

Opinion issued September 2, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00080-CV

**LEO DOUGLAS HUMPHRIES AS TRUSTEE OF JENKINS Y.
HUMPHRIES, SR. TRUST; HERBERT HUMPHRIES AS TRUSTEE OF
JENKINS Y. HUMPHRIES, SR. TRUST; ERMA JEAN MOFFETT AS
TRUSTEE OF JENKINS Y. HUMPHRIES, SR. TRUST; AND BUDDY J.
HUMPHRIES AS TRUSTEE OF JENKINS Y. HUMPHRIES, SR. TRUST,
Appellants**

V.

**JUDITH GALE SMITH, CORA LOUISE BARNES, CHAD HUMPHRIES,
AND JENKINS Y. HUMPHRIES, SR. TRUST, Appellees**

**On Appeal from the 335th District Court
Bastrop County, Texas¹**

¹ The Texas Supreme Court transferred this appeal from the Court of Appeals for the Third District of Texas. *See* TEX. GOV'T CODE § 73.001 (authorizing transfer of cases between courts of appeals). We are unaware of any conflict between the precedent of the Court of Appeals for the Third District and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

MEMORANDUM OPINION

This declaratory judgment appeal arises from a trustee's conveyances of land. In three issues, the appellants argue that the trial court erred by (1) failing to retroactively require the appellees to seek court modification of the trust to allow Pearlie Mae Humphries to convey trust property to pay taxes, (2) declaring that Pearlie had validly conveyed six warranty deeds to the appellees, and (3) awarding attorney's fees to the plaintiffs.

We affirm.

Background

The Last Will and Testament

Jenkins Y. Humphries, Sr. executed his Last Will and Testament in 1992, and named his wife, Pearlie Mae Humphries, as independent executor, trustee, and beneficiary. Jenkins bequeathed all his personal property to Pearlie. He and Pearlie owned a 146-acre tract in Bastrop County. Jenkins placed his undivided one-half community interest in the land into a trust to benefit Pearlie during her lifetime, and upon Pearlie's death, the trust would continue to benefit their 10 children.² Jenkins

² Jenkins and Pearlie's 10 children are Jenkins Y. Humphries, Jr., Judith Gale Smith, Cora Louise Barnes, Herbert Dean Humphries, Leo Douglas Humphries, Brenda Lee Howard, Bobby D. Humphries, James Harvey Humphries, Erma Jan Moffett, and Buddy Joe Humphries.

gave Pearlie, as trustee, “absolute discretion” to use the trust principal she found necessary “for her support and health expenses during her lifetime.”

Jenkins died several months after executing his will.

The Conveyances

In 1994, Pearlie probated Jenkins’s will. Around January 2000, Pearlie was having trouble paying the property taxes. She asked all her children to help her pay the delinquent property taxes to prevent foreclosure. Judith Gale Smith, Cora Louise Barnes and Jenkins Y. Humphries, Jr. agreed to pay the property taxes when the other seven children refused. After consulting counsel, Pearlie decided to convey the property to her three children who helped pay the taxes when they agreed to provide her support and health expenses for the rest of her life. Between February 1999 and April 2000, while serving as the trustee of Jenkins’s trust, Pearlie signed and recorded six warranty deeds, conveying her one-half interest and the one-half interest of the trust to Judith Gale Smith, Cora Louise Barnes, and Jenkins Y. Humphries, Jr.

Pearlie died in August 2003.

The Title Search

Herbert Humphries, one of the children who did not receive property, contacted a law firm to research the title of the 146-acre tract. In October 2003, Attorney C.M. Benjamin wrote a letter to Herbert Humphries, provided a title history

of the property, and recommended an accounting of trust assets and payments or a reconveyance of the property to the trust, or a lawsuit for breach of fiduciary duty. Herbert Humphries mailed a copy of the letter to his siblings, and none of them denied receiving it.

The Lawsuit

In 2016, Judith Gale Smith, Cora Louise Barnes, and Chad Humphries³ filed a petition, which was amended in 2019, and sued the children who did not receive property, as trustees and beneficiaries of the trust created by Jenkins Y. Humphries, Sr.'s will. The plaintiffs sought a declaratory judgment under the Uniform Declaratory Judgments Act (UDJA), Chapter 37 of the Texas Civil Practice and Remedies Code. They also alleged claims for adverse possession and partition of the properties in the alternative. The plaintiffs requested to recover their attorney's fees and court costs.

The defendants first filed a general denial in 2016. Then, in June 2018, they filed an amended answer, asserted a counterclaim for breach of fiduciary duty, and requested an order disgorging any title of the trust conveyed to the plaintiffs by Pearlie because of the plaintiffs' breach of fiduciary duty and undue influence exerted on Pearlie by the plaintiffs. They alleged that the plaintiffs breached their

³ Chad Humphries is the son of Jenkins Y. Humphries, Jr., the deceased son of Jenkins and Pearlie.

duty by failing to inform them about the nature and extent of the property tax problems on the property. They also alleged that the plaintiffs failed to disclose the foreclosure threat to the defendants to persuade Pearlie to convey all the property in the trust to the defendants in exchange for their assistance with the property taxes.

The plaintiffs responded the defendants' counterclaim, asserted affirmative defenses of statute of limitations and lack of standing, and requested dismissal of the defendants' counterclaim. They denied having a fiduciary relationship with the defendants while Pearlie was alive because she was trustee of the trust, not the plaintiffs.

The court conducted a trial on the petition for declaratory judgment. At trial, the parties stipulated to reasonable and necessary attorney's fees for the plaintiffs. The evidence included a survey map of the real property, Jenkins's will, Pearlie's will, the six warranty deeds, and the letter from Attorney Benjamin, among other things.

The trial court entered its final judgment, dismissed the defendants' counterclaim based on statute of limitations, and declared that Pearlie had validly conveyed all six warranty deeds. The trial court awarded the plaintiffs \$55,000 in attorney's fees under Section 37.009 of the Texas Civil Practice and Remedies Code.

The defendants' requested the trial court to issue findings of facts and conclusions of law, and the trial court entered its findings of fact and conclusions of law.

The defendants appealed.

Judicial Modification of Trust

In their first issue, the appellants argue that the trial court erred by failing to retroactively require the appellees to seek court modification of the trust to allow Pearlie to convey trust property to pay taxes under Section 112.054 of the Texas Property Code. *See* TEX. PROP. CODE § 112.054(a)(4). The appellees maintain that Section 112.054 is a permissive statute that authorizes only a trustee or a beneficiary to request modification of the trust's terms, and the appellees were neither trustees nor beneficiaries at the time of Pearlie's conveyances. We agree.

Section 112.054 of the Texas Property Code authorizes a trustee or beneficiary to petition the court and seek an order to modify the terms of the trust or otherwise request approval for any acts prohibited under the trust to achieve the settlor's tax objectives, such as making payments on the property taxes. *See* TEX. PROP. CODE § 112.054(a)(4). At the time of the conveyance, Pearlie was the sole trustee and beneficiary of Jenkins's trust, not the appellees. The trial court could not have ordered a modification of the terms of Jenkins's trust on this basis.

The appellants do not argue that the deeds were ambiguous or otherwise facially invalid. But, in support of their position that Jenkins’s trust was irrevocable and required court approval to modify the terms to allow for a conveyance, the appellants cite *Jinkins v. Jinkins*, 522 S.W.3d 771 (Tex. App.—Houston [1st Dist.] 2017, no pet.). *Jinkins*, however, merely addressed whether the parents’ trust was revoked by a prior will, which is not an issue here. *Id.* at 782. And the case does not hold that court approval was needed to modify the terms of a trust. *Id.*

We overrule the appellants’ first issue.

Declaratory Judgment

In their second issue, the appellants argue that the trial court erred by declaring that Pearlie had validly conveyed six warranty deeds to the appellees. The appellees contend that Pearlie’s conveyances were valid, even though they were voidable, and only amounted to a breach of fiduciary duty claim, which was barred by the statute of limitations.

A. Standard of review

“To determine the correct standard of review, we look first to the statute.” *Bocquet v. Herring*, 972 S.W.2d 19, 20 (Tex. 1998). The UDJA provides that “[a] person interested under a deed, will, written contract, or other writings . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder.” TEX.

CIV. PRAC. & REM. CODE § 37.004(a). We review a trial court’s construction of unambiguous language in a deed, will, or other written contract de novo. *See Gamboa v. Gamboa*, 383 S.W.3d 263, 273 (Tex. App.—San Antonio 2012, no pet.).

B. Analysis

Jenkins’s will shows that he transferred his undivided one-half community interest in the land into a trust for Pearlie’s benefit during her lifetime. His will gave Pearlie “absolute discretion” to use the trust principal she considered necessary “for her support and health expenses during her lifetime.”

The record shows that Pearlie conveyed her interest in the land to three of her children, Judith Gale Smith, Cora Louise Barnes, and Jenkins Y. Humphries, Jr. The record also shows that Pearlie conveyed the trust’s interests in the land to these same children. We assume without deciding that these conveyances violated Pearlie’s fiduciary duty to all her children under the Property Code. TEX. PROP. CODE § 113.053(a)(3). Section 113.053(a)(3) of the Texas Property Code prohibits a trustee from selling, directly or indirectly, any property belonging to trust estate to the trustee’s relative. *Id.* Thus, Pearlie’s conveyances were voidable. *See Snyder v. Cowell*, No. 08-01-00444-CV, 2003 WL 1849145, at *3 (Tex. App.—El Paso Apr. 10, 2003, no pet.) (mem. op.) (citing *Steves v. United Servs. Auto. Ass’n*, 459 S.W.2d 930, 937 (Tex. Civ. App.—Beaumont 1970, writ ref’d n.r.e.)). The conveyances from the trust to her children were valid “until adjudicated and declared void.” *See*

Love Terminal Partners v. City of Dall., 256 S.W.3d 893, 897 (Tex. App.—Dallas 2008, no pet.). But they were never adjudicated or declared void. The appellants, who had vested future interests in the trust property as remaindermen, could have brought a breach of fiduciary duty claim to void the conveyances before the limitations period expired. *See* TEX. PROP. CODE § 115.011(a), (b); *Snyder*, 2003 WL 1849145, at *6.

The appellees maintain that the appellants' counterclaim for breach of fiduciary duty is barred by the statute of limitations. The limitations period for a breach of fiduciary duty claim is four years from the conveyance. TEX. CIV. PRAC. & REM. CODE § 16.004(a)(5); *Willis v. Donnelly*, 199 S.W.3d 262, 278 n.33 (Tex. 2006). The statute of limitations begins to accrue when a party knows or should have known of "facts that in the exercise of reasonable diligence would have led to the discovery of the wrongful act." *Little v. Smith*, 943 S.W.2d 414, 420 (Tex. 1997).

Thus, the four-year limitations period began to run when Pearlie recorded the deeds in 1999 and 2000 because a recorded deed serves as "notice to all persons of the existence of the instrument." TEX. PROP. CODE § 13.002(1). The appellants do not dispute that Attorney Benjamin's October 2003 letter also alerted them of their right to sue for breach of fiduciary duty well within the limitations period. The appellants' counterclaim against appellees for breach of fiduciary duty was barred by the statute of limitations because they sued appellees to void the conveyances in

2018, almost 15 years after the statute of limitations had expired. We conclude that the trial court did not err in declaring that Pearlie had validly conveyed six warranty deeds to the appellees because the appellees did not timely contest the validity of Pearlie's conveyances by bringing their suit for breach of fiduciary duty within the limitations period.

We overrule the appellants' second issue.

Attorney's Fees

In their third issue, the appellants contend that the suit is disguised as a trespass-to-try-title action, and therefore the trial court erred by awarding attorney's fees under the UDJA. *See* TEX. CIV. PRAC. & REM. CODE § 37.009. The appellees assert that the trial court did not err in awarding attorney's fees for suing under the UDJA and that the appellants did not properly preserve the issue for appellate review because they did not include attorney's fees in their request for findings of fact and conclusions of law. "[W]e liberally construe issues presented to obtain a just, fair, and equitable adjudication of the rights of the litigants." *El Paso Nat. Gas Co. v. Minco Oil & Gas, Inc.*, 8 S.W.3d 309, 316 (Tex. 1999).

Although the appellants made no request for findings of fact and conclusions of law on the attorney's fee issue, the trial court addressed attorney's fees in its findings of fact and conclusions of law and provided its reasons for awarding the fees to the appellants. *Cf. Marion v. Davis*, 106 S.W.3d 860, 868 (Tex. App.—Dallas

2003, pet. denied) (“Davis did not request any findings of fact on the attorney’s fees issue, and none were filed. Without findings of fact establishing the basis for the trial court’s exercise of discretion, we cannot conclude as a matter of law that the court abused its discretion in declining to award attorney’s fees.”). The appellants’ third issue is thus properly before us. See *Horizon Health Corp. v. Acadia Healthcare Co., Inc.*, 520 S.W.3d 848, 882 (Tex. 2017).

A. Standard of review

The UDJA provides that “the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.” TEX. CIV. PRAC. & REM. CODE § 37.009. We review the trial court’s decision to award attorney’s fees under the UDJA for an abuse of discretion, and its judgment will not be reversed on appeal absent a clear showing that it abused that discretion. *Hartzell v. S. O.*, 613 S.W.3d 244, 258 (Tex. App.—Austin 2020, pet. filed). A trial court abuses its discretion by awarding fees when the record lacks sufficient evidence that the attorney’s fees “were reasonable and necessary, or when the award is inequitable or unjust.” *Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 891 (Tex. App.—Austin 2010, pet. denied) (citing *Bocquet*, 972 S.W.2d at 21). In other words, the trial court abuses its discretion when it “acts without reference to any guiding rules or principles.” *Hartzell*, 613 S.W.3d at 258 (citing *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam)). Whether the attorney’s fees are

reasonable and necessary are fact questions; whether the attorney's fees are equitable and just are matters of law, which come within the trial court's discretion. *Bocquet*, 972 S.W.2d at 21.

B. Analysis

The title to the trust's interest in the property was not the primary issue in this case. Neither the appellants nor the appellees dispute that the title to the trust's interest in the property was in the trust before Pearlie conveyed that title to her three children. At issue was whether Pearlie's conveyance of six warranty deeds validly conveyed that title to her three children. The appellants alleged a UDJA claim and sought a declaration that "the deeds transferring the Property to the Plaintiffs are valid as to Pearlie's 50% undivided interest in the Property, as well as the Trust's 50% undivided interest in the Property, and that Plaintiffs are therefore the rightful owners of the Property and the Tracts." They also alleged two alternate theories of liability: adverse possession and partition of properties. The appellants requested attorney's fees under Section 37.009 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE § 37.009.

At trial, the parties stipulated to attorney's fees. *See* TEX. R. CIV. P. 263. Stipulated facts bind the trial court and the parties. *Union Pac. R. Co. v. Ameriton Props. Inc.*, 448 S.W.3d 671, 676 n.1 (Tex. App.—Houston [1st Dist.] 2014, pet. denied) ("Stipulations conclusively resolve the facts stipulated and all matters

necessarily included therein and bind the court.”); *TPCIGA ex rel. Reliance Nat. Indem. Co. v. Morrison*, 212 S.W.3d 349, 353 (Tex. App.—Austin 2006, pet. denied) (“Stipulations in an agreed case are binding on the parties, the trial court, and the reviewing court.”).

In its finding of fact, the trial court acknowledged the parties’ stipulation on attorney’s fees:

The parties stipulated to reasonable and necessary attorney’s fees for Plaintiffs in the amount of \$55,000.00 for the trial of this case in the trial court, \$20,000.00 for an appeal to the Court of Appeals, and \$10,000.00 for a further appeal to the Supreme Court of Texas.

Similarly, the trial court issued a conclusion of law reflecting the attorney’s fees stipulation:

Under the [UDJA], Chapter 37 of the Texas Civil Practice and Remedies Code, [] reasonable and necessary attorney’s fees for Plaintiffs, which is just and equitable, is \$55,000.00 for the trial of this case in the trial court, \$20,000.00 for an appeal to the Court of Appeals, and \$10,000.00 for a further appeal to the Supreme Court of Texas.

In its judgment, the trial court took “judicial notice that the parties had stipulated to reasonable and necessary attorney’s fees,” awarded the plaintiffs attorney’s fees under Chapter 37.009 of the Texas Civil Practice and Remedies Code, and found “the award of attorney’s fees to the plaintiffs was equitable and just.” We conclude that the suit fell within the confines of the UDJA, and the trial court did not err in awarding attorney’s fees to the appellees under the UDJA based on the parties’ stipulation.

We overrule the appellants' third issue.

Conclusion

We affirm the judgment of the trial court.

Sarah Beth Landau
Justice

Panel consists of Chief Justice Radack and Justices Landau and Countiss.