

RENDERED: AUGUST 19, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-001550-MR

GALEN L. CLARK
AND ILEA MANNERING

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 02-CI-005032

ROBERT LANDERS
AND WILLIAM LANDERS

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: KNOPF AND TACKETT, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

KNOPF, JUDGE: Galen L. Clark and Ilea Mannering appeal from a judgment ordering partition of undivided real property as set forth in a 1992 agreement executed by their predecessor in title. They argue that the agreement lacks necessary terms and is void

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

under the statute of frauds. We agree with the trial court that the agreement is enforceable and further that the parties are estopped from asserting rights to undivided ownership of the property. Hence, we affirm.

Mary T. Mannering died testate on April 25, 1982. She was survived by her three sons, Robert Landers, William Landers and Danny Mannering. At the time of her death, she owned real property located along the Ohio River in Jefferson County, Kentucky (the riverfront property). Her will specifically devised residences on that property to Robert Landers and Danny Mannering as well as to each the surrounding one acre of land. The balance of the real property was devised in an equal, undivided share to each of Mary Mannering's children.

However, the riverfront property was not conveyed to the beneficiaries until 1987 following extensive litigation with the estate's executor.² During 1986, the executor conveyed the residences and the surrounding property to Robert Landers and Danny Mannering as directed by the will. Thereafter, on March 4, 1987, the executor conveyed the remaining riverfront property to Robert Landers, William Landers, and Danny Mannering. Each beneficiary received an undivided one-third interest without survivorship.

² See Lucas v. Mannering, 745 S.W.2d 654 (Ky.App. 1987).

While the earlier litigation was pending, Robert, William and Danny executed several documents which expressed an intent to partition the riverfront property among themselves. In 1992, a plat was prepared dividing the property into five tracts - including the two tracts which were specifically devised to Robert and Danny. On February 27, 1992, they executed an agreement assigning tracts one and three to Robert, tracts two and five to Danny, and tract four to William. The agreement and plat were notarized and recorded with the office of the Jefferson County Clerk. They did not execute any deeds transferring the partitioned tracts.

Danny Mannering died testate on May 24, 1995. Under his will, 80% of his interest in the riverfront property passed to his wife, Ilea Mannering, and 20% passed to his two sons, Michael R. Mannering and Timothy Mannering. In early 2002, Galen Clark purchased the 20% interest from Michael and Timothy Mannering. Thereafter, Clark brought this action against Ilea Mannering, Robert Landers, and William Landers, alleging that the riverfront property was indivisible and requesting that it be sold with the proceeds being appropriately divided.³ Clark also sought an accounting of rents received by the other joint tenants. Subsequently, the trial court granted Clark leave to

³ KRS 389A.030.

file an amended complaint re-aligning Ilea Mannering and William Landers as co-plaintiffs.⁴

In response to the amended complaint, Robert Landers relied on the 1992 partition agreement. He further argued that a sale of the riverfront property is not necessary because it is divisible without material impairment to each co-owner's interest. The trial court bifurcated the proceedings, first addressing the validity of the partition agreement. Following an evidentiary hearing, the trial court entered findings of fact and conclusions of law. The trial court found that the various agreements, including the recorded agreement and minor plat, were sufficient writings to satisfy the requirements of the statute of frauds. The court further found that the parties to the agreement had exercised exclusive control and ownership over their assigned tracts, and as a result those parties and their successors are estopped from asserting rights to the undivided ownership of the entire premises. Consequently, the court dismissed Clark and Mannering's complaint and directed the

⁴ The amended complaint is not clear regarding the status of William Landers. The amended complaint designates William as a party plaintiff and does not request separate relief against him nor does it incorporate the claims against William contained in the original complaint. William appeared at trial through counsel, but did not actively participate in the litigation. However, the parties to the action proceeded as if he were a cross-defendant and Clark and Mannering have named William an appellee in this appeal.

parties to prepare and execute deeds consistent with the 1992 partition agreement. Clark and Mannering now appeal from this judgment.

The trial court's factual findings in this case are not in dispute. Rather, Clark and Mannering assert that the 1992 partition agreement is not enforceable as a matter of law. The statute of frauds⁵ requires all contracts conveying or transferring an interest in real property to be in writing, signed by the parties to be bound, and sufficiently describing the real property affected. Kentucky further requires that contracts for the partition of real property are subject to the statute of frauds.⁶

Clark and Mannering contend that the 1992 partition agreement lacks necessary terms for it to be an enforceable contract. They further argue that, since the agreement does not reference any other documents, the trial court erred by considering the 1983 and 1984 agreements to supply the necessary terms. However, we agree with the trial court that the 1992 partition agreement, while sketchy, meets the requirements of the statute of frauds.

⁵ KRS 371.010.

⁶ Barnett v. Barnett, 283 Ky. 710, 142 S.W.2d 975, 977 (1940); Green v. Elliott County Board of Education, 244 Ky. 500, 51 S.W.2d 459 (1932); and Duncan v. Duncan, 93 Ky. 37, 18 S.W. 1022, 1023 (1892).

The 1992 partition agreement consists of two parts.

The first part provides:

I, /s/ Daniel R. Mannering, agree to sell my house and acre Tract two along with /s/ William L. Landers acre and a half on the following condition ; That Daniel Mannering has the right to sell his house and acre on tract and acre on tract two (2) at his price because what the State tax bureau calls fair market value on Daniel Mannering's house and acre is eighty thousand dollars. Daniel Mannering's house and acre is worth a lot more than eighty thousand dollars.

Part Two of the Agreement, between Robert Landers, Danny Mannering and William Landers, incorporates the attached plat of the property and provides:

Robert L. Landers receives Tract one (1) and Three (3) marked in blue.
Daniel R. Mannering receives tract two (2) and Five (5) marked in green.
William L. Landers receives tract Four (4) marked in pink.

The 1992 agreement is signed by all of the parties to be bound and, when read with the attached plat, specifically describes the property. Part one of the agreement relates to another matter, allowing Danny and William to sell the tracts which they inherited separately under the will. Although part two of the agreement does not specifically state that the parties intend to partition the remaining undivided property, the agreement, when read with the attached plat, clearly evidences an intention to assign specific tracts to each joint tenant.

Consequently, the trial court did not err in finding the 1992 agreement to be an enforceable partition agreement.

Furthermore, the trial court found that the parties and their predecessors have exercised exclusive control over their assigned tracts for at least twenty years, as evidenced by Robert's testimony and by the 1982 and 1983 agreements. Thus, even if the 1992 agreement is not enforceable, Clark and Mannering are estopped from asserting rights to the undivided ownership of the property.⁷ Because Clark and Mannering have not designated the video record of the trial on appeal, we must presume that the trial court's factual findings in this regard are supported by substantial evidence.⁸ Therefore, the trial court properly ordered the riverfront property partitioned as set forth in the 1992 agreement.

Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

⁷ See Howard v. Carmichael, 237 Ky. 462, 35 S.W.2d 852, 855 (1931).

⁸ Porter v. Harper, 477 S.W.2d 778, 779 (Ky. 1972).

BRIEF FOR APPELLANTS
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