MIDDLETON *v.* MCCOY.

4-3242

Opinion delivered December 11, 1933.

1. FRAUDULENT CONVEYANCES—FINDING.—A finding of a chancellor that a conveyance was for a valuable consideration and not executed with intent to defraud creditors *held* not against the preponderance of the testimony.
2. FRAUDULENT CONVEYANCES—HOMESTEAD.—Conveyance of his homestead by a debtor cannot be complained of by his creditors.
3. FRAUDULENT CONVEYANCES—VOLUNTARY CONVEYANCE.—A conveyance of land reasonably worth $1,500 for $550 is not voluntary as to the grantor's creditors.
4. FRAUDULENT CONVEYANCES—PRESUMPTION.—Where a conveyance was not voluntary, no presumption of fraud attends its execution.

Appeal from Pulaski Chancery Court; *Frank H. Dodge,* Chancellor; affirmed.

STATEMENT BY THE COURT.

This suit was instituted by appellant against appellee in the Pulaski Chancery Court to set aside a conveyance made by T. G. McCoy and Minnie McCoy, his wife, to appellee. This deed was executed on February 1, 1932, and shows the expressed consideration of $550. It conveyed lot 1 in block 29, Bragg's Second Addition, and lot 14 in block 2, Pinehurst Addition, all in Little Rock. It was alleged that said transfer and conveyance was without consideration, and was executed with the intent to cheat, hinder and defraud his creditors. On the trial of the cause, it was stipulated by counsel that lot 14, block 2, Pinehurst Addition, was the homestead of the said T. G. McCoy at the time the deed was executed. The testimony introduced tended to show that the two lots were worth in the aggregate $3,000 and $3,500. The testimony showed that there were no judgments against T. G. McCoy at the time of the execution of the deed, but that he was owing debts upon which suits were threatened. The trial court found that the conveyance of T. G. McCoy to appellee was for a valuable consideration and was not executed with the intent to defraud creditors.

Hays & Turner and *Alonzo D. Camp,* for appellant.

Robert J. Brown, Jr., for appellee.

JOHNSON, C. J., (after stating the facts). If the chancellor's finding to the effect that the deed from T. G. McCoy to appellee was for a valuable consideration, and was not executed with the intent to cheat, hinder or defraud creditors, is not clearly against the preponderance of the testimony, this case must be affirmed. *Cherry* v. *Brizzolara,* 89 Ark. 309, 116 S. W. 668; *Compagionette* v. *McArmick,* 91 Ark. 69, 120 S. W. 400; *Sullivan* v. *Winters,* 91 Ark. 149, 120 S. W. 843; *Lyons* v. *First National Bank,* 101 Ark. 368, 142 S. W. 856; *Kissire* v. *Plunkett-Jarrell Grocer Co.,* 103 Ark. 473, 145 S. W. 567.

It is stipulated by counsel that lot 14, block 2, Pinehurst Addition, was the homestead of T. G. McCoy at the time of the conveyance. Therefore, under the law, he

could sell or give same away if he liked, and his creditors would have no right to complain. When the homestead is subtracted from the deed of T. G. McCoy, it leaves only lot 1, Bragg's Second Addition, which was sold for a consideration of $550. This is a valuable consideration. It is true the testimony tends to show that this lot was worth approximately $1,500, if sold on "reasonable terms," but it can not be certainly said that a conveyance was voluntary which carried an expressed consideration of this sum of money.

Since this conveyance was not a voluntary one, no presumption of fraudulent intent attends its execution either in the grantors or grantee. Section 108, 12 R. C. L., Fraudulent Conveyances, page 594.

We conclude that the chancellor's finding is not clearly against the preponderance of the testimony, and its judgment should therefore be affirmed.