Cite as 2011 Ark. App. 739

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 11-465

Opinion Delivered November 30, 2011

JESSIE PAULINE EVANS
APPELLANT

V.

SEECO, INC.
APPELLEE

APPEAL FROM THE WHITE COUNTY CIRCUIT COURT, [NO. CV-08-318-1]

HONORABLE THOMAS HUGHES, III, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

This appeal arises from a declaratory-judgment and interpleader action filed to determine ownership of several tracts of land and the oil, gas, and mineral rights associated with the same. The appellant, Jessie Pauline Evans, appeals from a circuit court ruling that she does not hold title to the land or mineral rights at issue. We find no error by the circuit court and affirm.

Factual Background

On February 23, 1973, Mack Evans and the appellant entered into a prenuptial agreement. Paragraph II of the agreement provided that "all the property . . . belonging to Mack Oscar Evans before marriage shall be and remain forever his personal estate," including the following real property:

> The West 1/2 of the Northwest 1/4 and the South 1/2 of the Southwest 1/4 all in Section 10, Township 10 North, Range 7 West, containing 160 acres, more or less.
>
> The Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4), Section Nine (9), Township Ten (10) North, Range Seven (7) West, containing forty (40) acres more or less.

Paragraph IV of the agreement provided, "The parties herein mutually agree that any property of any name or nature, real, personal, or mixed, which is accumulated after the date of marriage shall be owned together as any other man and wife under the laws of the State of Arkansas."

On May 28, 1981, following their marriage, Mack Evans and the appellant executed a warranty deed ("the 1981 deed") conveying the above-named tracts to Marvin Evans, the brother of Mack Evans, and his wife Pauline Evans.[1] In 1982, Marvin and Pauline Evans conveyed the property back to Mack Evans as the sole grantee ("the 1982 deed"). Then, on August 19, 1986, Mack Evans and the appellant executed a warranty deed ("the 1986 deed"), conveying most of the property to Mack Evans' daughters from his first marriage, Willadean Roberts, Patsy Russell, and Billie Lee Evans. Also on August 19, 1986, Mr. Evans executed a warranty deed conveying the remaining portion of the property from himself individually to himself and the appellant "as husband and wife." That deed stated specifically, "The purpose of this conveyance is to create a tenancy by the entirety between the GRANTEES granting unto the surviving GRANTEE all rights of survivorship." The property conveyed

[1]Mrs. Evans is a different individual than the appellant.

by the 1986 deed to Mack Evans' daughters is the property at issue in this appeal, and hereafter is referred to as "the subject property."

After the 1986 deed, the mineral interests contained within the subject property were conveyed and leased to various other parties, including SEECO, the appellee.[2] Mack Evans died intestate on December 21, 1998, and on June 16, 2008, SEECO filed a complaint for declaratory judgment and interpleader, asking the circuit court to determine the ownership rights of the parties who might have an ownership interest in the subject property: Melvin W. Long, Jr. and Sherry Long; MPH Production Company; Freddie G. Fowler; Alex DeSalvo, Trustee of the Alex DeSalvo Revocable Trust; James T. Stith and Mary June Stith; Deltic Timber Corporation; XTO Energy, Inc.; and Chesapeake Exploration LLC. These parties were all named as defendants in SEECO's complaint.[3] The main issue was what, if any, ownership interest the appellant had in the subject property.

Following a hearing on October 25, 2010, the circuit court ruled that the appellant conveyed any interest she had in the subject property in the 1986 warranty deed executed by her and Mack Evans and that the after-acquired title doctrine also barred her from asserting any interest in the land. The court filed an affirmation of its findings of facts and conclusions of law on December 30, 2010, and a decree setting forth the mineral ownership rights of the various parties on February 14, 2011. The appellant has appealed from the February 14, 2011

[2]SEECO is the designated operator of two drilling and spacing units created on the subject property by the Arkansas Oil and Gas Commission.

[3] Per SEECO's complaint, SEECO had drilled and completed productive wells in each unit located on the subject property, but because of title disputes was unable to distribute royalties.

decree. The appellant's sole argument on appeal is that the circuit court erred in finding that she did not hold title to mineral rights in the subject property.

Standard of Review

Cases traditionally sounding in equity, such as quiet-title actions, are reviewed de novo on appeal.[4] In reviewing a bench trial in circuit court, we do not reverse unless we conclude that the trial court erred as a matter of law or if its findings were clearly against the preponderance of the evidence.[5] The construction of a deed is a matter of law, which we review de novo.[6] When interpreting a deed, we give primary consideration to the intent of the grantor and ascertain intent by examining the language employed, examining the deed from its four corners, and we will not resort to rules of construction when a deed is clear and contains no ambiguities.[7] Further, we gather the intention of the parties not from some particular clause, but from the whole context of the agreement.[8]

Discussion

The circuit court did not err in finding that the appellant did not hold title to the subject property, first and foremost because the appellant conveyed any interest she might have individually had in the subject property when she executed the 1986 warranty deed. We

---

[4]*Rice v. Welch Motor Co.*, 95 Ark. App. 100, 234 S.W.3d 327 (2006).

[5]*Trucker's Exch., Inc. v. Border City Foods, Inc.*, 67 Ark. App. 231, 998 S.W.2d 434 (1999).

[6]*Burgess v. Lewis*, 2011 Ark. App. 362.

[7]*Id.* (citing *Harrison v. Loyd*, 87 Ark. App. 356, 192 S.W.3d 257 (2004)).

[8]*Id.* (citing *Gibson v. Pickett*, 256 Ark. 1035, 512 S.W.2d 532 (1974)).

further agree with the circuit court's findings that the appellant possessed only a dower interest at the time of the 1986 deed and that the after-acquired title doctrine bars her from asserting a claim to the subject property.

A. *Appellant Possessed Only a Dower Interest at the Time of the 1986 Deed*

The appellant is wrong in her contention that since the subject property was acquired after marriage via the 1982 deed, she is presumed under Arkansas law to have co-owned the property as a tenant in entirety. A tenancy by the entirety can only be created if the four essential common law unities of interest, time, title, and possession coexist.[9] The four unities may be deemed concurrently present, and a tenancy by the entirety may be created, where a husband directly conveys his interest to his wife and himself.[10] Once property is placed in the names of both a husband and his wife, without specifying the manner in which they take, a presumption arises that they own the property as tenants by the entirety.[11]

The 1982 deed unambiguously conveyed the subject property to Mack Evans alone, and the appellant did not present evidence to show that the subject property was ever placed in her name also. Therefore, no presumption of a tenancy by the entirety arose, and the trial

---

[9] *See Weir v. Brigham*, 218 Ark. 354, 236 S.W.2d 435 (1951).

[10] *Harmon v. Thompson*, 223 Ark. 10, 263 S.W.2d 903 (1954); *Ebrite v. Brookhyser*, 219 Ark. 676, 244 S.W.2d 625 (1951).

[11] *See Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988) (presumption arose where husband placed proceeds from sale of property into certificates of deposit bearing both his and wife's names). *See also Carroll v. Carroll*, 2011 Ark. App. 356 (presumption arose where club membership was purchased entirely with marital funds); *Martindale v. Estate of Martindale*, 82 Ark. App. 22, 110 S.W.3d 319 (2003) (presumption arose where property was purchased entirely from joint banking accounts).

court correctly found that the 1982 warranty deed conveyed sole ownership of the subject property to Mack Evans. At the time the 1986 deed was executed, the appellant's only ownership interest in the subject property was her dower interest pursuant to Ark. Code Ann. § 28-11-301(a).

B. *Appellant Possessed Only a Dower Interest at the Time of Mack Evans' Death*

The 1986 deed contained the following provision: "The GRANTOR, Mack Evans, herein reserves all oil, gas and other minerals in and under said lands and reserves a life estate for and in his benefit as long as he lives." The deed contains no reservations concerning the appellant, and unambiguously covenants that the appellant and Mack Evans, as grantors, will "forever warrant and defend the title to the said lands against all claims whatever." The circuit court ruled that the deed conveyed all interest in the subject property except for a life estate retained by Mack Evans in the land and a reservation by Mack Evans of oil, gas, and mineral rights in the land. As a matter of law, the appellant would not hold a dower interest in any property held in a life estate by Mack Evans, since a life estate expires upon death.[12] At most, then, the appellant had only a dower interest in the oil, gas, and mineral rights reserved by her husband in the 1986 deed.

C. *After-Acquired Title Doctrine Defeats Appellant's Claim*

A dower interest, even in real property, remains only an inchoate right until the husband's death.[13] The after-acquired title doctrine is codified at Arkansas Code Annotated

[12] *See* 25 Am. Jur. 2d, *Dower and Curtesy* § 12.

[13] *Webber v. Webber*, 331 Ark. 395, 962 S.W.2d 345 (1998) (citing *Mickle v. Mickle*, 253 Ark. 663, 488 S.W.2d 45 (1972)).

section 18-12-601(a) and provides:

> If any person shall convey any real estate by deed purporting to convey it in fee simple absolute, or any less estate, and shall not at the time of the conveyance have the legal estate in the lands, but shall afterwards acquire it, then the legal or equitable estate afterwards acquired shall immediately pass to the grantee and the conveyance shall be as valid as if the legal or equitable estate had been in the grantor at the time of the conveyance.

(Emphasis added.) In *Robertson v. Griffin*, our supreme court held that the after-acquired doctrine applied where, just as in this case, a wife having only an inchoate dower interest joined her husband's deed as a granting and warranting party.[14] Although the 1986 deed contained a reservation clause with regard to Mack Evans, with regard to the appellant it purported to convey the subject property in its entirety, with no reservations or limitations. However, even if the 1986 deed had specifically limited the appellant's conveyance to her actual interest at the time–a dower interest–that interest was inchoate when the deed was executed. Thus, the deed with regard to the appellant purported to convey an estate she did not yet have. Accordingly, the circuit court did not err in ruling that the after-acquired title doctrine bars the appellant from asserting any interest in the subject property, and we affirm.

Affirmed.

WYNNE and ABRAMSON, JJ., agree.

[14]227 Ark. 969, 302 S.W.2d 773 (1957).