

STATE OF SOUTH CAROLINA

COUNTY OF MARION

James David "J.D." Jackson, Sr.

Plaintiff,

v.

James David Jackson, II,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A # 2013-CP-33-466

ORDER
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SC Court of Appeals

This is an action for equitable deed reformation by a father against his son. In his Complaint, the father asserts that a mistake was made in the preparation of a deed which conveyed a gift of property to his son; by his Answer, the son denies any such mistake. The matter was tried without a jury before the undersigned on Monday, February 9, 2015 in Marion, South Carolina.¹ Based upon the evidence presented, both in testimony and exhibits, the Court requires equitable reformation of the deed. This determination is based upon the following specific findings of fact which are based upon clear and convincing evidence, and based upon the related conclusions of law.

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FINDINGS OF FACT

(1) As the Plaintiff testified, sometime in the Fall of 2011, the Defendant David Jackson convinced him (the Plaintiff) to make a conveyance of real property in Marion County. This conveyance was a gift representing an advance of the Defendant's

¹ Prior to the start of the trial, the Defendant asserted an alleged right to have the matter determined by a jury. Plaintiff had previously filed a motion to strike the Defendant's jury demand. Because the sole matter raised by the pleadings is an equitable claim, the Court determined that it should proceed non-jury. This is in accordance with Loyola Federal Savings Bank v. Thomasson Properties, 318 S.C. 92, 456 S.E.2d 423, 424 (Ct. App. 1995) and Chisolm v. Pryor, 207 S.C. 54, 35 S.E.2d 21 (1945)(approving the non-jury-reference-and-disposition-of-a-deed-reformation-claim-even-with-related-jury-counter-claims held in abeyance). The Defendant's suggestion that questions of fact somehow removed the matter from non-jury determination is ~~inappropriate~~.

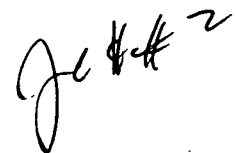
is correct. Jc #

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intended inheritance. This gift was intended to be consistent with the Plaintiff's estate plan which also made provisions for his daughters to receive certain contiguous parcels of real property at Plaintiff's death. The Court specifically finds the testimony of the Plaintiff to be clear and convincing. The Plaintiff was fully credible in all respects and his testimony was corroborated by the testimony of witnesses John Paul Williams, Jr. and Eddie Leeson as well as the contemporaneous exhibits as described in this Order.

(2) The Plaintiff's Last Will and Testament dated May 3rd, 2010 was introduced at the trial as Plaintiff's exhibit 6. This Will, which predates the conveyance in question and this litigation, demonstrates the intended inheritance of the Defendant (as well as his siblings). As part of the Defendant's inheritance under this Will, he was to receive "the house and pond which contains approximately two (2) acres located on Gibson Street in Marion, South Carolina and which is adjacent to my apartment complex." (Item I of the Will). This devise is consistent with the intended gift conveyance described by the Plaintiff in his testimony. Moreover, the apartment complex, which Plaintiff testified was not intended as part of the conveyance, is left in Item III of the Plaintiff's Last Will and Testament to his daughters.

(3) Sometime in the Fall of 2011, Marion practicing attorney John Paul Williams, Jr., was contacted by the Defendant David Jackson and engaged to prepare a deed of conveyance for property in Marion, South Carolina from Mr. Jackson's father, the Plaintiff in this action, to the Defendant David Jackson. Mr. Williams testified candidly as to his engagement and the complete circumstances surrounding his preparation of the deed in question, as well as his subsequent efforts to correct the erroneous property description. I find Mr. Williams' testimony to be clear and convincing. Mr. Williams was fully credible in all respects.



(4) To initiate his firm's work on the matter, Mr. Williams obtained the derivation for the existing undivided property (the conveyance to Plaintiff recorded October 20, 1989 at Deed Book A274 Page 344 in the Marion County Clerk of Court's Office) (represented by Tax Map Number 516-04-04-000-000) and prepared a draft deed using the existing property description. Mr. Williams' created this initial draft deed in his office computers on September 7, 2011. Mr. Williams' personal handwritten notes, prepared at the time of his engagement and maintained as part of his business records, clearly indicate that the property to be conveyed was to be divided. These notes were admitted at trial as Plaintiff's exhibit 1. Moreover, Mr. Williams' testified that the Defendant told him that he (the Defendant) was ordering a survey from Leeson Survey Company to better define the property to be conveyed and to subdivide it from other property also owned by the Plaintiff. Mr. William's further testified that the Defendant advised that the conveyed property was to be an advance of the Defendant's intended inheritance.

(5) Surveyor Eddie Leeson of Leeson Survey Company testified that he was also engaged by the Defendant to prepare a survey. Surveyor Leeson testified that the Defendant told him the survey was for the purpose of defining the property to be conveyed and to subdivide this gift of the "house and pond" property from the apartments also owned by the Plaintiff. Like the Plaintiff and Mr. Williams, I find that Mr. Leeson's testimony is clear and convincing. Mr. Leeson was also fully credible in all respects. According to Mr. Leeson and his business records (Plaintiff's exhibits 4 and 5), the survey was completed on or about August 10, 2011. A copy of the unrecorded survey

was admitted at trial as Plaintiff's exhibit 3. Exhibit 3 clearly shows the

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contemporaneous effort to divide the property consistent with the Plaintiff's pre-existing Will (Plaintiff's exhibit 6), and as described by the testimony of all three of Plaintiff's witnesses.²

(6) After approximately eight months of dormancy, during which Mr. Williams was not fully paid and did not receive the survey (for which Mr. Leeson was also unpaid at the time), Mr. Williams was again contacted by the Defendant who advised that he needed the completed deed urgently as the property was ready to transfer. Without realizing that the requested survey had not been finalized and filed, and without realizing that the draft deed property description had not been correspondingly updated, Mr. Williams printed out the draft deed as found on his office computers – as if it were the final correct deed. This erroneous deed, which failed to divide the property as planned, was then presented to the Plaintiff for execution and understandably executed by the Plaintiff on April 25, 2012 without knowing of its erroneous description.

(7) The Court finds, by clear and convincing evidence, that the deed in question, Plaintiff's trial exhibit 2, has an erroneous property description and was executed by mutual mistake -- the deed did not accurately reflect the contemporaneous intent of either party to the transfer. While the Defendant now testifies that he confirmed, at the time of the deed execution, his father's intent to convey his sister's inheritance as part of this transfer, the Court finds the Defendant lacks credibility to any degree. His claim is contrived, self-serving, and inconsistent with all other credible

² In cross-examination, the Defendant asserted that the property division was actually at his father's request and was for qualifying for reduced property tax rates on the "house and pond" portion of the property – a claim apparently raised in earlier motion practice. The Court finds this assertion utterly incredible. Moreover, as further demonstrated in cross-examination, the survey was never filed by the Defendant even once it was paid for (after some delay) – which would be the first prerequisite to reaching the asserted goal of reduced property tax.

evidence presented in the case. Moreover, it is inconsistent with the Defendant's own contemporaneous expression of the parties' intent as expressed to his lawyer and surveyor when providing them with instructions on services needed.

CONCLUSIONS OF LAW

(A) Availability of Deed Reformation.

The law in this state provides that "the description of land conveyed in a deed can be reformed and the boundaries of the realty redrawn only where there is a latent or patent ambiguity in the description of the land conveyed or if there is a showing of mutual mistake, fraud or coercion." Bellamy v. Bellamy, 292 S.C. 107, 355 S.E.2d 1 (Ct. App. 1987) (citing Sims v. Tyler, 276 S.C. 640, 281 S.E. (2d) 229 (1981); Gowdy v. Kelley, 185 S.C. 415, 194 S.E. 156 (1937); Scates v. Henderson, 44 S.C. 548, 22 S.E. 724 (1895); Blanton v. Blanton, 284 S.C. 250, 325 S.E. (2d) 340 (Ct. App. 1985)).

(B) Mutual Mistake.

A mistake is mutual where both parties intended a certain thing and by mistake the drafting did not obtain what was intended. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc., Opinion No, 5270 (S.C. Ct. App. Sept. 10, 2014); see also George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001). Additionally, 76 C.J.S. Reformation of Instruments §40 provides that:

A mistake by one party coupled with ignorance thereof by the other party does not constitute a mutual mistake within these rules. However, a mistake made by one party with the knowledge of the other, or with such knowledge plus silence, is equivalent to mutual mistake...

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Whether in a particular case mutual mistake exists depends on the facts and circumstances thereof. In determining this question the courts will look into the surrounding circumstances, and will take into consideration all facts which throw light on the intention of the parties. The facts showing mutuality may appear by admission of the parties, or from the face of the instrument which it is sought to have reformed.

(C) Applying the Law In This Case.

Again, the Court finds by clear and convincing evidence that a mutual mistake occurred in the drafting of the deed based on the testimony of Plaintiff's witnesses. The mutual mistake is evinced by Defendant's initial instruction to Mr. Williams as to what was to be deeded to him bolstered by the instruction to Mr. Leeson as to the preparation of a plat. Under the circumstances of this mutual mistake, it would be inequitable not to reform the deed gifting property from the Plaintiff to the Defendant.

CONCLUSION

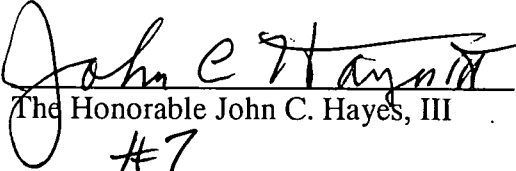
The Court finds, as a matter of law and fact, that the deed (Plaintiff's trial exhibit 1) in this matter was executed by mutual mistake and must, in equity, be reformed to reflect the true intent of the parties. Upon submission by Plaintiff's counsel, the office of the Clerk/Register of Deeds/Register of Mense Conveyance is hereby directed to file and record the survey completed by Leeson Land Surveying which subdivides the property, Tax Map Number 516-04-04-000-000, into two parcels – one with the “house and pond” and one with the adjacent apartments – as originally intended by these parties. The office of the Clerk/Register of Deeds/Register of Mense Conveyance is then directed to file a corrective deed without further filing costs, prepared by Plaintiff's counsel and executed by Plaintiff, which reflects the intended conveyance of only the “house and pond” to the



Defendant with the contiguous apartments remaining as the property of the Plaintiff. This corrective deed shall be executed following the filing of this order but shall reflect the corrected conveyance as of the original conveyance date; the corrective deed shall expressly incorporate this Order so that the notice is given to subsequent title examiners.

AND IT IS SO ORDERED.

February ~~18th~~ 2015


The Honorable John C. Hayes, III
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