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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-1112

JAMES C. MOORE and CLARA L. MOORE APPELLANTS V. FIRST PRESBYTERIAN CHURCH OF SEARCY, ARKANSAS, INC., and ESTATE OF NELLIE MARIE PHILLIPS, DECEASED APPELLEES	**Opinion Delivered** March 31, 2010 APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. PR-82-107] HONORABLE ROBERT CRAIG HANNAH, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

In a 2009 order, the probate court reopened the Estate of Nellie Marie Phillips, Deceased (Estate)—which was originally closed in 1983—for the purpose of reforming the probate file and a deed to show that two tracts of real property were conveyed to appellants, James C. Moore and Clara L. Moore, with a reservation of one-half the mineral rights on each tract. On appeal, appellants argue that the circuit court acted without authority to do so. We affirm.

Phillips died in 1982 and the Estate was opened, with appellee First Presbyterian Church of Searcy, Arkansas (Church), named as a devisee under Phillips's will and First National Bank of Searcy, Arkansas (Bank), named to administer the Estate. On July 12, 1983,

a "Notice of Sale" was filed, showing that real property in a forty-acre tract and a five-acre tract were to be sold at public auction on August 26, 1983. The property descriptions of each tract included language "retaining one-half the mineral rights thereon." The notice was published, and according to an installment note signed by appellants on August 26, 1983, and filed August 29, 1983, the two tracts were purchased by appellants. The note contained a description of the properties, and the description noted the reservation of one-half the mineral rights on each tract. A "Certificate of Purchase" filed on August 29, 1983, and signed by Wayne Hartsfield, the president of the Bank, showed that the sale was made to appellants. The property descriptions in the Certificate noted the reservation of one-half the mineral rights on each tract.

A "Report of Sale" filed October 7, 1983, and signed by Hartsfield noted the sale to appellants, but the property descriptions did not contain a reservation of mineral rights. The court's order confirming the sale was filed October 14, 1983, and the property descriptions also lacked a reservation of mineral rights. A "Fiduciary's Deed" signed by Hartsfield was filed of record on October 24, 1983. The deed showed that the two tracts were conveyed to appellants, and the property descriptions also lacked a reservation of mineral rights. But on November 10, 1983, a "Correction" Fiduciary's Deed signed by Hartsfield was filed, and the deed conveyed to appellants the two tracts with a reservation of one-half the mineral rights on each tract. A deed executed by Hartsfield on December 8, 1983, and filed December 15, 1983, conveyed one-half the mineral rights to the Church. The Estate was closed by order filed December 14, 1983.

On February 24, 2009, the Church filed a petition to reopen the Estate to correct a scrivener's error in the order confirming the sale and to ratify the Correction Fiduciary's Deed. Specifically, the petition asserted that the omission of the reservation of mineral rights in the order confirming the sale was a scrivener's error, and asked that the court correct the error and ratify the Correction Fiduciary's Deed.

At a hearing on the petition, Hartsfield was called to testify, and he stated that there was no doubt in his mind that appellants were to receive the land, less one-half the mineral rights. He recalled that after the original Fiduciary's Deed was issued, he called the attorney for the Estate and told him that the deed had not retained one-half of the mineral rights as asked by the Church. According to Hartsfield, the attorney prepared a correction deed that retained one-half the mineral rights.

James Moore testified that he received the correction deed showing the reservation of minerals. He also acknowledged that he and his wife signed the installment note showing the reservation. He testified, however, that there was no doubt that he owned all the mineral rights.

Following the hearing, the court issued an order finding that "it was clearly the intent of the Estate and the Church to reserve one-half of the mineral rights on the sale" to appellants. The court concluded that Hartsfield's testimony "accurately reflected the events surrounding the sale." The court further noted that testimony given by appellants was not credible and was contradicted by their written acknowledgment in the installment note that

they purchased only one-half of the mineral rights of each tract. The court found there was "a mutual mistake for which the Remedy of Reform should be granted." The court also found that the Estate's attorney committed a scrivener's error by omitting the reservation of mineral rights. The court reformed all references in the Estate file to reflect that the sale to appellants was with the reservation of one-half the mineral rights on each tract. The court further directed that Regions Bank, as successor in interest to the Bank, was authorized to issue a reformed Fiduciary's Deed reserving one-half the mineral rights on each tract.

On appeal, appellants argue that the probate court lacked jurisdiction to act under Rule 60 of the Arkansas Rules of Civil Procedure, as there was no scrivener's error and no showing of fraud; that reformation of the deed was not justified, as there was no mutual mistake or unilateral mistake with fraudulent conduct and as reformation would harm innocent third parties who had leased mineral rights from appellants; and that the petition was untimely and without a showing of good cause that is required under the probate code for vacating or modifying orders.

This court reviews probate proceedings de novo on the record, but will not reverse the decision of the probate court unless the decision is clearly erroneous. *Bullock v. Barnes*, 366 Ark. 444, 236 S.W.3d 498 (2006). The relevant statute for reopening estates provides in part as follows:

> If, after an estate has been settled and the personal representative discharged, other property of the estate is discovered, or if it appears that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause,

> the court, upon the petition of any person interested in the estate and without notice or upon such notice as it may direct, may order that the estate be reopened.

Ark. Code Ann. § 28-53-119(a)(1) (Repl. 2004). Thus, the statute permits reopening "for any other proper cause."

Here, we cannot say that the court clearly erred in reopening the estate. The evidence supporting proper cause to reopen included Hartsfield's testimony that one-half of the mineral rights were not to be sold to appellants, and his testimony was supported by the notice of sale, the installment note signed by appellants, the certificate of purchase signed by Hartsfield, and two deeds, one reserving one-half the mineral rights in each tract and the other conveying one-half the mineral rights to the Church. Courts have the power to correct mistakes in deeds and conform them to the intentions of the parties and may reform a deed where there has been a mutual mistake. *Falls v. Utley*, 281 Ark. 481, 665 S.W.2d 862 (1984) (reforming deed to reflect a reservation of mineral rights). While appellants assert that innocent lessees of the mineral rights relied upon both the probate file and the deed that lacked any reservation of mineral rights and consequently would be harmed if the estate were reopened, this assertion was not developed below. Thus, we cannot say that the court's decision to reform all references in the Estate file to reflect that the sale to appellants was with the reservation of one-half the mineral rights in each tract, and the court's ordering that a reformed deed issue reserving one-half the mineral interests, was clearly erroneous.

We acknowledge appellants' reliance on a provision of the probate code governing the probate court's authority to modify or vacate orders. Specifically, the statute provides as follows:

> (a) For good cause and at any time within the period allowed for appeal after the final termination of the administration of the estate of a decedent or ward, the court may vacate or modify an order or grant a rehearing. However, no such power shall exist as to any order from which an appeal has been taken or to set aside the probate of a will after the time allowed for contest thereof.
>
> (b) No vacation or modification under this section shall affect any act previously done or any right previously acquired in reliance on such an order or judgment.

Ark. Code Ann. § 28-1-115 (Repl. 2004). This statute establishes an extended period during which courts have jurisdiction to modify or vacate orders in probate proceedings. *Helena Reg'l Med. Ctr. v. Wilson*, 362 Ark. 117, 207 S.W.3d 541 (2005). The statute, however, does not speak to reopening the estate, which is authorized by the previously discussed Ark. Code Ann. § 28-53-119. Thus, Ark. Code Ann. § 28-1-115 is inapplicable and does not limit Ark. Code Ann. § 28-53-119.

Further, while appellants also rely on Rule 60 of the Arkansas Rules of Civil Procedure as precluding the probate court from reopening the Estate, we likewise hold that Rule 60 does not limit the probate court's authority to reopen the estate under Ark. Code Ann. § 28-53-119. This holding is supported by *Bullock v. Barnes*, 366 Ark. 444, 236 S.W.3d 498 (2006), where the Arkansas Supreme Court held that a party's petition to reopen the estate was time-barred, and in so holding, considered the circuit court's authority under Rule 60 or Ark. Code Ann. § 28-53-119. *Bullock* supports the conclusion that Ark. Code Ann. §

28-53-119 authorizes the reopening of an estate on the grounds allowed in the statute, separate and apart from the grounds for reopening a case provided under Rule 60.

Affirmed.

ROBBINS and HENRY, JJ., agree.