RENDERED: October 31, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001404-MR

GORDON POTTER AND
LORENE POTTER APPELLANTS

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 98-CI-01479

BLUE FLAME ENERGY CORPORATION;
JIMMY LEE MOORE AND CYNTHIA MOORE, HIS WIFE;
ROY RATLIFF AND BRENDA RATLIFF, HIS WIFE;
GENE P. RATLIFF AND HELEN D. RATLIFF, HIS WIFE;
LORETTA C. JUDE AND WILLIAM C. JUDE, HER HUSBAND;
CALVIN S. FRENCH AND JOY BARNETT FRENCH, HIS WIFE;
FRANKLIN SANDERS AND BARBARA SANDERS, HIS WIFE;
AND STONE CREEK FARM, LTD APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: PAISLEY AND TACKETT, JUDGES; AND HUDDLESTON, SENIOR JUDGE.[1]

TACKETT, JUDGE: Gordon Potter and Lorene Potter appeal from a summary judgment entered in favor of Blue Flame Energy Co. ("Blue Flame"), Stone Creek Farm ("Stone Creek"), and several

---

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

landowners including Jimmy Lee Moore and Cynthia Moore, Roy Ratliff and Brenda Ratliff, Gene Ratliff and Helen Ratliff, Calvin French and Joy Barnett French, Loretta Jude and William C. Jude (collectively "the Landowners") in the Potter's action respecting ownership of disputed acreage in Pike County, Kentucky. The circuit court granted summary judgment on the grounds that the Potters did not own the claimed land, in that their predecessor in title, Catherine B. Riley, did not succeed to the full interest held by Pine Mountain Land Company, a corporation of which she was the sole shareholder at the time of the corporation's dissolution. We affirm.

The Potters claimed that they own through a 1973 deed from Riley's administrator, all the land on the south side of Elkhorn Creek on Tom's Branch and the left fork of Pigeon Creek owned by Riley at the time of her death. The case turns on whether, as claimed by the Potters, Riley owned only the enumerated tracts described in the deed, or whether Riley owned those tracts in fee simple, through a succession of quitclaim transfers of whatever interest the grantor may have held besides the specific tracts described. Riley would have obtained such interest from the Pine Mountain Land Company, of which she was the sole shareholder, through transfer by deed and through succession to its interest when the corporation ceased to exist. The circuit court held that such succession does not

automatically occur, and that in order to affect a transfer, the corporation would have had to transfer its interest by deed. The Potters argue on appeal that the corporation did intend to transfer all its interest to Riley, and that the failure to include the quitclaim language transferring all other interest it might hold was a scrivener's error; the Potters also argue that the circuit court erred in holding that the corporation's interest did not pass to Riley when the corporation ceased to exist. After a careful review of the applicable law, we conclude that the circuit court did not err, and affirm.

Reviewing first the chain of title that extends back to the 1866 Gallup & Sowards patent, we conclude that there is evidence that the chain of title may include more than the 20 enumerated tracts. There is language of quitclaim in the deeds, referred to by the parties as "all-encompassing" language, which transfers all interest that the grantor may hold in land in this particular area. While this is a very poor description of the property conveyed, the weight of authority indicates that this description is sufficient to transfer what property the grantor may hold. However, this language is missing from the deed from Pine Mountain Land Company to Catherine B. Riley. The Potters insist that this is a mere "scrivener's error" and that the court should interpret the deed as if that all-inclusive language had been included. We disagree. The traditional rule

is that a clerical error in the use of a descriptive term in a deed description does not defeat the intent of the parties to convey a certain parcel of land in light of the sufficient expression of the parties' intent in the rest of the description. See, AMERICAN JURISPRUDENCE 2d, §44; Gwathmey v. State Through Dept. of Environment, Health, and Natural Resources Through Cobey, 342 N.C. 287, 464 S.E.2d 674 (1995). This is not a case where one word was substituted for another. This is a case where the deed, on its face, only evinces intent to transfer those 20 enumerated tracts of land. Nothing within the deed indicates that the parties believe that there is any other interest to transfer, and we are not permitted to supply language that is not present, to effect what the appellants wish their predecessor in title's intent to be. Arguably, the parties could have intended to include that language, and naturally there would have been no evidence of the intent to transfer any other interest Pine Mountain might have held, if the drafter of the deed simply forgot to include that language. However, the Potters offered no evidence that would indicate such intent, and we are restricted to the evidence found in the document of the intent of the parties, absent some other proof of intent. Dennis v. Bird, Ky. App., 941 S.W.2d 486 (1997).

The circuit court's central holding turns on whether title to real property held by a corporation may pass to its

shareholders in the event of corporate dissolution. The court reasoned that to follow a rule that the property did pass to the individual shareholders without the necessity for a deed would lead to serious problems in other cases; the court posited a hypothetical example of the problems which could arise in the event that a large corporation with thousands of shareholders dissolved, and all those shareholders became tenants in common of the real property. The circuit court, in support of its decision, noted that Kentucky's statute,[2] enacted in 1988, provides that title to real property does not automatically transfer to the shareholders on dissolution of a corporation. The court also cited the decisions of Stearns Coal & Lumber Co. v. Douglas, 299 Ky. 314, 185 S.W.2d 385, 386 (1944) and Greene v. Stevenson, 295 Ky. 832, 175 S.W.2d 519 (1943), which clearly state that all of the old rules relating to reversion of interests in corporate real estate were abrogated by the enactment of K.S. 561, Carroll's Kentucky Statutes. While these cases are not an exact fit with the facts of this case, they are nonetheless instructive and support the circuit court's opinion. We believe that the interest was not effectively transferred to Catherine B. Riley, and as she did not own it at the time of her death, the interest was not subsequently transferred to the Potters.

[2] KRS 271B.14-050(2)(a)

Appellants rely on the case of Barrowman Coal Corp. v. Kentland Coal & Coke Co., 196 S.W.2d 428 (1946), for the proposition that title to real property passes to shareholders on the dissolution of a corporation. Appellants' reliance on that case is misplaced. That case did not directly deal with the question of ownership of real estate, but the defunct corporation's interest in a lease. The case simply does not state that title to real property passes to the shareholders as tenants in common, and we believe that the circuit court, in relying on the statute it cited, was correct in its analysis. Barrowman is simply inapplicable here.

At oral argument, both sides addressed the question of whether this undefined interest that may have been held by Pine Mountain at the time of its dissolution is still held by the now-defunct Pine Mountain. Whether Pine Mountain holds the interest or not, it is at least certain that it does not reside with the Potters.

For the foregoing reasons, the judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR APPELLANTS:

Della M. Justice
Pikeville, Kentucky

BRIEFS FOR APPELLANTS:

Joseph W. Justice
Justice Attorney At Law
Pikeville, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEE BLUE FLAME ENERGY CORPORATION:

Charles J. Baird
Baird and Baird, P.S.C.
Pikeville, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEES JIMMY LEE MOORE AND CYNTHIA MOORE, HIS WIFE; ROY RATLIFF AND BRENDA RATLIFF, HIS WIFE; GENE P. RATLIFF AND HELEN D. RATLIFF, HIS WIFE; LORETTA C. JUDE AND WILLIAM C. JUDE, HER HUSBAND; CALVIN S. FRENCH AMD JOY BARNETT FRENCH, HIS WIFE; FRANKLIN SANDERS AND BARBARA SANDERS, HIS WIFE

Lawrence R. Webster
Webster Attorneys At Law
Pikeville, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEE STONE CREEK FARM, LTD:

James R. Cox
Cox Bowling & Johnson PLLC
Louisville, Kentucky

BRIEF FOR APPELLEE STONE CREEK FARM, LTD:

Ray S. Jones, II
Jones & Friend, PSC
Pikeville, Kentucky