IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 18, 2003 Session

ROY HELTON, ET AL. v. JANICE FAYE VIERS, ET AL.

Appeal from the Chancery Court for Hawkins County
No. 14961 Thomas R. Frierson II, Chancellor

Filed October 30, 2003

No. E2003-00132-COA-R3-CV

Following the death of Mattie P. Helton ("the deceased"), 11 of her 12 surviving children signed a writing agreeing to sell the deceased's real property to the twelfth child, their brother, Roy Helton, for $12,000. Soon thereafter, two of the children, Janice Faye Viers and Nadine Cradic, refused to be bound by the agreement. Roy Helton[1] then sued his two sisters for specific performance. The sisters filed a counterclaim for rescission and other relief. Another sister, Ruth Cradic, subsequently filed an intervening petition for rescission and other relief. At the conclusion of a bench trial, the court allowed Ruth Cradic's petition to intervene; granted Roy Helton's complaint for specific performance of the agreement; and denied the three sisters' request for rescission. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and WILLIAM H. INMAN, SR. J., joined.

Douglas T. Jenkins, Rogersville, Tennessee, for the appellants, Janice Faye Viers, Nadine Cradic, and Ruth Cradic.

Phillip L. Boyd, Rogersville, Tennessee, for the appellees, Roy Helton and Judy Helton.

OPINION

[1]Roy Helton's wife is also a plaintiff in this case. She is suing because Roy Helton apparently intends that the property will be deeded to him and his wife jointly. For ease of reference, we will refer to Roy Helton as the sole plaintiff.

I.

The deceased died testate in February, 2002.[2] She was survived by 12 of her 15 children. She appointed her son, Billy R. Helton ("the Executor"), to serve as executor of her last will and testament. Her will contains five provisions, only the second and third of which are material to this case. The second provision directs the Executor to sell the deceased's real property[3] by way of a public or private sale. After paying "all debts and expenses," the Executor is to divide the proceeds equally among the deceased's children. The third provision of the will gives the children a right of first refusal to purchase the subject property.[4] The will provides that the "reasonable purchase price" of the property "shall be determined by acquiring three (3) appraisals from local realtors and averaging said appraisals." The average of the appraisals would be the purchase price the child(ren) would pay if any decided to purchase the property. Further, the average of the appraisals was to serve as the base price for the property if the Executor decided to sell the Property at a private sale.

In March, 2002, about a month after the deceased's death, the children had a meeting to discuss whether to allow their brother, Roy Helton, to purchase the property.[5] The Executor took the lead at the meeting.[6] The three sisters who now attempt to rescind the agreement claim that the Executor encouraged the children to allow Roy Helton to purchase the property and that he gave the following reasons for doing so: (1) selling without obtaining three appraisals would save money; (2) the children would have to pay inheritance taxes if they could not agree among themselves to sell the property; and (3) the children might not get as much money for the property if a court got involved. The Executor denies making the first of these three statements.

After at least an hour of discussion, the children unanimously agreed to sell the property to Roy Helton for $12,000.[7] One of the children prepared an informal, handwritten agreement to

[2]The record contains conflicting allegations/testimony regarding the date of Mrs. Helton's death. The dates of February 5, 2002, and February 6, 2002, are both mentioned. This conflict is not material to the resolution of this case.

[3]The property consists of a small, run-down house, located on 10 acres.

[4]The record shows that the children were raised on the property.

[5]One of the children – Carl Helton – failed to attend the family meeting, mistakenly having gone to the wrong location.

[6]There is some dispute as to whether the Executor read the will and/or handed out copies of the will at the meeting. The Executor testified that he did both. Ruth Cradic initially testified that the Executor only handed out copies; however, in subsequent testimony, she claimed that he did not read the will and testified that he "might have" had a copy with him.

[7]The record shows that Roy Helton initially offered to pay $1,000 to each of his siblings or $11,000 total; however, the writing signed by the 11 children reflects that he agreed to pay $12,000 or approximately $1,090.90 per child.

memorialize their understanding. All of the 11 children signed the agreement.[8] In addition to signatures, the agreement contains the following: "We the children of Mattie P. Helton agree to let Roy buy the property. Price $12,000.00."[9] No appraisals were acquired before the purchase price was set at $12,000. After signing the agreement, the children orally agreed that Roy Helton would pay any remaining costs to probate the will, including attorney's fees; however, the children agreed to deduct $60.00 from their share of the purchase price to repay the remainder of the deceased's funeral expenses. Roy Helton's attorney subsequently prepared a warranty deed. All of the children except Janice Faye Viers and Nadine Cradic signed the deed.

The record reflects that Janice Faye Viers and Nadine Cradic decided not to sign the warranty deed after consulting an attorney and discovering (1) that their mother's estate would not owe inheritance taxes, and (2) that the property had been appraised at approximately $34,000.[10] It is undisputed that the three objecting sisters want their brother to have the property; they simply want more money for their interests.

Roy Helton brought this action based upon the agreement. He seeks the equitable remedy of specific performance. In turn, Janice Faye Viers and Nadine Cradic counterclaim for the equitable remedy of rescission. They also asked the trial court to enforce the directions contained in the deceased's will regarding appraisals or, in the alternative, to appoint the Clerk & Master to sell the land via public auction. The third sister joined in their request by way of her intervening petition.

The trial court granted Roy Helton's request for specific performance, holding that the agreement was enforceable. The trial court also granted Ruth Cradic's petition to intervene. The trial court refused to grant the three sisters' request for rescission, finding that "the evidence preponderates in favor of finding that no mutual mistake existed;" that the three sisters "fail[ed] to establish that" the Executor "rendered false statements of existing fact;" and that the objecting sisters "entered into and executed" the agreement "voluntarily and without undue influence." From this judgment, the three sisters appeal.

II.

In this non-jury case, our review is *de novo* upon the record of the proceedings below. Tenn. R. App. P. 13(d). We must honor the presumption that the trial court's findings of fact are correct unless the evidence preponderates otherwise. ***Id***.; *see also* ***The Bank/First Citizens Bank v. Citizens and Assoc.***, 82 S.W.3d 259, 262 (Tenn. 2002) (citing ***Bogan v. Bogan***, 60 S.W.3d 721, 727 (Tenn. 2001)); ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993). However, there is

---

[8]Ten of the children signed the agreement at the end of the meeting. Carl Helton signed the document the following day.

[9]The record suggests that the children recognized Roy Helton's contributions over the years in assisting the deceased with the maintenance of the property.

[10]The source of this information was the property tax card maintained in the office of the tax assessor.

no presumption of correctness as to the trial court's conclusions of law. ***The Bank/First Citizens Bank***, 82 S.W.3d at 262 (citing ***Southern Constructors, Inc. v. Loudon County Bd. of Educ.***, 58 S.W.3d 706, 710 (Tenn. 2001)); ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996). Further, the trial court, having seen and heard the witnesses testify, is in the best position to determine the witnesses' credibility. ***Bowman v. Bowman***, 836 S.W.2d 563, 567 (Tenn. Ct. App. 1991). Therefore, the trial court's determinations regarding witness credibility are entitled to great weight on appeal. ***Massengale v. Massengale***, 915 S.W.2d 818, 819 (Tenn. Ct. App. 1995).

III.

A.

On appeal, the three objecting sisters present two issues for review: (1) whether the trial court erred in ordering specific performance and (2) whether the trial court erred in refusing to order rescission. We will address these issues in the order stated.

B.

The principles of equity govern the right to specific performance. ***Miller v. Resha***, 820 S.W.2d 357, 360 (Tenn. 1991); *see also* ***GRW Enter., Inc. v. Davis***, 797 S.W.2d 606, 614 (Tenn. Ct. App. 1990); ***Owens v. Church***, 675 S.W.2d 178, 185 (Tenn. Ct. App. 1984). Granting the equitable remedy of specific performance "rests within the sound discretion of the trial court and upon the particular facts of each case." ***McGaugh v. Galbreath***, 996 S.W.2d 186, 191 (Tenn. Ct. App. 1998) (citing ***Shuptrine v. Quinn***, 597 S.W.2d 728, 730 (Tenn. 1979)); *see also* ***GRW Enter.***, 797 S.W.2d at 614. It is well-settled that courts should not interfere with the right of parties to contract. ***Guiliano v. Cleo, Inc.***, 995 S.W.2d 88, 100 (Tenn. 1999) (citing ***McKay v. Louisville & N.R. Co.***, 133 Tenn. 590, 595-96, 182 S.W. 874, 875 (1916) (citing ***Baltimore & Ohio S.W. Ry. Co. v. Voight***, 176 U.S. 498, 505, 20 S. Ct. 385, 387, 44 L. Ed. 560 (1900))). Instead, courts should "carry out the intentions of the parties and the terms bargained for in the contract, unless those terms violate public policy." ***Id.*** For example, parties may agree to "terms that may not seem desirable or pleasant to outside observers." ***Id.*** (citations omitted); *see also* ***Brooks v. Networks of Chattanooga, Inc.***, 946 S.W.2d 321, 324 (Tenn. Ct. App. 1996) (citation omitted).

Agreements entered into among family members are viewed in a special light. The Supreme Court in ***Trigg v. Read,*** 24 Tenn. (5 Hum.) 529 (1845), explained that

> [i]n the cases of family compromises, all that need be said here is that agreements affecting them are upheld with a strong hand, and an equity has been administered in regard to them, which has not been applied to agreements generally upon the ground that the honor and peace of families make it just and proper so to do.

Id. at 545. Nonetheless, where specific performance is sought to enforce a contract for the sale of land, the "'contract must be clear, definite, complete and free from any suspicion of fraud or unfairness.'" ***Shuptrine***, 597 S.W.2d at 730 (quoting ***Johnson v. Browder***, 185 Tenn. 601, 207 S.W.2d 1, 3 (1947)); *see also* **GRW Enter.**, 797 S.W.2d at 614.

The equitable remedy of rescission is "available only under the most demanding circumstances." ***Robinson v. Brooks***, 577 S.W.2d 207, 208 (Tenn. Ct. App. 1978). As such, "[r]escission is a remedy which 'should be exercised sparingly and only when the situation demands such.'" ***Richards v. Taylor***, 926 S.W.2d 569, 571 (Tenn. Ct. App. 1996) (quoting ***James Cable Partners v. Jamestown***, 818 S.W.2d 338, 343 (Tenn. Ct. App. 1991)). Ultimately, the decision to grant rescission is a matter resting in the sound discretion of the trial court, and we will not disturb a court's decision absent an abuse of that discretion. ***Vakil v. Idnani***, 748 S.W.2d 196, 199-200 (Tenn. Ct. App. 1987). Under the abuse of discretion standard, "'[a]n appellate court should not reverse . . . a discretionary judgment of a trial court unless it affirmatively appears that the trial court's decision was against logic or reasoning, and caused an injustice or injury to the party complaining.'" ***Marcus v. Marcus***, 993 S.W.2d 596, 601 (Tenn. 1999) (quoting ***Ballard v. Herzke***, 924 S.W.2d 652, 661 (Tenn. 1996)) (citations omitted).

C.

The three objecting sisters argue that the grant of specific performance was in error because the agreement was "rendered unenforceable by misrepresentation, mistake, and unconscionability." First, in discussing the sub-issues of misrepresentation and mistake, they argue that the Executor "intentionally, negligently, or mistakenly" misrepresented the following three facts at the family meeting: (1) that the children would pay estate taxes of at least 45 percent if they did not sell the property to their brother; (2) that "the state would 'step in' and sell the [p]roperty" if the children did not sell to their brother; and (3) that the children would receive more money if they sold to their brother Roy.

In its memorandum opinion, the trial court held that the inheritance tax representation was a legal representation, not a representation of fact, and that the other two representations were based upon "mere speculation and projection" and not based on existing fact. Ultimately, the trial court found that the "evidence does not support a finding that any fraud was committed." We hold that the trial court was correct in its determination that the inheritance tax representation is a legal, not a factual, assertion. It is well-settled that a mistake of law is not sufficient to warrant rescission. ***Trigg,*** 24 Tenn. (5 Hum.) at 532. As a result, we hold that the trial court was correct in granting specific performance even though the Executor's legal assertions were incorrect. Further, we find that the trial court was right in holding that the other two representations were merely "speculation and projection," not representations of fact. The Executor was simply predicting that the state would "step in" and that the children would get more money if they sold to their brother. Therefore, the trial court properly granted specific performance despite the Executor's speculations as to what would occur if they failed to reach an agreement.

In discussing the sub-issue of unconscionability, the appellants argue that the agreement was unconscionable because the property was appraised by the county at nearly three times the agreed purchase price of $12,000. In this case, the children held a meeting to determine whether to sell the property to their brother. At the conclusion of the meeting and following at least an hour of discussion regarding their options, the children unanimously agreed to sell the property to Roy Helton. The appellants admit that they want Roy Helton to have the property. However, after discovering that they might be entitled to more money, the appellants refused to complete the sale.

We have emphasized before that "an individual is free to bind himself [or herself] by a contract" where the "terms may not seem reasonable or decent to an outside observer." ***Brooks***, 946 S.W.2d at 324 (citation omitted). This is especially true in the case of family agreements, which are "favored in the law." ***Mason v. Pearson***, 668 S.W.2d 656, 662 (Tenn. Ct. App. 1983) (quoting ***Williams v. Jones***, 54 Tenn. App. 189, 203, 388 S.W.2d 665, 672 (1963)). Family agreements may "rest on grounds [that] would not have been satisfactory if the transaction had occurred between mere strangers." ***Id.*** In this case, although strangers may find the purchase price undesirable, "mere strangers" did not enter into this agreement. The children held a family meeting to decide what to do with the home in which they were raised. The children contracted to receive exactly what they bargained for – $12,000 and the peace of mind that their brother would receive the property and that it would remain in their family.

In the end, the trial court correctly concluded that "the mere inadequacy of consideration" was not an adequate basis "to render the [agreement] unenforceable." Because the evidence does not preponderate against the underlying factual predicate, we must honor the trial court's determination that the agreement was enforceable and that Roy Helton was and is entitled to specific performance.

D.

The appellants' second argument is that the trial court erred in failing to grant rescission. After reading the trial court's memorandum opinion, it is our understanding that the appellants argued that rescission should be granted because the agreement was unenforceable due to fraud and/or misrepresentation, mutual mistake, and duress, the very same arguments made in connection with the issue of specific performance. The fact of the matter is that the argument in the appellants' brief is not clear as to the basis of their rescission contention. They failed to cite to the record and simply stated that rescission was proper "[f]or the reasons stated above." Because we find that the appellants failed to comply with Rule 27(a)(7) of the Tennessee Rules of Appellate Procedure, we will not further address the issue of rescission in this opinion. Suffice it to say that we find no abuse of discretion in the trial court's decision denying rescission.

IV.

The judgment of the trial court is affirmed. This case is remanded to the trial court for enforcement of the trial court's judgment and for collection of costs assessed below, all pursuant to

applicable law. Costs on appeal are taxed to the appellants, Janice Faye Viers, Nadine Cradic, and Ruth Cradic.

____
CHARLES D. SUSANO, JR., JUDGE