RENDERED: March 4, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001975-MR

THOMAS WILLIAM MILES, INDIVIDUALLY;
THOMAS WILLIAM MILES, AS ADMINISTRATOR
OF THE ESTATE OF THOMAS B. MATTINGLY;
GAYLA EDLIN; CATHY BRADY; JOSEPH
ELI MILES; CYNTHIA MILES; AND
DENNIS MILES — APPELLANTS

v.

APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 02-CI-00252

ELIZABETH JANE BALLARD; JOSEPH
CARL RIGGS; PATRICIA ANN CHESHIRE;
SHIRLEY MAY RIGGS; JAMES MICHAEL
RIGGS; MARY LAVERNE MASTERSON;
JEWELL MARIE HAGAN; MARY GERALDINE
LUCAS; PAMELA JEAN DOWNS; KIMBERLY
MARIE GOOTEE; BRENDA SUE NEWTON;
JOSEPH CARL MUDD; DEBRA ANN
HAYDEN; CHARLES STEPHEN MUDD;
GARY ALEXANDER MUDD; AND JAMES
DANIEL MUDD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI, McANULTY, AND MINTON, JUDGES.

GUIDUGLI, JUDGE: Thomas William Miles, et al., appeal from a summary judgment of the Marion Circuit Court in an action to quiet title to a 130 acre parcel of real property situated in

Marion County, Kentucky. The circuit court found that the purported grantor of the ownership interest to Miles, et al., never had fee simple title to the parcel. Accordingly, it concluded that Miles, et al., never received an interest in the parcel. For the reasons stated herein, we affirm the judgment on appeal.

In 1933 and 1942, Herman Riggs purchased two parcels of real property located in Marion County, Kentucky. The parcels (together referred to as "the farm") totaled approximately 130 acres.

Riggs died intestate on January 23, 1946. He was survived by his wife, Thelma Riggs, and several children. Sometime thereafter, Thelma married Thomas "Bud" Mattingly.

On July 6, 1976, Thelma executed a will. It stated that she had inherited a one-half interest in the farm by operation of statute when Herman died. It further stated that the other one-half interest went to the children of Herman and Thelma. The will purported to devise Thelma's one-half interest into two shares at her death – one share to her husband, Thomas "Bud" Mattingly, and one share to be divided equally among the children from her first marriage. Thus, if Thelma pre-deceased Mattingly, Thelma's children would have a three-quarter interest in the farm (a one-half interest they received at Herman's death, plus half of Thelma's half-interest), and Bud Mattingly

would receive a one-quarter interest (half of Thelma's half-interest).

Bud Mattingly survived Thelma. At the time of her death, he was still living on the farm. On June 14, 1988, Thelma's children executed an agreement allowing Mattingly to continue residing on the farm for the remainder of his life, or until such time as he chose to reside elsewhere. In exchange, Mattingly was to pay the insurance and taxes, and provide reasonable upkeep.

After Bud Mattingly died, a title dispute arose between Thelma's children (and their heirs) and Mattingly's grandchildren from a prior marriage. If Thelma received a one-half interest in the farm at the time of Herman's death, then half of that interest would pass to Mattingly under Thelma's will, and Mattingly's interest would pass to his grandchildren. Conversely, if, as Thelma's heirs contended, Thelma received only a life estate in the farm at the time of Herman's death, then she would have no interest to bequeath to Mattingly, and Thelma's children (and their heirs) would have fee simple title to the entire farm.

On October 4, 2002, Thelma's children filed the instant action in Marion Circuit Court seeking to quiet title to the farm. The action was styled "Complaint for Declaration of Rights and Damages". Thelma's children and their heirs

maintained that Thelma received a life estate in a one-half interest to the farm at the time of Herman's death. As such, they argued that when Thelma died, the life estate extinguished and Thelma had no interest to pass to Bud Mattingly.

Mattingly's grandchildren relied on the agreement signed by Thelma's children which allowed Bud Mattingly to continue living on the farm after Thelma's death. In addition to allowing Mattingly to continue living on the farm, the agreement stated that Mattingly had a one-fourth interest in the farm which he had inherited from Thelma. Mattingly's grandchildren contended that the agreement was based on a mutual mistake of law (i.e., the belief that Thelma had a fee simple interest rather than a life estate), and that such a mistake could not form a basis for rescinding the agreement.

After taking proof and considering the record, the circuit court determined that at the time of Herman's death, Thelma received by operation of statute a life estate in a one-half interest in the farm. Thus, she had no interest to bequeath to Mattingly at the time of her death. As for the agreement upon which Mattingly's grandchildren rely, the court opined that it was immaterial whether the agreement was based on a mistake of law or fact, since the agreement could not establish an ownership interest in the farm. That it to say, the agreement was merely a recitation of the mutual mistake of

fact (i.e., that Mattingly had an ownership interest) and did not operate to convey any such interest. The court rendered a summary judgment in favor of Thelma's children and heirs, and denied a subsequent motion to set aside the judgment. This appeal followed.

Mattingly's heirs now argue that the circuit court erred in granting summary judgment in favor of Thelma's heirs. While conceding that Thelma only had a life estate which terminated at her death, they contend that the subsequent agreement recognizing Bud Mattingly's purported interest (albeit improperly) was based on a mistake of law and not fact and therefore cannot be rescinded. They go on to argue that Thelma's heirs are equitably estopped from claiming that the agreement should not be enforced, and maintain that even if the agreement was based on a mistake of fact, it cannot be rescinded because they cannot be restored to the position occupied by Mattingly before it was made. They seek an order reversing the summary judgment and remanding the matter for entry of summary judgment in their favor.

We have closely examined the record, the written arguments, and the law, and find no basis for reversing the judgment. Since the Mattingly heirs have conceded that Thelma received a life estate in a one-half interest in the farm by operation of KRS 392.010 and KRS 392.020 (each now repealed),

the corpus of their argument centers on the effect of the June 14, 1988, agreement. The circuit court found in relevant part that the agreement did not operate to vest with Mattingly or his heirs any ownership interest in the farm. This conclusion is correct. The agreement did two things – it gave Mattingly the right to remain on the parcel until his death in exchange for paying for insurance and taxes, and it incorrectly stated that Mattingly had a one-quarter interest in the farm.

Neither of these provisions has the effect of granting to Mattingly or his heirs an ownership interest that Thelma did not possess during her life. That is to say, the incorrect recitation of fact contained in the agreement (i.e., that Mattingly inherited a one-quarter interest from Thelma) did not operate as a deed of conveyance. It is more in the form of an affidavit or declarative statement as it was signed by Thelma's heirs but not signed by Mattingly. Even if it were signed by Mattingly, it did not purport to convey any ownership interest in the farm.

The provision allowing Mattingly to reside on the farm in exchange for paying insurance and taxes was fulfilled. Mattingly resided on the property until his death. The Mattingly heirs' argument on the theory of equitable estoppel is misplaced, because Mattingly did not rely on the agreement to

his detriment.[1] Rather, he received precisely what the agreement gave – the right to possess the property until his death in exchange for paying taxes and insurance and providing upkeep.

Lastly, the Mattingly heirs contend that the agreement cannot be rescinded because they cannot be restored to the position occupied by Mattingly before it was made. The circuit court correctly noted that Thelma's heirs did not seek rescission. This point aside, the Mattingly heirs were not parties to the agreement, and cannot be "restored" to a position they never held. Furthermore, since it is uncontroverted that Thelma had no interest in the farm at the time of her death to bequeath to Mattingly, his heirs never had an interest to which they could be restored.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[2] "The record must be viewed in a light most favorable to the party opposing the motion for

[1] Kendrick v. Toyota, 145 S.W.3d 422 (Ky.App. 2004), stating that the elements of equitable estoppel are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.
[2] CR 56.03.

summary judgment and all doubts are to be resolved in his favor."[3] "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact."[4] Finally, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law."[5]

Summary judgment was properly rendered by the Marion Circuit Court. The court correctly found that there were no genuine issues as to any material fact and that Thelma's heirs were entitled to judgment as a matter of law. Accordingly, we find no error.

For the foregoing reasons, we affirm the summary judgment of the Marion Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:	BRIEF FOR APPELLEES:
James L. Avritt, Sr. Lebanon, KY	John C. Miller Campbellsville, KY

[3] Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991).
[4] Id.
[5] Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).