

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 21, 2018 Session

STEVEN E. WARRICK, SR. ET AL. v. PENNY MULLINS

Appeal from the Chancery Court for Hawkins County
No. 2016-CH-22 Douglas T. Jenkins, Chancellor

No. E2018-00197-COA-R3-CV

Steven E. Warrick, Sr. and Cindy Heffernan (petitioners) filed this action to enforce a settlement agreement and partition a parcel of real property pursuant to Tenn. Code Ann. § 29-27-101 (2012) *et seq.* Penny Mullins (respondent) filed a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim upon which relief can be granted. The trial court, relying on the terms of the settlement agreement filed as an exhibit to the petition, granted the motion. We hold that the agreement conclusively establishes that petitioners have no present ownership interest in the property, and thus have no standing to ask the court for partition. We consequently affirm the trial court’s judgment.

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

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and THOMAS R. FRIERSON, II, JJ., joined.

Robert J. Foy, Murfreesboro, Tennessee, for the appellants, Steven E. Warrick, Sr. and Cindy Heffernan.

Joseph E. May, Mount Carmel, Tennessee, for the appellee, Penny Mullins.

OPINION

I.

Petitioners are the children of Jesse Warrick, who died and left his entire estate to his wife Dortha Mae Warrick, respondent’s mother. Mrs. Warrick later died and left her

entire estate to respondent. In settlement of an anticipated will contest, petitioners and respondent executed an agreement providing as follows:

We understand and agree that under Tennessee law, we are not entitled to any assets, personal items or any other property belonging to our father, Mr. Jesse Warrick, since he left everything to his wife, Mrs. Dortha Mae Warrick, and upon Mrs. Dortha Mae Warrick's death, she left everything to her daughter, Mrs. Penny Mullins. However, Mrs. Penny Mullins, as the sole beneficiary of her mother's estate, has agreed to offer us the following:

1. Certain items of tangible personal property including antiques and jewelry that belonged to our father, aunt, and grandmother, a list of which is attached hereto and incorporated herein.

2. Upon the sale of the house and farm located at 212 Jones Cemetery Road, Rogersville, Tennessee, she will pay each of us a one-fourth ($\frac{1}{4}$) share of the net proceeds of the sale reduced by any inheritance, gift, or other transfer taxes the estate or Mrs. Mullins is obligated to pay. *I understand and agree that Mrs. Mullins shall have full and sole authority to decide the price, manner, timing and all other terms of the sale of the house and farm.*

Know All Men by These Presents, that in consideration of the above, I also acknowledge and agree that:

1. I have received all of the items of tangible personal property on the attached list.

2. *I remise, release, and forever discharge Mrs. Penny Mullins, individually and in any and all of her representative capacities, her heirs, executors and assigns from all manner of actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, I ever had, now have, or which my heirs, executors or assigns hereafter can, shall, or may have for or by reason of any matter or thing whatsoever*

having to do with the estate of Mr. Jesse Warrick and/or Mrs: Dortha Mae Warrick.

3. We will dismiss with prejudice the pending Will Contest[.]

(Emphasis added).

Roughly five years later, petitioners filed the instant action, alleging, in pertinent part, as follows:

Pursuant to the terms of said Settlement Agreement, upon the sale of the house and farm located at 212 Jones Cemetery Road, Rogersville, Tennessee, Respondent, PENNY MULLINS was to pay Petitioners a one-fourth (1/4) share each of the net proceeds of the sale reduced by any inheritance, gift, or other transfer taxes Respondent, Penny Mullins is obligated to pay.

Upon information and belief, Respondent, PENNY MULLINS has made little or no effort to attempt to sell the house and farm. Upon further information and belief, Respondent, PENNY MULLINS has taken the house and farm off of the real estate market, and is renting the property for a profit.

(Capitalization in original; numbering in original omitted). As noted, the settlement agreement was attached to the petition as an exhibit. Petitioners requested the trial court to order the sale and partition of the real property.

Respondent filed a motion to dismiss or in the alternative, for judgment on the pleadings. Following a hearing, the trial court granted the motion on the ground that the unambiguous settlement agreement establishes that petitioners have no ownership interest in the real property. The trial court held that “[p]etitioners have, by their agreement, relinquished any power to set conditions upon or force [r]espondent to sell the subject property.” Petitioners timely filed a notice of appeal.

II.

The issue is whether the trial court correctly dismissed the petition for failure to state a claim upon which relief can be granted.

III.

In *In re Estate of White*, 77 S.W.3d 765, 770 (Tenn. Ct. App. 2001), this Court observed the following dispositive principle:

Only persons with an ownership interest in real property can force a partition sale. They derive this right, not from the common law, but from the statutes creating the right. *Administration & Trust Co. v. Catron*, 171 Tenn. 268, 270, 102 S.W.2d 59, 60 (1937). Accordingly, partition claims are governed by Tenn. Code Ann. § 29–27–101 (2000) which provides:

Any person having an estate of inheritance, or for life, or for years, in lands, and holding or being in possession thereof, as tenant in common or otherwise, with others, is entitled to partition thereof, or sale for partition. . . .

Under this statute, persons seeking a partition sale of property must demonstrate (1) that they have a present interest in the property and (2) that other persons also have an interest in the property. This is consistent with the general rule.

Petitioners rely on the well-established rule that “[i]n considering a motion to dismiss, courts must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011) (internal quotation marks omitted). They argue that the trial court, and we, must accept as true the assertion in their petition that they “have an ownership interest in the house and farm.” However, the Supreme Court in *Webb* also stated that “courts are not required to accept as true assertions that are merely legal arguments or ‘legal conclusions’ couched as facts.” *Id.* at 427 (quoting *Riggs v. Burson*, 941 S.W.2d 44, 47–48 (Tenn.1997)). We believe petitioners’ allegation that they have an ownership interest in the real property falls into the category of “legal conclusions couched as facts.” The settlement agreement, which petitioners freely executed and rely upon, conclusively and irrefutably establishes that they have no present ownership interest in the property. It unambiguously gives respondent “full and sole authority to decide the price, manner, timing and all other terms of the sale of the house and farm.” The trial court correctly dismissed the petition for failure to state a claim upon which relief can be granted.

IV.

The judgment of the trial court is affirmed. Costs on appeal are assessed to petitioners, Steven E. Warrick, Sr. and Cindy Heffernan.

CHARLES D. SUSANO, JR., JUDGE