

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

2022-CP-36-326

RECEIVED

Jul 13 2023

SC Court of Appeals

Lena Sue Yarborough)
)
Plaintiff)

vs.)

ORDER GRANTING SUMMARY JUDGMENT

Joel F. Yarborough III)
)
Defendant)

This is an action for partition. Prior to considering the merits of the partition action, it is necessary to determine the respective interests that each party may own in the subject properties. This matter is before me on cross motions for summary judgment on that issue.

The parties are in agreement that :

1. With regard to 1807 Livingston Road, each party owns a 50% interest.
2. With regard to 1648 Livingston Road, the Plaintiff owns a 75% interest and the Defendant owns a 25% interest.
3. With regard to the Fairfield Timber Tract, the Plaintiff initially claimed that she owned a 14/36 interest while the Defendant owned a 22/36 interest. The Defendant initially claimed that the Plaintiff owned an 11/36 interest while he owned a 25/36 interest. By email communication on the day the motions were filed, the Defendant conceded that the Plaintiffs calculations are correct.

However, the parties still disagree as to the interests each owns in the Newberry Timber Tract containing approximately 78 acres.

1. The Defendant claims title through a deed recorded in the Office of the Clerk of Court for Newberry County in Deed Book 482 at page 207 (the "First Deed").
2. The Plaintiff claims title through a subsequent deed executed by Bonnelle G. Yarborough with language to create a life estate in the grantor with remainder in the Plaintiff (the "Second Deed"). The Second Deed is recorded in the Office of the Clerk of Court for Newberry County in Deed Book 2242 at page 183.

The determination of the interests that the parties own in the Newberry Timber Tract depends entirely upon the construction of the First Deed. The effectiveness of the Second Deed turns on whether the interest held by Mrs. Yarborough, under the First Deed, was capable of being conveyed by her to the Plaintiff.

- a. The First Deed is entitled "Joint Tenants with Right of Survivorship".
- b. The granting clause conveys the property from Bonnelle G. Yarborough to "Joel F. Yarborough III and Bonnelle G. Yarborough, for and during their joint lives, and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion." Identical language was used in the habendum clause.

The construction of a clear and unambiguous deed is a question of law for the court. Hammond v. Lindsay, 277 S.C. 182, 284 S.E.2d 581 (1981). The intention of the grantor is to be gleaned from the four corners of the deed, if ascertainable therefrom, and consistent with applicable legal principles; but intention is unavailing to avoid the latter where words of settled legal import are used and contrary principles are encountered. In such cases the intention will be conclusively presumed to accord with the established meaning of the words and to conform to

the fixed rules of construction. Otherwise there would be little stability of land titles. Abbeville County v. Knox, 225 S.E.2d 863, 267 S.C. 38 (1976). Also, see Wilson et al. v. Poston, et al, 129 S.C. 345, 123 S.E. 849 (1924) ¹

I conclude that the words of inheritance in the granting clause unambiguously created a tenancy in common with an indestructible right of survivorship (“TIC ROS”). Davis et al. v. Davis et al, 223 S.C. 182, 75 S.E.2d 46 (1953). Smith v. Cutler, 366 S.C. 546, 623 S.E.2d 644 (2005).

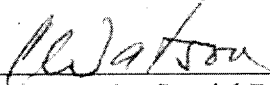
I recognize that the Plaintiff contends that the language of the granting clause in the Deed created a Joint Tenancy with Right of Survivorship (“JT ROS”).

- a. She contends that the label on the deed “Joint Tenants with Right of Survivorship” creates an ambiguity. I conclude that no ambiguity is created because the words of inheritance in the granting clause have well established meaning in our jurisprudence and control the interpretation of the Deed.
- b. She also contends that, because the deed was executed in 1998, before the Supreme Court decided Cutler, the grantor and her attorney could not have been aware of how the Supreme Court would construe that language in the future. However, the Supreme Court, in Cutler, did not create TIC ROS as a new estate. Tenancies in Common have long existed under the common law of England, as adopted in this state by S.C. Code 14-1-50. In addition, this specific argument, in a different context, was considered and rejected in Cutler.

¹We have no doubt that it was the intention of the grantors that Jessie M. Wilson should have the fee-simple title to the land, but that, if she died without leaving children, her fee-simple title should terminate and the land should be equally divided among the heirs of the grantors. We concede, however, that this intention, so plainly indicated, cannot be allowed effect, if in so doing the established rules of construction be contravened.

I conclude that there is no genuine issue as to any material facts regarding the construction of the First Deed. The Deed unambiguously creates a Tenancy in Common with an indestructible right of survivorship. The Defendant's motion for summary judgment is granted pursuant to Rule 56, SCRPC. The Plaintiff's motion for summary judgment is denied.

AND IT IS SO ORDERED.



Charles M. Watson Jr., Special Referee

Greenwood, South Carolina

May 25, 2023