

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00463-CV

Pensive Properties LP, Appellant

v.

Terry Barnhart and All Occupants, Appellees

**FROM THE COUNTY COURT AT LAW NO. 2 OF TRAVIS COUNTY
NO. C-1-CV-15-002862, HONORABLE ERIC SHEPPERD, JUDGE PRESIDING**

MEMORANDUM OPINION

After the justice court signed a judgment for eviction against Terry Barnhart in favor of Pensive Properties, LP, owner of the real property at issue in this suit, Barnhart appealed to the county court at law, which heard the case de novo and rendered judgment denying Pensive's eviction action and awarding Barnhart possession. Pensive appeals the county court's final judgment, contending that the evidence conclusively established that Barnhart had merely a tenancy at will and no life estate in the property satisfying the statute of frauds and that, accordingly, Pensive is entitled to possession. We will reverse the county court at law's final judgment and render judgment awarding possession of the property to Pensive.

DISCUSSION¹

At the bench trial, Barnhart testified that the now-deceased, previous owner of Pensive had orally granted him a life tenancy in one of the units at the four-plex property by promising him that he could live in the unit rent-free for as long as he provided yard maintenance at the four-plex. There was no evidence of any written lease or other documents evidencing a property interest in favor of Barnhart. He admitted that he had ceased performing the yard maintenance, and the evidence showed that the current manager of the property, the deceased-owner's wife, had thereafter initiated eviction proceedings against him. Barnhart has not contended that Pensive did not properly follow the statutory eviction procedures.

Pensive contends that the county court erred in denying its petition for eviction because, even viewing the evidence in Barnhart's favor to conclude that he was granted a tenancy for the remainder of his life or for as long as he continued to perform yard maintenance, (1) Barnhart had merely a tenancy at will, which was terminable at the will of Pensive, and Pensive properly followed statutory procedures for terminating the at-will tenancy; and (2) there was no documentary evidence meeting the requirements of the statute of frauds demonstrating that Barnhart had a life estate in the property and no evidence showing that any exception to the statute of frauds applied. We agree.

When a lease is for an indefinite time period, the tenant is merely a tenant at will, and the tenancy may be terminated at the will of either party. *Holcombe v. Lorino*, 79 S.W.2d 307, 310

¹ Because the parties are familiar with the facts, procedural background, and relevant standards of review, we dispense with a recitation of them here except as necessary to explain the reasons for our decision. *See* Tex. R. App. P. 47.4.

(Tex. 1935); *Providence Land Servs., LLC v. Jones*, 353 S.W.3d 538, 542 (Tex. App.—Eastland 2011, no pet.). Even had Pensive’s former owner entered into an oral lease with Barnhart allowing him to live at the property rent-free for the rest of Barnhart’s life or for as long as he chooses to maintain the yard, both those periods of time (Barnhart’s life and however long he chooses to maintain the yard) are indefinite and, therefore, the lease is terminable at will as a matter of law. *See Effel v. Rosberg*, 360 S.W.3d 626, 630 (Tex. App.—Dallas 2012, no pet.) (holding that lease granted to lessee for remainder of her life or until she voluntarily vacated premises was indefinite and terminable at will of either party); *Nitschke v. Doggett*, 489 S.W.2d 335, 337 (Tex. Civ. App.—Austin 1972) (noting longstanding rule that tenancy for lifetime of lessee is tenancy at will because of uncertainty of duration), *vacated on other grounds*, 498 S.W.2d 339 (Tex. 1973). Pensive produced evidence of its service upon Barnhart of a 30-day “Notice of Intent to Terminate Occupancy” and, upon Barnhart’s failure to vacate, its service upon him of the statutory 3-day “Notice to Vacate.” *See* Tex. Prop. Code §§ 24.002, .005. Therefore, to the extent that the county court awarded possession of the property to Barnhart based on his claimed “life tenancy,” the court erred.

To the extent that the county court awarded possession to Barnhart based on his claimed “life estate,” we conclude that the county court erred on that ground as well. A grant of a life estate in real property must be created in accordance with the statute of frauds. *Carley v. Carley*, 705 S.W.2d 371, 373 (Tex. App.—San Antonio 1986, writ dism’d); *Truitt v. Wilkinson*, 379 S.W.2d 400, 402 (Tex. Civ. App.—Texarkana 1964, no writ); *see also* Tex. Prop. Code § 5.021 (“A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the

conveyor's agent authorized in writing.”). Barnhart conceded in his testimony that he has no written document evidencing the grant to him of any life estate in the property and, therefore, his claim that he was granted a life estate fails, and he may not assert any right to possession of the property based thereon.²

CONCLUSION

We reverse the county court at law's final judgment and render judgment granting possession of the property to Pensive.

David Puryear, Justice

Before Justices Puryear, Goodwin, and Bourland

Reversed and Rendered

Filed: June 28, 2016

² While there is an exception to the statute of frauds for oral interests in real property, there must be proof of three elements: (1) the transferee had paid consideration, either in money or services; (2) the transferee has taken possession of the land; and (3) the transferee has made permanent and valuable improvements upon the land with the consent of the transferor. *Carley v. Carley*, 705 S.W.2d 371, 373 (Tex. App.—San Antonio 1986, writ dismissed); *Norwood v. Childress*, 250 S.W.2d 927, 928–29 (Tex. Civ. App.—San Antonio 1952, writ refused n.r.e.). However, Barnhart neither pleaded this exception nor did he present evidence that he had made permanent and valuable improvements upon the property with the consent of the transferor. The exception, therefore, is inapplicable, and the alleged conveyance to Barnhart of a life estate must meet the requirements of the statute of frauds.