to a different but also nonexistent limited partnership. None of the four deeds

was recorded. Appellant sought to have the designated grantee under all four deeds altered. Appellant's proposed grantee was a third limited partnership, which also was not created until after March 17, 1997.

Appellee filed petitions to strike Appellant's petitions. Said petitions were granted and the orphans' court struck Appellant's request to have the four deeds reformed. It also declined to transfer the two parcels of real estate into the name of the limited partnership that Appellant claimed was the intended grantee under the four deeds. The court reasoned that the four March 17, 1997 deeds were void since they purported to transfer the described properties into the names of entities that did not legally exist when the deeds were executed. It concomitantly concluded that the two parcels of land could not be legally transferred into the name of the entity that Appellant alleged should own it. The orphans' court therefore dismissed Appellant's petitions to reform the March 17, 1997 deeds. After the denial of his exceptions to that ruling, Appellant filed the present appeals, which were consolidated for disposition. Appellant presents this contention for our review:

The Trial Court declared that certain deeds to a limited partnership were "void or invalid" because as of the date of the deeds, the Certificates of Limited Partnership had not yet been filed with the Department of State. Did the Trial Court err in determining that the deeds were void, invalid and/or of no affect because on the date of the deeds the Certificate of Limited Partnership had not yet been filed when, the Certificates of Limited Partnership were filed approximately three months after the date of the deeds and the parties conducted themselves, for over ten years, as if the deeds were valid and enforceable?

Appellant's brief at 3.

Initially, we outline the standard of review that we employ when reviewing the rulings rendered by an orphans' court. "When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence." ***In re Estate of Pendergrass***, 26 A.3d 1151, 1153 (Pa.Super. 2011). Herein, the pertinent facts are uncontested, and this matter involves purely an application of the law to those facts. Therefore, in the present case, we will reverse if "the rules of law on which the court relied are palpably wrong or clearly inapplicable[.]" ***Id.***

The orphans' court set forth the pertinent facts. During their lifetimes, Elizabeth and Vincent owned and operated two funeral homes. One funeral home was located in Manor while the other one was situated in Irwin. Elizabeth and Vincent acquired the real estate for the Manor funeral home in 1961, and the named grantees under that deed were Vincent V. Rodgers and Elizabeth J. Rodgers as tenants in common. In 1964, they obtained the real estate for the Irwin funeral home, and that land was titled in the same manner.

Elizabeth and Vincent operated these funeral homes jointly and filed annual partnership returns for these businesses under the name of Rodgers Funeral Home. When he died, Vincent was the principal partner and owner of the Vincent V. Rodgers Family Limited Partnership. That limited partnership actually functioned, similarly to a living trust, as an estate

planning device. The Vincent V. Rodgers Family Limited Partnership owned Vincent's personal liquid investment assets. When she died, Elizabeth was the principal partner and owner of the Elizabeth J. Rodgers Family Limited Partnership, which likewise operated as an estate planning vehicle and held her personal liquid investment assets.

On March 17, 1997, Vincent conveyed his one-half interest in the Irwin real estate to "Vincent V. Rodgers and Elizabeth J. Rodgers, General Partners Under the Vincent V. Rodgers Family Limited Partnership." That same day, Vincent transferred his one-half interest in the Manor real estate to "Vincent V. Rodgers and Elizabeth J. Rodgers, General Partners Under the Vincent V. Rodgers Family Limited Partnership." Simultaneously, Elizabeth conveyed her one-half interest in the Irwin property to "Elizabeth J. Rodgers and Vincent V. Rodgers, general partners under the Elizabeth J. Rodgers Family Limited Partnership." She also deeded her one-half interest in the Manor real estate to "Elizabeth J. Rodgers and Vincent V. Rodgers, General Partners Under the Elizabeth J. Rodgers Family Limited Partnership." Thus, there were four deeds executed on March 17, 1997.

Appellant filed a petition at each estate; he claimed that the four deeds had to be reformed in that they had the incorrect grantees in them. That petition also contained a request to quiet title to the two pieces of property. Appellant maintained that Elizabeth and Vincent had intended to transfer their interests in the two parcels of land to "Vincent V. Rodgers and

Elizabeth J. Rodgers, general partners under the Rodgers Family Limited Partnership.”

Appellee filed a motion to dismiss Appellant’s petition because neither the Vincent V. Rodgers Family Limited Partnership nor the Elizabeth J. Rodgers Family Limited Partnership was in existence when the deeds were signed on March 17, 1997. Specifically, the certificates of limited partnership for the Vincent V. Rodgers Family Limited Partnership and the Elizabeth J. Rodgers Family Limited Partnership Limited Partnership were not filed with the Department of State until June 16, 1997, three months after the deeds were created. Likewise, the limited partnership that did business as the Rodgers Family Limited Partnership Rodgers Funeral Home was formed on June 16, 1997. The orphans’ court agreed with Appellee’s position that all four March 17, 1997 deeds were void *ab initio* because they purported to transfer the interests of Elizabeth and Vincent to entities that were nonexistent. It reasoned:

In this case, none of the three limited partnerships were created at the time of the execution of the deeds on March 17, 1997. Therefore, regardless of which limited partnership was the grantee, all of these deeds attempting a conveyance to a nonexistent limited partnership are either void or invalid. Merely because the evidence may establish the existence of a general partnership on March 17, 1997 between Elizabeth and Vincent, does not cure the fact that the conveyance was attempted to a limited partnership between the parties that did not exist at that time and not a general partnership that might have existed and therefore the attempted conveyance had no effect.

Trial Court Opinion, 8/30/11, at 4.

In this case, the court relied upon a legal principle that is precedential in this Commonwealth. In ***Borough of Elizabeth v. Aim Sher Corp.***, 462 A.2d 811 (Pa.Super. 1983), the grantor in a deed transferred her property on March 14, 1977, to a corporation in exchange for \$150.00. However, the articles of incorporation creating the grantee in question were not filed until April 24, 1978. We concluded that the March 14, 1977 deed was invalid and ruled, “A deed that purports to convey real estate to a nonexistent corporation has no effect.” ***Id.*** at 812. ***See also Africa v. Trexler***, 81 A. 707 (Pa. 1911) (land was transferred into name of company but there was no proof that the company in question existed as a fictitious name, legal corporation or partnership; our Supreme Court held that the deed to the company did not pass title to the real estate in question).

The Commonwealth Court grappled with the identical issue in ***Lester Associates v. Commonwealth***, 816 A.2d 394 (Pa.Cmwlt. 2003). Therein, the following occurred. The Pennsylvania Department of Revenue (the “Department”) assessed a real estate transfer tax upon Lester Associates, a general partnership, based upon a March 20, 1995 deed in which Lester Associates transferred real estate that it owned into the name of a nonexistent entity. Lester Associates claimed that the March 20, 1995 deed was void *ab initio*, and it therefore did not owe the real estate transfer tax.

Lester Associates appealed the imposition of the transfer tax to the Board of Finance and Revenue, which affirmed the decision of the Department. In an appeal filed by Lester Associates, the Commonwealth Court affirmed. ***Lester Associates v. Commonwealth***, 751 A.2d 253 (Pa.Cmwlt. 1999). However, our Supreme Court granted allowance of appeal in the matter, and it issued a *per curiam* order vacating the Commonwealth Court's affirmance of the imposition of the real estate transfer tax upon Lester Associates. In pertinent part, our Supreme Court's order remanding to the Commonwealth Court stated, "this matter is **REMANDED** to the Commonwealth Court for consideration of whether Lester Associates proffered sufficient evidence that the March 20, 199[5] deed was void *ab initio*, . . . such that there was no transfer of real estate, justifying the imposition of realty transfer tax by the Department of Revenue." ***Lester Associates v. Board of Finance and Revenue***, 762 A.2d 1084 (Pa. 2000) (emphasis in original).

Upon remand, the Commonwealth Court noted that the parties had jointly stipulated that Lester Associates was a general partnership with a fictitious name registered with the Corporation Bureau of the Department of State. In 1992, Lester Associates obtained title to the property in question. In the March 20, 1995 deed, Lester Associates purported to convey the property to "Lester Associates, L.L.C." However, "Lester Associates, L.L.C."

was never registered as a fictitious name or legal entity in Pennsylvania or in any other jurisdiction. Thus, it did not exist.

After remand from the Supreme Court, Lester Associates argued to the Commonwealth Court that the March 20, 1995 deed was void *ab initio* so that there was no transfer of real estate to justify the imposition of the real estate transfer tax. It claimed that the deed was invalid because the grantee was not capable of taking title when the real estate was conveyed to it since the grantee did not exist. Relying upon ***Borough of Elizabeth***, the Commonwealth Court agreed and ruled that the March 29, 1995 deed was ineffective and did not operate to transfer title to the real estate. It reversed the imposition of a real estate transfer tax.

While this Commonwealth Court decision itself is not binding on the Superior Court, it constitutes persuasive authority. ***Commonwealth v. Simmons***, 56 A.3d 1280, 1284 n.1 (Pa.Super. 2012) (“While decisions of the Commonwealth Court are not binding upon us, they may serve as persuasive authority.”) Furthermore, our Supreme Court’s *per curiam* order granting remand in the ***Lester*** case clearly indicated that the Supreme Court accords weight to the position that a deed is invalid if it transfers land to an entity that has not been created when the deed is executed. Our Supreme Court’s acceptance of this precept is further cemented by the decision in ***Africa, supra***.

In this case, none of the three limited partnerships at issue in this case existed when the March 17, 1997 deeds were executed. The Pennsylvania Uniform Limited Partnership Act provides that a limited partnership is created when the certificate of limited partnership is actually filed with the Department of State:

A limited partnership is formed at the time of the filing of the certificate of limited partnership in the department or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section or the corresponding provisions of prior law.

15 Pa.C.S. § 8511(b), effective date of formation. The certificates of limited partnership herein were filed in June, 1997. Thus, under the above discussed case law, the March 17, 1997 deeds are void because they attempted to transfer the grantors' interest in the parcels of land to nonexistent entities.

Appellant's first challenge to the propriety of this holding is that the property should be placed in the Rodgers Family Limited Partnership because "the subject real estate has always been utilized as limited partnership property." Appellant's brief at 10. This position is factually incorrect since the Rodgers Family Limited Partnership was not formed until 1997, but Elizabeth and Vincent acquired the properties and ran the funeral homes as a general partnership from the 1960s forward. Thus, the real estate was utilized by the limited partnership for less time than it was utilized by a general partnership between Elizabeth and Vincent. Secondly, the fact that

the Rodgers Family Limited Partnership used land owned by Elizabeth and Vincent as tenants in common does not mean that the Rodgers Family Limited Partnership acquired ownership of the real estate in question. As noted by the trial court, businesses do conduct their affairs on property that the businesses do not own.

Appellant also maintains that the primary basis for the orphans' court ruling was a distinguishable court of common pleas decision. **See Kuziak v. Kuziak**, 2001 WL 34315435 (Court of Common Pleas of Columbia County 2001). We disagree. The orphans' court also relied upon **Borough of Elizabeth, supra**.

Appellant's next claim is as follows. "Appellant Mark D. Bradley has been unable to find any binding Pennsylvania case law authority for the conclusion that a deed is not invalid simply because the grantee entity did not exist on the date the deed was signed." Appellant's brief at 11. Appellant asks that we apply a case from West Virginia involving that precept. **Id.** Appellant was unable to locate authority for his proposition from Pennsylvania because the law in this Commonwealth, as outlined *supra*, is to the contrary. A deed is not valid if it transfers real estate to a fictitious entity that was not legally created when the deed was executed. We decline to apply a West Virginia decision that conflicts with authority from this jurisdiction.

Appellant's final position is that certain provisions of Title 15, which govern corporations and unincorporated associations, of the Pennsylvania

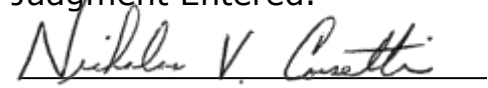
Consolidated Statutes support his proposition that the March 17, 1997 deeds should not be declared void. Specifically, he points to 15 Pa.C.S. § 8504 (footnotes omitted), which states: "In any case not provided for in this chapter [governing limited partnerships], the provisions of Chapters 81 (relating to general provisions) and 83 (relating to general partnerships) govern." Next, Appellant refers us to 15 Pa.C.S. § 8313, partnership property, that states in subsection(a), "All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property." Appellant continues that since there is "no provision comparable to Section 8313(a) of the General Partnership Law setting forth a general rule as to partnership property," we should apply § 8313(a) to limited partnership property. Appellant's brief at 16. The fault in this premise is that the two pieces of real estate were never brought into the partnership nor were they acquired or purchased on account of the partnership. Hence, Appellant's invocation of § 8313(a) is unavailing.

As the orphans' court applied controlling precedent from the Superior Court, which is consistent with Supreme Court and Commonwealth Court authority, we are compelled to affirm.

Orders affirmed.

J-A05001-13

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 8/21/2013