

SUSAN S. A.,
Plaintiff

vs.

KIM K. A.,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

:

: NO. 08-21, 484

:

: CIVIL ACTION - DIVORCE

:

Date: November 24, 2009

OPINION

This divorce action was commenced with the filing of a Complaint by Wife/Plaintiff, Susan S. A., against Husband/Defendant, Kim K. A., on October 27, 2008. At an equitable distribution pre-trial conference held before this Court on October 5, 2009, a legal issue was raised by the parties regarding whether a residential lot known as 5445 Rose Valley Road, Gamble Township, Lycoming County, Pennsylvania owned solely by Husband is a marital asset. As set forth in the following Opinion and Order we have determined that one-half of the increase in value of the property from October 26, 1993 to the date of separation is a marital asset. Both parties have requested this Court determine this issue prior to proceeding further in equitable distribution.¹

The parties were married on February 24, 1973 and separated on or about August 16, 2008. At the time of separation, the Husband was the sole owner of 5445 Rose Valley Road (hereafter “the property”). By virtue of a deed dated October 26, 1993, recorded in Lycoming County Record Book 2154, page 141 Husband and his mother, the late Helen S. A., were named as Grantees as joint tenants with the right of survivorship. Husband’s mother died on

¹ Equitable distribution proceedings are currently pending before the Court with an evidentiary hearing presently scheduled to proceed on January 20, 2010. A settlement conference is scheduled before the Master on December 2, 2009.

July 15, 2001 thereby vesting Husband with sole ownership of the property. In this deed of October 26, 1993, the Grantors were Kim K. A. and Susan S. A., Husband and Wife, together with Husband's aunt and her husband, Madeline E. Sweeney and Keith A. Sweeney.

The specific issue for this Court to determine is the interpretation of the language in the deed of October 26, 1993 which is a recital stating the following:

Susan S. A. and Keith A. Sweeney, spouses of the Grantees, (sic) join in this conveyance to relinquish any marital interest they may have in and to the subject premises.²

Husband and his aunt, Madeline E. Sweeney, had acquired the property by a deed dated August 5, 1993 recorded in Lycoming County Record Book 2100 at page 345 from Husband's grandfather (aunt's father), apparently as a gift. Husband and his aunt took title to the property as tenants in common. Thus, Husband and his aunt at the time of the October 26, 1993 deed each owned an undivided one-half interest in the property.

Wife now contends that regardless of her joinder in the October 26, 1993 deed, the entire property is a marital asset and as to its increase in value from the date of October 26, 1993. Wife asserts her joinder in the October 26, 1993 deed only released her marital interest up until the date of that deed. In the alternative, Wife argues that she is entitled to treat the property as a marital asset as to one-half of its increase in value from the date of death of Husband's mother, Helen S. A., which occurred on July 15, 2001. Wife has not cited to us any legal authority to support her position.

² The use of the word "Grantees" in this recital is a patent error; this Court will interpret the intent of the parties that the correct word to have been used would be "Grantors" rather than the word "Grantees"; counsel have not argued otherwise.

Husband, relying upon various case law authority and the language of the deed, asserts that Wife's joinder in the October 26, 1993 deed for the purpose of "...to relinquish any marital interest (she) may have" relinquished any and all marital interests to the property and therefore it is not a marital asset. Husband's counsel has referred us to the case of *Lowery v. Lowery*, 544 A.2d 972 (Pa. Super 1988) and its citation to *Semasek v. Semasek*, 502 A.2d 109 (Pa. 1985) to the effect that a spouse may make a gift of realty to a spouse and the reason for making of the gift is not important. *Lowery* determined in its holding that when husband conveyed real estate owned solely by him to the wife, he made a gift of the property to the wife at that time, "...thus excluding the property at its then present value from marital property." *Id.* at 977. The Court in *Lowery* went on to hold that, "The result of the gift is to exclude the property from marital property *except for the increase in value during marriage.*" (Italics in original). *Ibid.*

Further, Husband relies on the case of *Hindman v. Farren*, 44 A.2d 241 (Pa. 1944) for the proposition that if there is any doubt as to the meaning of a deed, the intention of the parties must be considered.

Hindman does provide us with a statement of well known general principles as to interpretation of clauses in a deed, stating that, among others: if there is doubt or ambiguity as to the meaning, the terms should be given a reasonable construction and one that would accord the intention of the parties; in order to ascertain intention, the Court should look at the circumstances under which the grant was made as the intention of the parties is the ultimate guide; in order to ascertain intention, the Court may take into consideration the surrounding

circumstances, the situation of the parties, the objects they apparently have in view and the nature of the subject matter. *Id.* at 242.

No testimony or other evidence as to the intention of the parties has been proffered by either party.

Applying the *Hindman* principles as to the intent of the parties and in ascertaining that intent, it is clear that Wife's joinder would have served two purposes: first, to discharge her from any liability under the warranty of the deed; second, to release the claims she could assert as Wife of Husband Grantor to the property. This latter purpose in effect was a gift to Husband of her marital rights to his interest in the property.

To ascertain the parties' intent we first look to statute law. Applying Pennsylvania's statutory provisions regarding deed interpretation makes it clear Wife did not relinquish any and all rights to the property as Husband asserts but limited her conveyance. 21 P.S. § 3 provides:

“All deeds or instruments in writing for conveying or releasing land hereafter executed, granting or conveying lands, unless an exception or reservation be made therein, shall be construed to include all the estate, right, title, interest, property, claim, and demand whatsoever, of the grantor or grantors, in law, equity, or otherwise....”

The clause in question in the October 26, 1993 deed is clearly an exception recognized by 21 P.S. § 3.

The property was acquired by Husband as a tenant in common with his aunt by gift. The Wife's interest in the property as of October 26, 1993 from a marital asset point of view would have been the increase in value of Husband's undivided one-half interest from the date Husband acquired his interest in the property, August 5, 1993 to October 26, 1993. It's clear

that Wife's joinder in the October 26, 1993 deed extinguished that marital right. Unlike *Lowery* in which a spouse gifted fee simple title to the other spouse, Wife gifted to Husband her marital interest by the October 26, 1993 deed; we conclude, therefore, that the exception recognized by *Lowery* as to the increase in value during marriage does not apply and Wife can not now assert a claim to an increase in value of the Husband's interest in the property he owned as of the date of the conveyance.

Applying that provision, Wife's conveyance of her marital interest of Husband's share of title without limiting it to the then existing interest or otherwise excluding her future right in Husband's half interest in the property results in one-half of the increase of the value of the property being excluded as a marital asset.

Applying the principles found in *Lowery*, however, does not lead to the conclusion that Wife is foreclosed from now asserting her marital rights in the interest of the property Husband did not own at the time of the October 26, 1993 deed but which he acquired thereby.

Prior to the October 26, 1993 deed, Husband was the owner of an undivided one-half interest in the property. Following the October 26, 1993 deed, Husband, together with his mother, owned the property as joint tenants with the right of survivorship. As a tenant with the right of survivorship, Husband owned an undivided share of the whole estate. Wife could not, and did not, make to him by her October 1993 deed a gift of her marital interest in the whole property. Furthermore, as of the date of death of his mother, Husband became the sole owner of the property.

In applying the principles recited in *Hindman*, supra, to this case we first find there is a latent ambiguity in the deed as it relates to the extent of the marital interest, to one-half or the

whole, which Wife conveyed. The controlling circumstance that then existed was that Husband owned only a half interest in the property and a reasonable construction of Wife's joinder would be to release her marital interest to that one-half interest of Husband, with the intent that neither Husband nor any future purchaser from him (and/or his mother) would have concern as to title defect from any outstanding marital interest of the Wife as to that one-half interest, especially since the conveyance to Husband and his mother was without consideration. Also, such assurance would have been the object of their interest. The nature of the subject matter of the October 26, 1993 deed for Wife and Husband was Husband's one-half interest. The intent of the parties was to release that one-half interest, then owned by Husband, as a marital asset. Therefore, the other half-interest which became vested in Husband and his mother remained subject to being a marital asset.

Accordingly, applying *Hindman's* recognized principles and *Lowery's* reasoning to the circumstances of the parties, specifically the title held by Husband prior to and after the 1993 deed and then vested in him by the virtue of the death of his mother, we find that while Wife gifted to Husband her marital interest in one-half of the value of the property as of October 26, 1993, she did not relinquish her marital interest of the increase in value of one-half of the property from October 26, 1993 until the date of separation in August 2008.

ORDER

It is hereby ORDERED and DIRECTED that the property known as 5445 Rose Valley Road, Gamble Township, Lycoming County, Pennsylvania is a marital asset as would relate to one-half of the increase in value of that property from the date of October 26, 1993 to the date of separation.

BY THE COURT,

William S. Kieser, Senior Judge

cc: Bradley Hillman, Esquire
Christina Dinges, Esquire
Family Court