

MASON *v.* BARRINGER.

5-2181

338 S. W. 2d 337

Opinion delivered September 26, 1960.

1. DEEDS — MENTAL CAPACITY TO CONVEY, WEIGHT AND SUFFICIENCY OF EVIDENCE. — Chancellor's finding that deed in question should be cancelled because of appellee's incompetency, held supported by the evidence.
2. INSANITY — DEEDS, RETURN OF CONSIDERATION UPON CANCELLATION OF. — Chancellor's refusal to order return of consideration paid for deeds, cancelled because of incompetency, held not error in view of his finding that it had either been returned to appellant or dissipated by the appellee during her incompetency.

Appeal from Pulaski Chancery Court, First Division; *Murray O. Reed*, Chancellor, affirmed.

*W. W. Shepherd*, for appellant.

*Dean R. Morley*, for appellee.

SAM ROBINSON, Associate Justice. This appeal arises out of a suit in chancery court brought by appellee, Pearl Barringer by Izola Ferguson, her next friend, against appellant, John T. Mason, asking that deeds to certain lands in Pulaski County be set aside. The chancellor found that at the time appellee executed same she was incompetent and therefore the deeds should be cancelled. From this ruling appellant has appealed.

In October, 1958, and April, 1959, appellee, an aged Negro woman, executed three warranty deeds conveying

eight lots to appellant. She also revoked a power of attorney previously given to a daughter, Frances Smith. Each of the deeds was properly acknowledged and valid on its face.

The chancellor heard the testimony of a number of witnesses, some of whom were relatives and close friends of appellee and had known her for many years. It appears from the record that in 1955 appellee had deeded two of the lots to a third party and appellant had assisted in having that transaction set aside. A great number of incidents were related which support the allegation that at the time the deeds were executed appellee was incompetent. It would serve no useful purpose to recite this testimony here. We cannot say that the finding of the chancery court that the deeds should be cancelled because of appellee's incompetency at the time they were executed is not supported by a preponderance of the evidence. *Fikes v. Lee*, 225 Ark. 192, 280 S. W. 2d 230; *Oliphant v. Oliphant*, 217 Ark. 446, 230 S. W. 2d 653.

Appellant urges, also, that the chancery court should have ordered the return of the consideration paid for the deeds. The chancellor found that this consideration, if any, was either returned to appellant or dissipated by appellee during her incompetency. We cannot say he erred in this finding. *First National Bank v. Tribble*, 155 Ark. 264, 244 S. W. 2d 33; *Reaves v. Davidson*, 129 Ark. 88, 195 S. W. 19.

Affirmed.