

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002191-MR

ADAMS REAL ESTATE LIMITED PARTNERSHIP

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 99-CI-01085

MINDY KING, INDIVIDUALLY AND AS
MOTHER AND NEXT FRIEND OF
SKY ANDREW ADAMS, A MINOR 4 YEARS OF AGE

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Adams Real Estate Limited Partnership (ARELP) has appealed from the judgments entered by the Pike Circuit Court on March 29, 2001, and September 20, 2001, which ordered it to hold certain real property in trust for the benefit of Sky Andrew Adams, a minor, and which further ordered it to convey the same real property to the minor. Having concluded that the trial court's findings of fact were not clearly erroneous and that its rulings were correct as a matter of law, we affirm.

ARELP was engaged in the business of buying and leasing primarily residential property in and near Pikeville, Kentucky. Stuart Adams, deceased, was the general partner of ARELP and Sky Andrew Adams's great-grandfather. Sky is Mindy King's son.¹

On November 12, 1998, ARELP entered into a lease with Mindy for a residence on Mildred Street in Pikeville.² However, Mindy moved from Mildred Street³ to the property located at 721B Scott Avenue and the lease was amended to reflect this change.⁴ Mindy was to pay rent of \$10.00 per month to ARELP and the lease was to last for a period of five years. Stuart Adams signed the lease as general partner for ARELP.

The trial court found that on March 9, 1999,⁵ in contemplation of his death, Stuart executed and delivered a handwritten document to Mindy which read as follows:

3-5-99

¹ Sky's biological father is Joshua Adams, Stuart's grandson.

² Although made and entered into on November 12, 1998, the lease reads that it was to commence on November 1, 1998.

³ There was testimony that Mindy and Sky moved from Mildred Street to Scott Avenue due to structural problems with the Mildred Street residence and because Stuart wanted Sky to have a backyard in which to play.

⁴ The realty located in Pikeville at 721B and 721C Scott Avenue, was acquired by ARELP by a deed of conveyance from Gratho Bartley, a widower, and Donna B. Osborne and Fred Osborne, her husband, dated March 28, 1998, and recorded in Deed Book 751, Page 332 of the Pike County Court Clerk's Office, and by a deed of conveyance from Debbie Huffman Venters and W. E. Venters, Jr., her husband, dated January 9, 1998, and recorded in Deed Book 748, Page 47 of the Pike County Court Clerk's Office. 721C Scott Avenue consists of a house and adjoining property behind 721B Scott Avenue.

⁵ We assume the trial court's finding in this regard is a typographical error and the date of execution was March 5, 1999, the date appearing on the exhibit.

I hereby give to Sky Andrew Adams house #721B
and #721C Scott Avenue.

/s/ Brenda Adams
/s/ Davin Adams⁶
/s/ Stuart Adams
/s/ Mindy King

Mindy testified that Stuart called his office to have a deed prepared to replace the handwritten document. However, David Adams, who was Stuart's son, an attorney, and was then a limited partner of ARELP, testified that he received no such instructions from his father.

The trial court found that this document expressed Stuart's intention to give his great-grandson, Sky, the property described. The trial court further found that this handwritten document was delivered to Mindy on the date of its execution and held by her for the benefit of Sky. Additionally, the trial court found that this document was similar to others Stuart had made near that time and that, until the time of his death, he signed documents transferring land for and on behalf of ARELP, including documents of transfer making gifts to his children, grandchildren, and other family members.

The trial court concluded that this document could not be recorded in the Pike County Court Clerk's Office as a deed because it did not comply with either KRS⁷ 382.110(3) or KRS

⁶ Davin Adams was Stuart's grandson.

⁷ Kentucky Revised Statutes.

382.135(1). However, the trial court did find that this document was effective as a conveyance between the grantor, Stuart, and the grantee, Sky. After determining that the handwritten document satisfied the fundamental elements of a deed, the trial court concluded that the document was a deed of conveyance of real property that was binding upon the parties.

The trial court also found that ARELP owned the disputed property and that Stuart Adams was the general partner. In its order entered on March 29, 2001, the trial court concluded that

KRS 362.195(1) requires that where title to real property is in a partnership's name, any partner may convey title to such property by a conveyance executed in the partnership name. The document in question does not name the partnership as the grantor and cannot convey legal title. However, KRS 362.195(2) states that a conveyance executed by a partner in his own name passes the equitable interest of the partnership. Therefore, [this] Court concludes that [ARELP] holds the property at 721B and 721C Scott Avenue, Pikeville, Kentucky, in trust for the benefit of Sky Andrew Adams. Since the parties have not addressed the issue of how long this trust will last or its nature, [this] Court [] order[s] the parties to brief this issue simultaneously and will enter a Supplemental Judgment based on review of those briefs and the applicable law.

In its supplemental judgment entered on September 28, 2001, the trial court found that ARELP was created by an agreement dated December 18, 1978, and quoted from Paragraph Four of ARELP's limited partnership agreement as follows:

The purpose of the partnership shall be to engage in the business of owning and developing real property, and the operation thereof including, without being limited to the leasing of its properties, which leases may be for terms longer than the life of this partnership agreement, and the right to sell, mortgage, pledge or otherwise deal in its properties and investments as if it were an adult individual. The partnership is specifically authorized to hold title to real property in the name of the partnership and transfer title thereto by the act of the General Partner [emphasis original].

After Stuart died on May 6, 1999, his son, David, became the general partner of ARELP. David testified that the partnership assets originated from a corporation that had been formed after his parents divorced. When the partnership was formed in 1978, Stuart owned 55%; at his death, however, he owned only 2.148%. The trial court found that although David denied that ARELP itself was used as an estate-planning device, it was nonetheless created in 1978, the same year Stuart began a complicated, confusing method of estate-planning. The trial court thus found that one purpose of ARELP was to allow Stuart control of the assets that he was divesting for estate-planning purposes.

The trial court further determined that ARELP's partnership agreement specifically authorized Stuart, as general partner, to transfer real property owned by the partnership. The trial court then determined:

A conveyance of partnership property by a partner in his own name passes equitable title, making it an effective conveyance

provided the title is in the partnership and the conveyance is for partnership purposes. 59 Am.Jur.2d ' 304. One purpose of the partnership was for estate planning purposes. A transfer of real property to a great-grandson of Stuart Adams would comply with that purpose.

Therefore, in its supplemental judgment, the trial court ordered ARELP to convey the property to Sky.⁸ Furthermore, the trial court ordered that the consideration to be stated in that deed would be a gift and that its value would be the last assessed value of the property by the Property Valuation Administrator. This appeal followed.

ARELP presents five assignments of error on appeal: (1) that the trial court erred by finding the handwritten document to be a deed of conveyance; (2) that an unrecordable document is insufficient to divest title from the lawful owner; (3) that the trial court erred by finding that a constructive trust had been created; (4) that the trial court erred by finding that one purpose of ARELP was to provide an estate-planning mechanism for Stuart Adams to divest assets; and (5) that a partnership is entitled to recover partnership assets that were wrongfully conveyed.

We will address the first two issues jointly. KRS 382.135 provides, in pertinent part, as follows:

⁸ The trial court specifically ordered ARELP to convey "the property shown on the attached deed, Deed Book 748, Page 47, being the property deeded by Debbie Huffman Venters and W. E. Venters, Jr., to [ARELP]."

(1) In addition to any other requirement imposed by law, a deed to real property shall contain the following:

(a) The mailing addresses of the grantor and grantee;

(b) A statement of the full consideration; and

. . .

(d) In the case of a transfer by either gift or with nominal or no consideration, a sworn, notarized certificate signed by the grantor or his agent and the grantee or his agent, or the parent or guardian of a person under eighteen (18) years old, stating that the transfer is by gift and setting forth the estimated fair cash value of the property.

. . .

(5) No county clerk or deputy clerk shall lodge for record, and no county clerk or deputy shall receive and permit to be lodged for record, any deed that does not comply with the provisions of this section.

Obviously, the handwritten document lacked the mailing address of both the grantor and the grantee, a statement of the full consideration, and, as it was a transfer by gift and without consideration, a notarized certificate, signed by the grantor and the grantee, stating that the transfer was by gift and setting forth the estimated fair cash value of the property. Thus, this document failed to satisfy KRS 382.135(1)(a), (b), and (d); and was also unrecordable because it did not contain the grantor's

source of title.⁹ Thus, the trial court properly found that this document could not be recorded as a deed.

However, the trial court concluded that "[w]hile the document in question cannot be recorded it is effective as a conveyance as between the grantor and the grantee." The trial court cited Howard v. Kelsay,¹⁰ for the rule that A[a] deed may not be properly recorded unless the statute is complied with, but although it is not properly recorded it is a valid transfer of title and is effective as between the grantor and the grantee.@ The trial court ruled that the handwritten document was binding upon Stuart's estate and Sky since it contained the fundamental elements of a deed: (1) there was a grantor and a grantee, (2) there was delivery and acceptance, and (3) there was a divesting of title by the grantor and a vesting of title in the grantee. The trial court concluded:

The document in question has a grantor, AI@ which is readily determined as Stuart Adams; a grantee, Sky Andrew Adams; delivery by Stuart Adams and acceptance by Sky Andrew Adams by and through [his] mother; and finally it states Stuart Adams['s] intention to be divested of title and to vest it in Sky Andrew Adams using the present sense language, AI hereby give.@ The document in question is a deed of conveyance of real property that is binding upon the parties to it.

⁹ KRS 382.110(3).

¹⁰ 230 Ky. 61, 63, 18 S.W.2d 884, 885 (1929).

In Travis v. Saunders,¹¹ the former Court of Appeals was presented with the argument "that the instrument was void under our statute, and therefore passed no title because the husband did not join in the conveyance with his wife by acknowledging the same."² The appellant maintained that the deed involved was void because the notary public's certificate only indicated that the deed was acknowledged by appellant's mother, but failed to show an acknowledgment by the appellant's mother's husband. The Court then enunciated a superb review of the applicable law, which merits quotation at length:

Similar questions have often been made in this state, and without exception it has been held that such instruments are valid as between the parties and those claiming under them, although they may not be recordable instruments under our statute. In the early case of Fitzhugh v. Croghan, 2 J. J. Marsh. 429, this court, in an opinion by Chief Justice Robertson, upheld the validity of an instrument not properly attested as then required by statute, so as to make the same recordable, and said:

These requisitions were made for the benefit of innocent purchasers and creditors alone, and that without the required attestation, or recording the deed, if otherwise good, would pass the title, as between the parties to it. The three witnesses were necessary only to prove the deed for recording. The recording was necessary only to secure the title against subsequent creditors and

¹¹ 198 Ky. 742, 249 S.W. 1040 (1923).

¹² 198 Ky. at 743, 249 S.W. at 1040.

purchasers; and therefore, between the vendor and vendee, the title was not affected by an omission to record the deed, or to obtain the attestation of three witnesses, who were required only to prove the execution, in order to record it.

Following that opinion and referring to it, this court, in the case of Shoptaw v. Ridgway~~s~~ Administrator, 22 Ky. L. Rep. 1495, said:

A deed ample in form and expression, duly signed and delivered by the grantor, and accepted by the grantee, is effectual as between them, and those claiming under them, to pass the legal title to the land.

. . .

This court in the more recent case of Ferrell v. Childress, 172 Ky. 760, 189 S.W. 1149, held that an instrument which was in form and expression a deed, duly signed and delivered by the grantor and accepted by the grantee, although never acknowledged at all, was a valid and binding instrument as between the parties and passed legal title of the grantor although it was not a recordable instrument, but that the recording of same imputed no notice to strangers.¹³

This line of reasoning directly supports Mindy~~s~~ position, as well as the trial court~~s~~ ruling that the handwritten document was effective as a conveyance between Stuart and Sky.¹⁴

¹³ 198 Ky. at 743-44, 249 S.W. at 1040-41.

¹⁴ While Mindy~~s~~ brief to this Court fails to present any of these cases, this issue is teeming with examples of the validity of unrecorded deeds. Fitzpatrick v. Layne, 291 Ky. 523, 165 S.W.2d 13 (1942) (a deed duly executed and delivered need not be recorded to pass title); Blankenship v. Green, 283 Ky. 700, 143 S.W.2d 294 (1940) (a deed properly signed is good between the parties even if it is not acknowledged or recorded); Brewer v. Lee, 252 Ky. 798, 68 S.W.2d 409 (1934) (an unrecorded deed is valid to both parties to the

The purpose of KRS 382.135(1) is for the protection of innocent purchasers and creditors alone. Recording a deed is necessary only to secure the title against subsequent creditors and purchasers[.]¹⁵ As in Shoptaw, the handwritten document in the case sub judice is ample in form and expression. Additionally, identical to Ferrell, the handwritten document from Stuart to Sky is a valid and binding instrument between them and, although not a recordable instrument, it is nevertheless good as between the parties and those having actual notice thereof.¹⁶

There was ample evidence to support the trial court's findings that the three fundamental elements of a deed were satisfied. Mindy testified during direct examination that from 1981 to 1999 Stuart made 19 conveyances of property to children and grandchildren, as well as conveyances to his future wife, Brenda Cooke Adams. Mindy testified that in all of these conveyances Stuart signed in his capacity as general partner of ARELP. Mindy testified that Davin Adams, Stuart's grandson, witnessed Stuart sign this handwritten document; Stuart wanted to give Sky the property in order to provide him with income from the rental property; Brenda Cooke Adams, Stuart's widow, drafted the handwritten document per Stuart's dictation; Stuart signed and dated this document; and Stuart promised to provide her with deed but also all others who have notice).

¹⁵ Travis, 198 Ky. at 743, 249 S.W. at 1040 (citing Fitzhugh, supra).

¹⁶ Ferrell, 172 Ky. at 764, 189 S.W. at 1151.

a recordable instrument conveying the property to Sky.

Brenda Adams testified during cross-examination that, at the time the handwritten document was prepared, it was discussed that a deed would be prepared for that property. Furthermore, she testified that Stuart attempted to have a deed drafted for this property. However, she also testified that Stuart was known to change his mind frequently.

David Adams, the current general partner of ARELP, testified that in 1978 Stuart began setting up trusts to distribute his estate. David freely admitted that this estate-planning system was a ~~A~~complicating and confusing method,~~@~~was ~~A~~fairly confusing,~~@~~and ~~A~~kind of a mess.~~@~~ However, during cross-examination, David testified that Stuart did not use ARELP as an estate-planning tool. Regarding the handwritten document, David testified that it was his opinion that Stuart gave Mindy the handwritten document even though Stuart knew that it was not legal and that he did not sign it in his capacity as general partner of ARELP. David further testified that the handwritten document had no legal effect and that it was probably Stuart's intention to make a gift but later decided to revoke it by his codicil. David testified that, as far as he could remember, Stuart never asked him to prepare a deed to convey the disputed property to Sky.

After a thorough review of the record, this Court is not convinced that the trial court's factual finding that the

handwritten document was a deed is clearly erroneous.¹⁷

Similarly, we are not convinced that the trial court's factual finding that one purpose of ARELP was to provide Stuart with an estate-planning device is clearly erroneous.¹⁸ CR 52.01 provides, in relevant part, as follows:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment. . . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

Accordingly, it was certainly within the trial judge's province to evaluate the testimony of each testifying witness. The trial court specifically found that the handwritten document

expresses Mr. Stuart Adams's intention to give his great-grandchild the property described. This document is similar to others that Mr. Adams made at the time. He also made one to his companion of many years whom he married before his death, Brenda Cooke Adams. Mr. Adams signed documents transferring land for and on behalf of [ARELP] up to the time of his death, including documents of transfer and gifts to other children, grandchildren, and family members.

ARELP nevertheless maintains that, pursuant to KRS 362.185(3), Stuart could not grant the property to Sky. KRS 362.185(3) provides that A[any] estate in real property may be

¹⁷ Kentucky Rules of Civil Procedure (CR) 52.01.

¹⁸ CR 52.01.

acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.@ ARELP argues that even though Stuart was general partner, he still could not convey title to the property by use of the word At.@

As previously mentioned, the trial court found that, pursuant to KRS 362.195(1), the handwritten document could not convey legal title because it did not name the partnership as the grantor. However, the trial court further found that pursuant to KRS 362.195(2) that a conveyance executed by a partner in his own name passed the equitable interest of the partnership. Thus, the trial court concluded that ARELP held the property at 721B and 721C Scott Avenue in trust for the benefit of Sky.

KRS 362.195(1) provides:

Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of KRS 362.190(1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

In the case sub judice, the handwritten document clearly was not executed in the partnership name. There is no language in the document consistent with David Adams's testimony which indicates that Stuart signed it on behalf of ARELP as general partner. Without this language, a logical inference would be that he signed the document in an individual capacity

and not as general partner of ARELP. Thus, Stuart's conveyance to Sky was not executed in the name of ARELP.

As Stuart conveyed the property in his individual name, we must apply KRS 362.195(2), which states:

Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided that the act is one within the authority of the partner under the provisions of KRS 362.190(1).

If Stuart's act was within the parameters of KRS 362.190(1), then he would have conveyed an equitable interest in the property to Sky. Thus, we must turn our attention to KRS 362.190(1), which provides:

Subject to the limitations set forth in KRS 362.220(2), every partner shall be an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member shall bind the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no authority.

At the time Stuart made the conveyance, he was the general partner of ARELP. ARELP's course of business necessarily included dealing in its properties; thus, Stuart obviously had authority to act on the partnership's behalf under KRS 362.190(1). Furthermore, ARELP's partnership agreement permitted ARELP to otherwise deal in its properties and investments as if

it were an adult individual.¹⁹ This grant of authority would obviously include conveying a piece of property by gift. Perhaps most telling of Stuart's authority to bind ARELP is the express language employed in ARELP's partnership agreement, which reads, in applicable part, that [t]he partnership is specifically authorized to hold title to real property in the name of the partnership and transfer title thereto by the act of the General Partner.²⁰

We conclude that the trial court properly found that ARELP held the property in trust for Sky. KRS 362.195(2) explicitly states that where property is held in the partnership's name and a partner in his own name conveys that property, the equitable interest in the partnership is passed. The Legislature could not have been more clear. A court's duty in construing statutes is to ascertain and give effect to the intent of the General Assembly.¹⁹ Moreover, because the language of KRS 362.195(2) is clear and unambiguous and express[es] the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written.²⁰ ARELP's argument that Stuart could not convey equitable title to the disputed property is not supported by the law.

¹⁹ White v. Check Holders, Inc., Ky., 996 S.W.2d 496, 497 (1999)(citing Beckham v. Board of Education, Ky., 873 S.W.2d 575, 577 (1994)).

²⁰ White, supra at 497 (quoting McCracken County Fiscal Court v. Graves, Ky., 885 S.W.2d 307, 309 (1994)).

The second element of a deed is that there must be delivery by Stuart and acceptance by Mindy on behalf of Sky. ARELP argues that delivery was negated because the handwritten document failed to identify the correct owner of the property. This argument is flawed because the trial court found that the handwritten document was a valid conveyance and binding as between the parties thereto. The former Court of Appeals has held that A[i]t is essential to the validity of a deed that there be an absolute delivery of the instrument,@ adding that A[t]he question of delivery is generally determined by the intention of the parties, and there must be some act or declaration from which an intention to deliver can be inferred.@¹ There was actual, manual delivery in the case sub judice. The trial court found that the handwritten document Aexpress[ed] Mr. Stuart Adams[']s intention to give his great-grandchild the property described.@ The trial court's finding of delivery was supported by substantial evidence. The record demonstrates that Mindy accepted the document from Stuart on Sky's behalf.

The third element of a deed is that there must be a divesting of title in the grantor and a vesting of title in the grantee. ARELP argues that Mindy's knowledge that the handwritten document was not a deed and did not divest title necessitates that this third element was unfulfilled. ARELP

²¹ Sublett v. Runyan, Ky., 316 S.W.2d 362, 363 (1958)(citing Dunbar v. Meadows, 165 Ky. 275, 277-78, 176 S.W. 1167, 1169 (1915)).

additionally argues that Stuart's failure to have a deed prepared is further evidence that he did not intend to give this property to Sky. We conclude that the trial court correctly determined that Stuart's intention to be divested of title in the property and to vest it in Sky was evidenced by Stuart's use of the present-sense language, "I hereby give." This language unequivocally demonstrated Stuart's intention to dispossess himself of the property.

The former Court of Appeals has held that

[i]f the intention of the parties is that by the deed the grantor intends to divest himself of title and the grantee intends to accept it upon the terms contained in it, and both parties treat it as complete, it will be deemed in law to have been so accepted.²²

In the case sub judice, Stuart's present-sense language overtly indicated that he treated the divestment as complete. The trial court found that the document was similar to others he had made at the time. Furthermore, the trial court's finding that the document was delivered to Mindy on its date of execution and that she continues to possess it denotes that she treated it as complete. This factual finding was not clearly erroneous and the trial court must be affirmed.²³

ARELP's third assignment of error is that the trial court erred by finding that a constructive trust was created.

²² Hardin v. Kazee, 238 Ky. 526, 532, 38 S.W.2d 438, 440 (1931).

²³ CR 52.01.

The trial court concluded that, pursuant to KRS 362.195(2), ARELP held the property in constructive trust for the benefit of Sky.

In its supplemental judgment, the trial court concluded:

A conveyance of partnership property by a partner in his own name passes equitable title, making it an effective conveyance provided the title is in the partnership and the conveyance is for partnership purposes. 59 Am.Jur.2d '304. One purpose of the partnership was for estate planning purposes. A transfer of real property to a great-grandson of Stuart Adams would comply with that purpose.

Accordingly, the trial court ordered ARELP to convey the property to Sky.

ARELP claims that it "does not have a duty to pass legal title or hold equitable title as a trustee on behalf of anyone to the property in issue, but instead has the right, if not the obligation, to recover any attempted conveyance of property,@ citing Noble v. National Mines Corp.²⁴ In Noble, the United States Court of Appeals for the Sixth Circuit reasoned that A[t]he plain language of [KRS] 362.195(1) provides that, if the conveyance is executed in the partnership name, any partner may convey real property for the partnership@ (emphasis original).²⁵ However, Noble is distinguishable from the case sub judice. Unlike the real property transferred in Noble, Stuart conveyed the property to Sky in his individual name and

²⁴ 774 F.2d 144 (6th Cir. 1985).

²⁵ Id. at 147.

not as general partner of ARELP. Noble necessarily involved the application of KRS 362.195(1), whereas Stuart's conveyance requires the application of KRS 362.195(2). Noble is factually dissimilar from the case sub judice and is inapplicable.

ARELP alleges that Mindy Atransparently asserted and mislead the trial court into concluding that a partner, in his own name, could pass an equitable interest in the partnership per KRS 362.195(2).@ We have already considered this argument and concluded that KRS 362.195(2) is directly relevant to this conveyance. Nevertheless, ARELP argues that the trial court Afurther erred by taking this one step further and finding as a result of this ineffectual attempt to pass an equitable interest, some sort of constructive trust was created.@

The trial court seemingly relied upon the following language from 59 Am.Jur.2d Partnership ' 304 (1987):

A partner may also pass an equitable title by a conveyance in his own name affecting property held in the partnership name. In other words, a conveyance executed by a partner in his own name, without mentioning the partnership, passes the equitable title of the partnership, making it an effective conveyance, provided the title is in the partnership and the conveyance is for partnership purposes.

Likewise, in the case sub judice, the property was held in ARELP's name, but Stuart conveyed it in his own name. Since Stuart did not indicate that the conveyance was made in his capacity as general partner of ARELP, he only conveyed an equitable interest in the property. The trial court determined

that A[o]ne purpose of [ARELP] was for estate planning purposes[,]@and that A[a] transfer of real property to a great-grandson of Stuart Adams would comply with that purpose.@ After reviewing the record, we cannot say that the trial court's findings were clearly erroneous.²⁶

A[A] constructive trust arises when a person entitled to property is under the equitable duty to convey it to another because he would be unjustly enriched if he were permitted to retain it.²⁷ Furthermore, an Ainjured party is not required to show actual fraud to support a constructive trust.²⁸ The former Court of Appeals has stated that A{c]onstructive trusts are such as are raised by equity in respect of property which has been acquired by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it.²⁹ As our highest court held long ago:

A constructive trust is one not created by any words either expressly or impliedly evincing a direct intention to create a trust, but by the construction of equity in order to satisfy the demands of justice. They are entirely in invitum and forced upon the conscience of the trustee for the purpose of working out right and justice or frustrating fraud.³⁰

²⁶ CR 52.01.

²⁷ Kaplon v. Chase, Ky.App., 690 S.W.2d 761, 763 (1985)(citing Becker v. Neurath, 149 Ky. 421, 149 S.W. 857 (1912)).

²⁸ Kaplon, supra at 763.

²⁹ Id. (quoting Hull v. Simon, 278 Ky. 442, 449, 128 S.W.2d 954, 958 (1939)).

³⁰ Long v. Reiss, 290 Ky. 198, 212, 160 S.W.2d 668, 676 (1942)(quoting

In the case sub judice, it would be inequitable to permit ARELP to retain title to the property as it would be unjustly enriched because, as the trial court properly found, the handwritten document constituted a valid deed of conveyance. Furthermore, it would be in direct violation of KRS 362.195(2) and therefore contrary to the Legislature's intent. The trial court did not err by concluding that a constructive trust had been established.

ARELP additionally argues that since ~~A~~ partner owns no personal specific interest in any specific property or asset of the partnership, he cannot assign an interest in any specific property or asset.³¹ In Dreisbach this Court held that ~~A~~ partner has no right to transfer an interest in specific partnership property.³² This language suggests that Stuart may not have had the authority to convey this specific partnership property to Sky. However, as was not noted by ARELP in its brief, the factual situation in Dreisbach concerned a non-partner who attempted to convey her interest in specific partnership property. Notwithstanding ARELP's omission regarding this patent difference in facts, this Court in Dreisbach concluded that even

Motley's Adm'rs v. Tabor, 208 Ky. 702, 271 S.W. 1064, 1065 (1925)).

³¹ ARELP cites Dreisbach v. Eifler, Ky.App., 764 S.W.2d 631 (1989), in support of this proposition.

³² Id. at 633.

if the non-partner had in fact been a partner, she would still have had no right to transfer property.

KRS 362.270 states, in pertinent part, as follows:

- (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.
- (2) The incidents of this tenancy are such that:
 - (a) A partner, subject to the provisions of KRS 362.150 to 362.360 and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.
 - (b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

The above-quoted language from KRS 362.270(2)(b) is identical to that provided in the Uniform Partnership Act (UPA) ' 25. At seems clear that [' 25(b)(2)] of the Uniform Partnership Act . . . was not intended to prevent a partner from assigning his right in particular partnership property to third persons so long as such assignment involved a business purpose.³³ Accordingly, since the trial court found that one purpose of ARELP was to provide an estate-planning mechanism to Stuart

³³ W. M. Moldoff, Annotation, Construction, application, and effect of Uniform Partnership Act, ' 25(2)(b), relating to nonassignability of partner's right in specific partnership property, 39 A.L.R.2d 1365, 1366 (1955).

Adams, KRS 362.270(2)(b), which is statutorily identical to UPA ' 25(b)(2), does not prevent Stuart from conveying the property to Sky. Moreover, according to ARELP's partnership agreement, ARELP was specifically permitted to otherwise deal in its properties. Stuart, as the ARELP's general partner, was specifically authorized to hold title to real property in the name of the partnership and transfer title thereto Thus, Stuart's conveyance was authorized by ARELP's partnership agreement. The trial court committed no error by ruling that a constructive trust had been created.

ARELP's fourth assignment of error is that the trial court erred by finding that one purpose of ARELP was to provide an estate-planning mechanism for Stuart to divest assets. ARELP premises this argument upon the notion that nowhere in its partnership agreement did it state that one purpose of the agreement was to provide Stuart with an estate-planning mechanism. This argument is further founded upon David's testimony wherein he denied that Stuart used ARELP as an estate-planning mechanism.

ARELP, however, neglects to mention that David testified that in 1978, Stuart began setting up trusts to distribute his estate and that this estate-planning system was a complicated and confusing method, was fairly confusing, and a kind of a mess. David also testified that when ARELP was formed in 1978, Stuart owned 55%; however, at his death, he owned

2.148%. Moreover, Daniel C. Manley, a trust officer employed by Firststar Bank N.A., Trust Department, executor of Stuart's estate, testified that ARELP was totally funded by Stuart and that, during ARELP's existence, Stuart would increase other partners' interests while decreasing his own interest. This testimony supported the trial court's findings which were not clearly erroneous.

ARELP's fifth and final assignment of error is that a partnership is entitled to recover partnership assets that were wrongfully conveyed. ARELP argues that, pursuant to KRS 362.195(1), it is entitled to recover the property unless Stuart's conveyance bound it under KRS 362.190(1). However, ARELP attempts to disregard KRS 362.195(2), the provision which clearly pertains to the case sub judice. KRS 362.195(2) concerns an instance in which a partner conveys real property in his own name, whereas KRS 362.195(1) applies where a partner conveys real property in the partnership's name. As we have consistently reiterated throughout this Opinion, Stuart conveyed the property in his own name and not as general partner of ARELP.

For the foregoing reasons, the judgments of the Pike Circuit Court are affirmed.

ALL CONCUR.

BRIEF AND ORAL
ARGUMENT FOR
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