

IN THE COURT OF APPEALS

**FILED**

**August 28, 1997**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

IN RE: ESTATE OF RANDALL GREER )  
SIMMONS, Deceased )

BLED SOE CHANCERY )  
C. A. NO. 03A01-9704-CH-00108 )

MARGARET S. SIMMONS, )  
Appellee )

vs. )

HON. JEFFREY F. STEWART )  
CHANCELLOR )

THE ESTATE OF RANDALL GREER )  
SIMMONS, )

AFFIRMED AND REMANDED )

Appellant )

HOWARD L. UPCHURCH, Pikeville, for Appellant.

J. ARNOLD FITZGERALD, Dayton, for Appellee.

O P I N I O N

Murray, J.

In this case, the Chancellor for Bledsoe County, in exercising his probate jurisdiction, construed a deed which the decedent,

Randall Greer Simmons, made and delivered in his lifetime. He concluded that the deed created an estate by the entirety between the deceased and his wife. We affirm the judgment of the trial court.

The decedent, Randall Greer Simmons, died testate in Bledsoe County, Tennessee, and his will, dated April 4, 1989, was admitted to probate on April 3, 1993. Peggy Bowling was named executrix in the will and was duly appointed. The appellee, Margaret S. Simmons, is the widow of the deceased, Randall Greer Simmons.

In his last will and testament, Mr. Simmons, among other things left specific devises of lands to his wife and children. The devise to the wife described the property as "being a portion of the property described in that deed of record in Deed Book 40, Page 442, Deed Book 43, Page 359, Deed Book 75, Page 24 and Deed Book 75, Page 27, Register's office of Bledsoe County." To his son, Douglas Keith Simmons, he devised six acres, more or less, and referred to the tract of land as being a part of the lands referred to in the same Deed Books and pages as that devised to his wife. To his daughter, Peggy Bowling, he devised the house and real property referred to in paragraph 1, upon the death of his wife. (Paragraph 1 contains the specific bequest to his wife as set out above.) The devise to Peggy Bowling contained a provision that "the property shall not be sold or encumbered by Peggy Bowling, or her heirs, for a period of fifty (50) years after the date of my

death. Upon the expiration of the said fifty (50) year period, fee simple absolute title will then and there vest with Peggy Bowling, or her heirs." In paragraph 4 of the Will, the testator left the balance of his real estate to his children, Douglas Keith Simmons and Peggy Bowling.

Upon probate of the will, the decedent's widow, Margaret S. Simmons chose to take an elective share of the estate pursuant to the provisions of T.C.A. § 31-4-101 which provides as follows:

**Right to elective share.** (a) A decedent's surviving spouse has the right to elect to take an elective share. The elective share is one third (a) of the decedent's net estate as defined in subsection (b). The right to elect an elective share is available to the surviving spouse of an intestate decedent and a testate decedent if the surviving spouse elects against the decedent's will. When the elective share is determined, it is exempt from the unsecured debts of the decedent incurred after April 1, 1977. In determining the elective share, it is not reduced by any estate or inheritance taxes.

(b) The net estate includes all of the decedent's real and personal property subject to disposition under the terms of the decedent's will or the laws of intestate succession reduced by funeral and administration expenses, homestead, exemptions and year's support.

In addition to the elective share, Ms. Simmons claimed title to all the real estate as the surviving tenant by the entirety. Her claim rests upon the interpretation of a deed which is the subject of this appeal. The parties stipulated that there were no facts in dispute regarding the deed and submitted the deed to the court for construction. The Chancellor found that the deed did, in

fact, create a tenancy by the entireties between the decedent and Margaret S. Simmons she was the owner of the lands described therein as surviving tenant. This appeal resulted. We affirm the judgment of the trial court.

The appellant challenges the jurisdiction of the "probate division" of the Bledsoe County Chancery Court to construe the deed. Secondly, she asks this court to review the findings of the Chancellor that the deed created an estate by the entireties between the deceased, M. Simmons and M. Simmons.

#### JURISDICTION

Firstly, we point out that there is no "probate division" of the Chancery Court for Bledsoe County. The chancery court is the chancery court whether exercising probate jurisdiction or jurisdiction over other matters. The Chancery Court for Bledsoe County is granted additional jurisdiction over probate matters by virtue of the provisions of T. C. A. § 16-16-201 which, in pertinent part, provides as follows:

(a) In all counties where not otherwise specifically provided by public, private, special or local acts, all jurisdiction relating to the probate of wills and the administration of estates of every nature, including the estates of decedents and of wards under guardianships or conservatorships and related matters heretofore vested in the county court, the county judge or county chair, is hereby vested in the chancery court of the respective counties. The chancery court in such counties shall have

exclusive jurisdiction over the probate of wills and the administration of estates of every nature, including the estates of decedents and of wards under guardianships or conservatorship, and all matters relating thereto, heretofore vested in the county court.

(b) ... The chancellor shall hear all probates in solemn form and may hear such other matters as the chancellor may deem proper. ...

Section 16-16-201 in no way limits the jurisdiction of the chancery court but, on the other hand, increases it. It is a specific grant of jurisdiction in addition to all other jurisdiction it possesses. When exercising its probate jurisdiction, the chancery court is nevertheless entertaining an action in the chancery court, not in a "probate division of the chancery court."

It is well-settled that chancery court possesses the inherent power to settle and remove clouds from the title to property. The surviving spouse, incorporated in her notice to take an elective share of the estate, a request that the court remove the cloud on her title to the real estate which was brought about by the will. See Industrial Dev. Board. v. Hancock, 901 S.W2d 382 (Tenn. App. 1995). We find and hold that the Chancery Court for Blount County does have jurisdiction to construe the deed in question.

#### CONSTRUCTION OF THE DEED

We will next examine the provisions in the warranty deed which gave rise to this action. In the granting clause, the deed

recites: "FOR AND IN CONSIDERATION of the love and affection which I hold for my wife, MARGARET S. SIMMONS, an undivided one-half interest in and to a certain parcel of land in the First Civil District of Bledsoe County, Tennessee, described as follows:

Being in Bledsoe County, on Cumberland Mountain, being three tracts combined and BEGINNING at Cecel Angel's S. E. corner of his Horter tract; thence N. 44° E. with said Angel's line, 2747 ft. to Laverne Simmons' S. W. Corner; thence S. 44° E., 1058 ft. to an iron pin corner in Hollis Frazier's line; thence S. 44° W, 2653 ft. to the old Horner Corner; thence S. 23° 30' E., 238 feet to corner on Panter Road; thence with said road as it meanders S. W 1029 ft. to corner; thence N. 42° 30' W with an old fence, 766 ft. to a stone; thence N. 86° 30' W, 486 feet to corner; thence N. 14° W, 452 ft. to corner; thence N. 53° E., 902 ft. to the BEGINNING, containing 103 acres, more or less.

Being the same property conveyed to Randall Simmons by deeds of record in Deed Book 43, page 359, and Deed Book 40, page 442, Register's office, Bledsoe County, Tennessee.<sup>1</sup>

Following the description of the property we find the following language:

\* \* \* \*

The sole intent of this conveyance is to create in one instrument a complete description of all the properties owned by the parties hereto a tenancy by the entireties between the Grantor and the Grantee in and to the entire interest in said property previously held by the grantor in accord with Section 64-109, Tennessee Code annotated. [Now T. C. A. § 66-1-109.] (Emphasis added).

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<sup>1</sup>The deed under consideration here is the deed recorded in Deed Book 75, Page 27. The deed recorded in Deed Book 75, Page 24, was a direct conveyance from a third party to Randall Simmons and Wife Margaret Simmons.

T. C. A. § 66-1-109 provides as follows:

**66-1-109. Estate by entireties created by direct conveyance.** — Any married person owning property or any interest therein in such person's own name, desiring to convert such person's interest in such property into an estate by the entireties with such person's spouse, may do so by direct conveyance to such spouse by an instrument of conveyance which shall provide that it is the grantor's intention by such instrument to create an estate by the entireties in and to the entire interest in the property previously held by the grantor. (Emphasis added).

The construction of a deed is a question of law, Rodgers v. Burnett, 108 Tenn. 173, 65 S.W. 408 (1901), and questions of law are reviewed by this Court de novo with no presumption of the correctness of the trial court. Billington v. Crowder, 553 S.W.2d 590 (Tenn. App. 1977).

The canons of construction for deeds are clearly set out in the case law in Tennessee. It is our duty to apply these canons without deviation.

The preferred rule in Tennessee is that all of the provisions of an instrument are considered together and the intention of the grantor of a deed is ascertained from the entire document, not from the separate parts thereof, if at all possible. Collins v. Smithson, 585 S.W.2d 598 (Tenn. 1979). If clauses or parts of a deed are conflicting or repugnant, the intention of the grantor is gathered from the whole instrument, instead of from particular clauses, and if it is the clear intent of the grantor that apparently inconsistent provisions shall all stand, it will be given that effect if possible, and

the technical rules of the common law as to the division of deeds into formal parts will not prevail as against the manifest intent of the parties, as shown by the whole deed. Hutchison v. Board, 194 Tenn. 223, 250 S.W2d 82 (1952).

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In search for the intention of the grantor no preference is given to the premises over the habendum because of position or form and the estate granted in the premises may be enlarged, qualified or diminished in the habendum clause.

The paramount rule of construction to which all others are subservient is that the intention of the grantor is to be decided by consideration of the words he used. (Emphasis added). And as a corollary, to reach the intention it is proper to consider the entire instrument without regard to technical parts or divisions of the deed. (Citations omitted).

This principle of law of interpretation is well settled by a long array of authorities.

If clauses or parts of a deed are conflicting or repugnant, the intention is gathered from the whole instrument, instead of from particular clauses, and if it is the clear intent of the grantor that apparently inconsistent provisions shall all stand, it will be given that effect if possible, and the technical rules of the common law as to the division of deeds into formal parts will not prevail as against the manifest intent of the parties, as shown by the whole deed.' 16 Am J., Sec. 235; Quarles v. Arthur [33 Tenn. App. 291], 231 S.W2d [589], 591.

Hutchinson v. Board, 250 S.W2d 82, 194 Tenn 223 (Tenn. 1952)

T. C. A. § 66-1-109 [set out above] requires that to establish a tenancy by the entireties the deed from the grantor must contain the following provision: [Which shall provide that it is the grantor's intention by such instrument to create an estate by the



entireties in and to the entire interest in the property previously held by the grantor. (Emphasis added). In the deed under consideration, the grantor's intent was stated unambiguously and stronger, in our view, than that required by the statute. We find and hold that the statement of intent in the deed under consideration is a continuance of the habendum clause (now for all practical purposes a useless distinction from other parts of the deed.)

We note that extrinsic evidence is required to interpret the deed if the deed were to be construed as appellant would have us do. The granting clause taken literally attempts to convey a one-half interest in some of the properties already owned by the husband and wife as tenants by the entirety. (The original deeds are a part of the record.)

We concur in the conclusion reached by the trial court. We therefore affirm the judgment in all respects. Costs of this appeal are adjudged against the appellant and this case is remanded to the trial court.

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Don T. McMurray, Judge

CONCUR:

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Houston M. Goddard, Presiding Judge

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Charles D. Susano, Jr., Judge

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)	)
)	)
)	)
)	)
THE ESTATE OF RANDALL GREER )	AFFIRMED AND REMANDED
SIMMONS, )	)
)	)
Appellant )	)

**JUDGMENT**

This appeal came on to be heard upon the record from the Chancery Court of Bledsoe County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

We therefore affirm the judgment in all respects. Costs of this appeal are adjudged against the appellant and this case is remanded to the trial court.

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