

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001600-MR

BOBBIE STAFFORD

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 05-CI-00753

MICKEY METCALF

APPELLEE

OPINION
REVERSING

** ** * * * **

BEFORE: STUMBO, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.¹

STUMBO, JUDGE: Bobbie Stafford appeals from findings of fact, conclusions of law and order of the McCracken Circuit Court which reformed a deed and quieted title.

Stafford argues that the circuit court erred in failing to rule that the deed was void by operation of statute. She also maintains that it was unambiguous and not subject to reformation. Since the deed incorrectly showed a non-existent administratrix as grantor,

¹ Senior Judges David C. Buckingham and Michael L. Henry, sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and because it purported to convey an interest which did not exist, we must conclude that the deed was void *ab initio*. Accordingly, we reverse the order on appeal.

The relevant facts are not in controversy. On September 9, 2001, Robert C. Metcalf died testate. The court dispensed with administration of the estate and did not appoint an administratrix. Pursuant to the will, title to a parcel of real property situated in McCracken County, Kentucky vested with Robert Metcalf's daughters, Joyce Burnett and Bobbie Stafford.

Approximately three years after the death of Robert Metcalf, Joyce Burnett signed a deed conveying the parcel to Mickey Metcalf. The deed, which was drafted by counsel, showed the grantor as "Joyce Burnett, Administratrix of the Estate of Robert Metcalf." The deed purported to convey a 100% interest in the parcel, even though Burnett (in her individual capacity) had only a 50% undivided interest.

On June 29, 2005, Stafford filed an action in McCracken Circuit Court against Burnett and Metcalf seeking to quiet title to the parcel. Stafford's complaint alleged that she had entered into an oral agreement with Burnett providing that Burnett was to receive all of Robert Metcalf's personal property and that Stafford was to receive a 100% interest in the real property at issue. Metcalf answered and counterclaimed. Burnett did not answer, and a default judgment was entered against her on February 13, 2006. The matter proceeded to a bench trial as against Metcalf.

At trial, proof was tendered as to the alleged oral agreement providing that Stafford was to receive a 100% interest in the parcel. It was also noted that - contrary to

the language expressed in the deed - Burnett was not an administratrix and did not possess a 100% interest in the parcel which she could convey to Metcalf. The court determined that despite what the deed purported to convey, Burnett intended to hold herself out as grantor in her individual capacity, and further intended to convey only her 50% undivided interest in the parcel. It reformed the deed to conform with these findings, and went on to reject Stafford's contention that the trusts and estates statute, namely KRS Chapter 389A, was applicable. The result was that Stafford (as heir) and Metcalf (as grantee) each retained or received an undivided half interest in the parcel. This appeal followed.

Stafford now argues that the trial court erred in reforming the deed rather than finding it void. She argues that the statute addressing the administration of estates, KRS 389A.010, disallows a fiduciary from conveying an interest in realty until the entry of a final order on the estate, and that the circuit court erred in failing to so rule. She also argues that the deed is unambiguous and therefore not subject to reformation. Stafford goes on to maintain that the court erred in modifying the size of the estate conveyed. In sum, she argues that the deed was void from the outset and not subject to reformation, and that she is entitled to an order quieting title and recognizing her 100% interest in the parcel.

We have closely examined the written arguments, the record and the law, and conclude that the deed at issue was void from the outset. We will first note that we are not persuaded by Stafford's argument that KRS Chapter 389A is applicable.

Though the deed held out Burnett as an administratrix, it is uncontroverted that this assertion was erroneous. The false claim that Burnett was an administratrix does not support a finding that the title transfer is subject to KRS Chapter 389A, and the trial court did not err in so ruling.

More important, our conclusion that the deed was void *ab initio* arises from the demonstrably false language set forth in the deed itself. That is to say, the deed erroneously held out that, 1) Burnett was serving as grantor in her capacity as administratrix of Robert Metcalf's estate, and 2) that Burnett, as administratrix, was transferring a 100%, fee simple interest in the parcel. These crucial elements of the deed, i.e., the "who" and the "what", were undeniably false. This is not simply a matter of a typographical or other benign error reasonably subject to judicial revision. Nor is it merely a mutual mistake subject to reformation. *Campbellsville Lumber Co. v. Winfrey*, 303 S.W.2d 284 (Ky. 1957). Rather, the corpus of the deed purported to evidence the transfer of a non-existent property interest by a non-existent grantor. This is, we believe, well beyond what may reasonably be the subject of judicial revision or reformation.

Where no ambiguity exists, the intent of the parties to a written instrument must be gathered from the face of the instrument. *Hoheimer v. Hoheimer*, 30 S.W.3d 176 (Ky. 2000). The deed at issue, though erroneous, was not ambiguous. As such, the circuit court erred in going outside the deed to determine the parties' intent. The deed was void on its face and not subject to revision or reformation, and the circuit court erred in failing to so rule.

For the foregoing reasons, we reverse the findings of fact, conclusions of law and order of the McCracken Circuit Court, and hold that the deed at issue is void *ab initio*.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kevin A. Long
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BRIEF FOR APPELLEE:

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