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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-191

No. COA20-430

Filed 4 May 2021

Buncombe County, No. 19CVS00262

LAWRENCE PHARO HOUSE, JR., EXECUTOR OF THE ESTATE OF ELSIE
HOUSE ANDREWS, Plaintiff,

v.

VIRGINIA HOUSE RICE AND HEATH THOMAS CHRISTOPHER RICE,
Defendants.

Appeal by Plaintiff Lawrence Pharo House, Jr., from judgment entered 30
March 2020 by Judge Steven R. Warren in Buncombe County Superior Court. Heard
in the Court of Appeals 9 February 2021.

Barnwell & Long, PLLC, by Stephen Barnwell, for Plaintiff-Appellant.

Craig Law Firm, PLLC, by Sam B. Craig, for Defendants-Appellees.

GORE, Judge.

¶ 1 Lawrence Pharo House, Jr. (“Plaintiff”), appeals from a trial court’s judgment declaring three deeds as valid and enforceable conveyances to Virginia House Rice and Heath Thomas Christopher Rice (collectively, “Defendants”). Specifically, Plaintiff takes issue with the trial court’s conclusions of law numbers 3-8 and contends that the deeds in question contain no language of grant or conveyance.

Accordingly, he argues that the deeds should be declared invalid and unenforceable.

We affirm the trial court's judgment.

I. Factual and Procedural Background

¶ 2 Elsie House Andrew¹ (“Andrew”), mother to both Plaintiff and Defendant Virginia House Rice, and grandmother to Defendant Heath Thomas Christopher Rice, executed three deeds subject to this appeal. Each of the deeds contain the words “NORTH CAROLINA WARRANTY DEED,” “GRANTOR,” “GRANTEE,” a sufficient description of the property, and the following language:

Witnesseth, that said Grantor, for in consideration of the sum of (\$0.00) DOLLARS indicating NO REVENUE RECEIVED, and no other good and valuable considerations in hand paid by Grantees, the receipt forever all the right, title, interest, claim, and demand which the said Grantor has in and to the following described lot, piece or parcel of land, situate lying and being in BUNCOMBE COUNTY, NORTH CAROLINA, to-wit[.]

¶ 3 In addition to Andrew's signature on each of the three deeds, the words “No Money Exchanged” were handwritten near the “Grantor” section at the top of the front page. On or about 26 August 2016, Andrew presented the three signed and notarized deeds to the Buncombe County Register of Deeds, recorded in Deed Book 5461 at Pages 705, 707, 709. Andrew died on 30 May 2018, approximately twenty-

¹ The grantor's surname is “Andrew”, but written as “Andrews” in the caption of the judgment from which the parties are appealing.

one months after recording the deeds.

¶ 4

Plaintiff commenced this action on 15 January 2019 by filing a complaint and issuance of summons which sought: (1) a declaratory judgment voiding the three recorded deeds for their lacking language of grant; (2) judgment declaring the three deeds null and void due to their fraudulent procurement; and (3) judgment declaring the three deeds null and void due to undue influence in their procurement. On 21 March 2019 and 4 April 2019, Defendants filed verified answers and counterclaims seeking declaratory judgment that the deeds in question are valid and enforceable. Plaintiff filed a reply on 11 April 2019. The parties acknowledged that the trial court had personal and subject matter jurisdiction.

¶ 5

On 9 March 2020, this matter proceeded to trial without a jury before the Honorable Steven R. Warren of the Buncombe County Superior Court. On 30 March 2020, the trial court entered final judgment in favor of Defendants. Plaintiff gave written notice of appeal on 22 April 2020.

¶ 6

On appeal, Plaintiff does not contest the trial court's adjudication in favor of Defendants on the issues of fraudulent procurement or undue influence. This appeal pertains only to Plaintiff's first cause of action, that the three recorded deeds should be declared null and void for lacking language of grant. Plaintiff appeals the trial court's conclusions of law numbers 3-8 and judgment declaring the deeds to be valid and enforceable.

¶ 7

The contested conclusions of law are as follows:

3. The words “the receipt forever” are technically operative words of conveyance, just as “the receipt of which is hereby acknowledged” are words used to indicate conveyance of monies.

4. The words “the receipt forever” indicate a current conveyance, not merely an intention.

5. The words “the receipt forever all the right, title, interest, claim and demand which the said Grantor has in and to the [properties described in the respective deeds executed by Andrew on 26 August 2016]” indicate Andrew’s knowing intent to currently, and permanently, convey those properties.

6. Within the four corners of the document, other indicators of knowing intent of Andrew to convey property include Andrew’s handwriting directly on or near the all-capitalized words “GRANTOR,” “GRANTEE,” and “GENERAL WARRANTY DEED.”

7. The Three Deeds contain all of the essential elements of a deed, including a competent grantor, capable grantees, operative words of conveyance, a sufficient description of the respective properties, proper execution, and proper delivery and acceptance.

8. The Three Deeds are valid and enforceable.

Plaintiff argues that the three deeds at issue should be declared null and void because they contain no operative words of conveyance. We disagree.

II. Discussion

¶ 8

“Conclusions of law drawn by the trial judge from the findings of fact are reviewable *de novo* on appeal.” *Humphries v. Jacksonville*, 300 N.C. 186, 187,

265 S.E.2d 189, 190 (1980) (citations omitted). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and quotation marks omitted).

¶ 9

“The outcome of the instant matter hinges on interpreting the language of the Deed, and therefore our analysis is rooted in the canons of construction outlined by our state’s jurisprudence.” *Rutledge v. Feher*, 255 N.C. App. 356, 360, 804 S.E.2d 806, 809 (2017). “In construing written conveyances of property, the court ultimately endeavors to determine and effectuate the intent of the parties based on the written language they used.” *Id.* at 360, 804 S.E.2d at 809 (citation omitted). “In construing a deed and determining the intention of the parties, ordinarily the intention must be gathered from the language of the deed itself when its terms are unambiguous.” *Smith v. Smith*, 249 N.C. 669, 675, 107 S.E.2d 530, 534 (1959). “However, there are instances in which consideration should be given to the instruments made contemporaneously therewith, the circumstances attending the execution of the deed, and to the situation of the parties at the time.” *Id.* at 675, 107 S.E.2d at 534.

Another maxim is that such a construction should be made of the words of a deed as is most agreeable to the intention of the grantor. The words are not the principal thing in a deed, but the intent and design of the grantor. We have no power, indeed, to alter the words or to insert words which are not in the deed, but we may and ought to construe the words in a manner the most agreeable to the meaning of

the grantor[] and may reject any words that are merely insensible.

Elliott v. Jefferson, 133 N.C. 207, 215, 45 S.E. 558, 561 (1903) (citation omitted).

¶ 10 “An effective deed must, of course, contain operative words of conveyance which indicate the grantor’s intention to convey his property.” *New Home Bldg. Supply Co. v. Nations*, 259 N.C. 681, 683-84, 131 S.E.2d 425, 427 (1963) (citation omitted). “The absence of such words cannot be supplied . . . but the failure to use technically operative words will not usually defeat an intention which is plainly though not technically expressed.” *Id.* at 683-84, 131 S.E.2d at 427 (citation omitted). “Ordinary words in common parlance may be effectively used . . . and informality alone will not defeat an instrument which is intended to be a deed.” *Id.* at 683-84, 131 S.E.2d at 427 (citation omitted).

Even so, the words used in the purported conveyance must be such that, upon liberal construction thereof, they suffice to operate presently as a transfer of the grantor’s interest to the grantee. Apart from any operative words of conveyance, the mere expression of an intention is insufficient to constitute a conveyance.

McLamb v. Weaver, 244 N.C. 432, 436-37, 94 S.E.2d 331, 335 (1956) (citation omitted).

¶ 11 We first look within the four corners of the document itself, and we endeavor to determine the intent of the parties from the language used therein. The deed must contain operative words of conveyance, which may be untechnical and liberally construed in favor of the grantee. *See Doe ex dem. Armfield v. Walker*, 27 N.C. 580,

583, ___ S.E.2d ___, ___ (1845) (“[I]t is a rule of law, that if two constructions can be placed on a deed or any part of it, that shall be given to it, which is most beneficial to the grantee.”). Words of conveyance must evidence the present transfer of a property interest from grantor to grantee and not a mere intention to do so.

¶ 12 Here, Plaintiff argues that the words, “the receipt forever,” are neither technical nor untechnical words of conveyance. Accordingly, these inoperative words of conveyance do not satisfy the essential element of a valid deed being to “sell and convey to the purchaser.” *See* N.C. Gen. Stat. § 43-31 (2020). While we agree that the words, “the receipt forever,” are untechnical and at variance with conventional language, this phrase does indicate an immediate transfer of value or property from one party to another. When this language is examined in the context of the three deeds at issue, and liberally construed in favor of the grantees and intent of the grantor, the words “the receipt forever” sufficiently express a transfer of property from Andrew to Defendants.

¶ 13 Moreover, each deed contains the words “GENERAL WARRANTY DEED,” “GRANTOR,” “GRANTEE,” and sufficient descriptions of the properties. Andrew made handwritten notations writing “No Money Exchanged” next to the word “GRANTOR” on all three deeds. Andrew signed, notarized, and presented the deeds for recording at the Register of Deeds. Therefore, knowing intent of an immediate transfer can be gathered from the plain language and circumstances surrounding the

execution of each deed.

III. Conclusion

¶ 14

The words, “the receipt forever,” indicate a current and permanent conveyance of property from Grantor to Grantees. Accordingly, the words, “the receipt forever,” are operative words of conveyance, and the three deeds at issue are valid and enforceable. We affirm the trial court’s judgment.

AFFIRMED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).