

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Lena Sue Yarborough)
)
Plaintiff)
)
vs.)
)
Joel F. Yarborough III)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

2022-CP-36-326

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Jul 13 2023
SC Court of Appeals

ORDER ON RECONSIDERATION

I previously heard Cross Motions for Summary Judgment filed by the Plaintiff and the Defendant regarding the construction of a deed 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” (the “Words of Inheritance”)

which is recorded in the Office of the Clerk of Court for Newberry County in Deed Book 482 at page 207 (the “Deed”) (italics added).

The Plaintiff contended that the Words of Inheritance in the granting clause created a Joint Tenancy with Right of Survivorship (“JT ROS”) while the Defendant contended that the Words of Inheritance created a Tenancy in Common with Right of Survivorship (“TIC ROS”). The distinction is significant because the Defendant claims ownership of the property through the survivorship provisions of the Deed, while the Plaintiff claims ownership through a subsequent deed which she argues severed the survivorship provision of the Deed and conveyed a one-half interest to her. If the Words of Inheritance created a JT ROS, the Plaintiff’s claim would be valid. If the Words of Inheritance created a TIC ROS, the Plaintiff’s claim would fail.

After considering the arguments presented in the briefs filed by the parties, I found that there was no genuine issue as to any material fact, regarding the estate created and that the Defendant was entitled to judgment as a matter of law, pursuant to Rule 56, SCRCP, since the Words of Inheritance in the granting clause have well established meaning under the law and they unambiguously created a TIC ROS.

The Plaintiff filed a Motion to Reconsider, Alter or Amend. I have carefully reconsidered my order, in light of the issues raised by the Plaintiff.

1. The Plaintiff urges me to place significant weight on the fact that the title at the top of the deed reads “Joint Tenants with Right of Survivorship”. She argues that the title at the top of the deed conclusively expresses the grantor’s intent to create a JT ROS rather than a TIC ROS. At the very least, the Plaintiff argues that the title at the top of the deed creates an ambiguity which should be resolved through extrinsic evidence. I disagree.
 - a. While the intent of the grantor is to be given effect, if it can be found within the four corners of the deed, not all clauses within the four corners of the deed are given equal weight. The language of the granting clause is paramount. The subjective intention of the grantor cannot override words that have settled legal meaning.
 - i. Wallace v. Taylor, 127 S.C. 121, 120 S.E. 838 (1924) (The granting clause should contain the nerve, the vital force, of the deed. When the granting clause conveys a complete estate, no other portion of the deed can contradict it).

- ii. Batesburg-Leesville Sch. Dist. No. 3 v. Tarrant, 293 S.C. 442, 445, 361 S.E.2d 343, 345 (Ct.App.1987). (Only if the granting clause is deemed indefinite may the court look to other parts of the deed to ascertain the intent of the grantor).
 - iii. Abbeville County v. Knox, 225 S.E.2d 863, 267 S.C. 38 (1976). (The [grantor's] 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).
 - iv. Wilson et al. v. Poston, et al., 129 S.C. 345, 123 S.E. 849 (1924) (We 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).
 - v. Calling a tenancy by an erroneous name does not prevent the estate from being created. Davis v. Davis, 223 S.C. 182, 75 S.E. 2d 46 (1953).
- b. Even if I were to find the deed ambiguous, no extrinsic evidence of the grantor's intent was presented to me in connection with the Plaintiff's motion for summary judgment.

2. In Smith v. Cutler,¹ the South Carolina Supreme Court interpreted the Words of Inheritance as creating a TIC ROS. The Plaintiff urges me to construe the deed as a JT ROS because it was executed before the Cutler decision. Before Cutler, she argues that no court had ever recognized the Words of Inheritance as creating a TIC ROS. Since the Deed was executed prior to Cutler, she argues that the grantor could not have intended to grant a TIC ROS. I disagree.
- a. Cutler did not create the estate of TIC ROS. A TIC was an estate recognized at common law.²
 - b. An estate of freehold, during the joint lives of multiple owners, with a contingent remainder in fee to the survivor, was recognized at common law as being completely distinct from a JT.³
 - c. In 1953, long prior to Cutler, our Supreme Court recognized that a right of survivorship could be annexed to a TIC. See Davis v. Davis, supra.

Accordingly, the Plaintiff's motion is denied.



Charles M. Watson Jr., Special Referee

Dated: June 16, 2023

¹ 366 S.C. 546, 623 S.E.2d 497 (2005).

² See Blackstone's "Commentaries on the Laws of England" (1766) Book 2 at Chapter 12 (IV).

³ See Blackstone's "Commentaries on the Laws of England" updated by George Sharswood (1893), Vol 1, Book 2, Chapter 12(2) at fn 3, citing Hargrave and Butler's Notes on Coke Upon Littleton (1853), page 191, section a, note 1.

Also, see "Littleton's Tenures" edited by Eugene Wambaugh (1903), at page 137.