

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000413-MR

WAYNE R. HALL
AND
GLENN A. HALL

APPELLANTS

v. APPEAL FROM HENRY CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 01-CI-00156

MARY LUCILLE HALL

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND COMBS, JUDGES.

BARBER, JUDGE: Appellants Wayne R. Hall and Glenn A. Hall appeal from an award of summary judgment in favor of Appellee Mary Lucille Hall. Appellants also assert entitlement to an award of damages against an Executrix for breach of fiduciary duty.

Wayne and Glenn Hall are the children of decedent Raymond Hall. Mary Hall was the spouse of Raymond Hall and the stepmother of Appellants. Decedent Raymond Hall's Will granted

Mary Hall a life estate in all his property, and stated that she had the right to sell or dispose of any of the property for her care, support or medical expenses. The inventory filed with the Will states that at the time of his death, in addition to various marital property, Raymond Hall owned a piece of real estate individually.

After her appointment as Executrix to the Estate of Raymond Hall, Mary Hall filed a previously signed and executed deed showing that Raymond had transferred ownership of the real estate from Raymond Hall individually, to Mary and Raymond Hall as joint tenants with a right of survivorship. That deed was executed and delivered to Mary Hall in 1995, several years prior to Raymond Hall's death. The record shows that the deed naming Mary Hall a joint tenant with right of survivorship was prepared by an attorney and signed in her office on April 21, 1995. The deed was signed by Raymond Hall on the same date that he signed his Will. The deed was executed and witnessed on that date in accordance with law.

Wayne and Glenn Hall filed the present action claiming breach of fiduciary duty by Mary Hall due to the filing of that deed, and asserting that she took an exclusive interest in the property, rather than the life estate interest specified in the Will. Wayne and Glenn Hall argued that no valid delivery of the deed took place and that the record did not establish that

Raymond Hall had made a definite and irrevocable delivery of the deed to Mary Hall.

Wayne and Glenn Hall assert that genuine issues of material fact barred entry of summary judgment. They argue that Raymond Hall kept the deed in his possession and did not file it. They claim a failure in delivery and assert that the property was still owned by Raymond individually at the time of his death.

Mary Hall asserted that the deed was valid and binding on the date it was signed and delivered to her, April 21, 1995. The trial court granted Mary Hall's motion for summary judgment, finding that delivery of the deed was complete upon execution of the deed and delivery of the deed to Mary Hall. The trial court accepted Mary's testimony that she had made a mistake when she listed the property as individually owned on the inventory. There is no evidence in the record indicating that Raymond Hall did not intend to add Mary Hall as a joint tenant to the marital residence.

A grantor's intention "may be inferred from the grantor's acts and words and from the circumstances surrounding the execution of the instrument." Hayden v. Hayden, Ky., 214 S.W.2d 603 (1948). The signed and executed deed contains a statement by the notary public witnessing the execution, which shows that both parties properly signed the deed. According to

the attorney who prepared the deed, the signed and executed deed was then handed to Mary Hall. At that point, delivery of the deed was accomplished.

A gift of real estate is considered valid upon delivery by the grantor to the grantee. Damron v. Damron, 301 Ky. 636, 192 S.W.2d 741 (1945). Mary Hall retained possession of the deed in the home until the date it was filed. Possession of a deed creates a presumption in favor of delivery having taken place. Jones v. Driver, 282 Ky. 82, 137 S.W.2d 729 (1939). Placement of an unrecorded deed with other papers of the decedent does not automatically defeat delivery of the deed. Harned v. Smoot, Ky., 209 S.W.2d 485 (1948). The law presumes in favor of delivery where the grantee has possession of the deed, or produces evidence tending to show that delivery was accomplished. White v. Hogge, Ky., 291 S.W.2d 22, 24 (1956). We affirm the trial court's finding of a valid delivery.

Wayne and Glenn Hall assert that Mary Hall owed them a duty to protect their interests in their father's property. Wayne and Glenn argue that when Mary claimed a sole interest in Raymond's real estate, this action was in opposition to the interests of the estate's heirs. They claim a breach of fiduciary duty with regard to Mary Hall's claim on property in which they had an interest. As the evidence reflects that Wayne and Glenn Hall had no interest in the residential property, no

breach of duty can be claimed by Mary Hall's asserting an interest therein.

A party objecting to entry of summary judgment must provide some affirmative evidence showing the existence of a genuine issue of material fact in order to defeat the motion. City of Florence, Kentucky v. Chipman, Ky., 28 S.W.3d 387, 390 (2001). The trial court held that no genuine issues of material fact existed barring entry of summary judgment. We affirm the trial court's decision.

ALL CONCUR.

BRIEFS FOR APPELLANT:

T. Sherman Riggs
Nathan T. Riggs
Shelbyville, Kentucky

BRIEF FOR APPELLEE:

Gerald T. Kemper
Owenton, Kentucky