

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 21, 2015 Session

DARRYL F. BRYANT, SR. v. DARRYL F. BRYANT, JR.

**Appeal from the Chancery Court for Davidson County
No. 141059I Claudia Bonnyman, Chancellor**

**No. M2014-02379-COA-R3-CV
Filed September 28, 2015**

Owner of real property conveyed, by quitclaim deed, an interest to herself and her son as joint tenants, with the right of survivorship. Owner then conveyed her interest to her grandson by quitclaim deed a year later. In the deed to her grandson, Owner expressly referenced the earlier deed to her son, the grandson's father. After Owner died, the son filed a declaratory judgment in which he asked the court to rule that he owns the property in fee simple. The son filed a motion for summary judgment, which the trial court granted. The grandson appealed the trial court's judgment. We affirm. Owner transferred her right of survivorship to her grandson; but this right would come into play only if her son predeceased her. Because Owner died first, the son exercised his right of survivorship and became the sole owner in fee of the property.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

Leroy Johnston Ellis, IV, Old Hickory, Tennessee, for the appellant, Darryl F. Bryant, Jr.

Ronald Buford Buchanan, Hendersonville, Tennessee, for the appellee, Darryl F. Bryant, Sr.

OPINION

This case concerns the ownership of a parcel of real property located in Old Hickory, Tennessee (the "Property"). The facts are undisputed. Molly Bryant and her husband, James Bryant, purchased the Property in 2006 as tenants by the entirety. James Bryant died on

February 27, 2009, leaving his wife, Ms. Bryant, as the sole owner of the Property. By quitclaim deed dated June 9, 2009, Ms. Bryant transferred the Property to herself and her son as joint tenants with the right of survivorship. Ms. Bryant used the following language in the quitclaim deed: “I, Molly Bryant, a widow, . . . do hereby transfer and convey unto Molly Bryant and Darryl Bryant [Sr.] for the purpose of creating a joint tenancy with right of survivorship”

Then, by quitclaim deed dated September 2, 2010, Ms. Bryant transferred an “undivided interest, right, and title to my grandson, Darryl F. Bryant, Jr., Grantee, in [the Property]” The quitclaim deed dated September 2, 2010, included the following language: “Reference is also made to instrument number 20090611-0054308.” The quitclaim deed dated June 9, 2009, whereby Ms. Bryant transferred the Property to herself and Darryl F. Bryant, Sr., is stamped with the number 20090611-0054308. Ms. Bryant died on November 4, 2013.

The plaintiff, Darryl F. Bryant, Sr. (“Darryl Sr.”), is the son of Ms. Bryant and the father of the defendant, Darryl F. Bryant, Jr. (“Darryl Jr.”). On July 18, 2014, Darryl Sr. filed a complaint seeking a declaratory judgment that he is the fee simple owner of the Property. He then filed a motion for summary judgment shortly thereafter in which he contended that the only interest his mother could convey to Darryl Jr., following her transfer to him as a joint tenant with the right of survivorship, was her survivorship interest, which she would have only if she survived Darryl Sr. Once he outlived his mother, Darryl Sr. argued, she no longer had a survivorship interest to convey; Darryl Sr. became the sole surviving joint tenant with 100% interest in the Property; and Darryl Jr. was left with no legal interest in the Property. Darryl Jr. disagreed, arguing that a joint tenant is at liberty to convey her interest in property to a third party, who then has a one-half interest in the property alongside the former joint tenant. According to Darryl Jr., once Ms. Bryant conveyed her ownership interest in the Property to him, he and his father became tenants in common, and Darryl Sr.’s right of survivorship was extinguished.

Trial Court Decision

The trial court agreed with Darryl Sr.’s position and granted his motion for summary judgment. The court wrote, in part:

Following the enactment of T.C.A. 66-1-107 . . . , the common-law four unities requisite to create a joint tenancy became academic. Now, a conveyance to cotenants that aren’t husband and wife results in a tenancy in common unless [a] right of survivorship is expressly stated in the conveyance document, whether or not the four unities of title are present.

. . . The express language in the granting instrument creating the joint tenancy with the right of survivorship has many of the characteristics of a contract between the cotenants. Each cotenant has the right to own the fee title upon the death of the other cotenant. One cotenant should not have the right to destroy that right of survivorship by his/her unilateral action.

. . . [T]his Court finds that Molly Bryant created a joint tenancy with the right of survivorship with her son, Darryl F. Bryant Sr., by specific language in the deed dated June 9, 2009. The deed to her grandson, Darryl F. Bryant Jr., dated September 2, 2010, did not destroy the right of survivorship, and she conveyed to him that which she had: her right of survivorship. Upon the death of Molly Bryant on November 4, 2013, her right of survivorship was terminated and the property is now held by her son, Darryl F. Bryant Sr., in fee simple, free from the claims by the grandson, Darryl F. Bryant Jr. The modern approach is to read deeds as contracts.

Darryl Jr. appeals from the trial court's order granting Darryl Sr.'s motion for summary judgment. He contends the trial court erred when it failed to conclude that he and Darryl Sr. own the Property as tenants in common.

ANALYSIS

A case is appropriately decided by summary judgment when there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. TENN. R. CIV. P. 56.04; *Tenn. Farmers Mut. Ins. Co. v. Reed*, 419 S.W.3d 262, 265 (Tenn. Ct. App. 2013). The trial court's decision to grant Darryl Sr.'s motion for summary judgment was based on an issue of law, which means we review the decision de novo, with no presumption of correctness. *King v. Betts*, 354 S.W.3d 691, 711 (Tenn. 2011); *Pier v. Jungkind*, 427 S.W.3d 922, 926 (Tenn. Ct. App. 2013).

Under the common law in Tennessee, before the enactment of Tenn. Code Ann. § 66-1-107, two unmarried individuals owned real property as joint tenants, with the right of survivorship, if the unities of time, title, interest, and possession were all present. *Jones v. Jones*, 206 S.W.2d 801, 803 (Tenn. 1947). This changed in 1858, however, with the passage of Tenn. Code Ann. § 66-1-107. That statute provides:

In all estates, real and personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant or tenants, but shall descend or be vested in the heirs, executors, or administrators, respectively, of

the tenant so dying, in the same manner as estates held by tenancy in common.

The Tennessee Supreme Court has made clear that although this statute abolished a joint tenant's right of survivorship under the common law, "the statute does not abridge the right of the owner of property to expressly provide for survivorship by deed." *Peebles v. Peebles*, 443 S.W.2d 469, 470 (Tenn. 1969). In other words, the four unities of title no longer result in a joint tenancy, with the right of survivorship, as a matter of law. However, "[w]hen the intent to establish an estate by survivorship is clear, the existence or nonexistence of the unities becomes immaterial upon the idea that the rule fails where the reason fails." *Id.* (citing *Jones*, 206 S.W.2d at 803). Thus, the *Peebles* Court explained, following the enactment of Tenn. Code Ann. § 66-1-107, the right of survivorship arises "from the terms of the grant rather than by operation of law." *Id.*; see *Jones*, 206 S.W.2d at 803 (explaining that common law unities formerly required to create joint tenancy have become academic since passage of statute abolishing common law joint tenancy); *McLeroy v. McLeroy*, 40 S.W.2d 1027, 1028 (Tenn. 1931) (expressing unanimity of viewpoints that statutes do not impair grantor's creation of survivorship estate by will or deed).

"A deed is to be construed to effect the intention of the grantor." *Neeley v. Neeley*, No. M2008-01575-COA-R3-CV, 2009 WL 1076740, at *3 (Tenn. Ct. App. Apr. 21, 2009) (citing *Barber v. Westmoreland*, 601 S.W.2d 712, 714 (Tenn. Ct. App. 1980)); see *Bennett v. Langham*, 383 S.W.2d 16, 18 (Tenn. 1964) (stating that drafter's intention is court's primary guide to interpreting deed). A grantor's intentions are determined by considering the deed in its entirety and giving effect to all of its provisions, if possible. *Neeley*, 2009 WL 1076740, at *3 (citing *Barber*, 601 S.W.2d at 714); accord *Elliott v. Morrow*, No. E2013-00692-COA-R3-CV, 2013 WL 6909424, at *3 (Tenn. Ct. App. Dec. 23, 2013); *Constantino v. Williams*, No. W1999-00229-COA-R3-CV, 2001 WL 99576, at *3 (Tenn. Ct. App. Jan. 30, 2001).

Darryl Jr. rests his argument upon *Tindell v. Tindell*, 37 S.W. 1105 (Tenn. Ch. App. 1896). In *Tindell*, a brother and sister inherited property from their father. They agreed on a partition, so the brother and his wife conveyed to the sister and her husband the portion allotted to them, while the sister and her husband conveyed their portion to the brother's wife.

Mrs. Tindell's contention is that her husband's title by inheritance, and her own by deed, immediately coalesced, and they became tenants by the entireties of the two tracts. The opposing contention is that they were but tenants in common. It is urged by Mrs. Tindell's counsel that the estate or interest known as "tenancy by entireties" does not depend upon the form or terms of the conveyance, "but upon the legal fact that the husband and wife are one, and cannot own separate interests in the same property." On the other side it is

insisted that the estate is substantially an estate in joint tenancy, or rather a species of joint tenancy.

Id. at 1106.

When comparing a joint tenancy with a tenancy by the entireties, the *Tindell* court observed, “In joint tenancy, either of the owners may, at his pleasure, dispose of his share, and convey it to a stranger, who will hold undivided, and in common with the other owner. Not so with husband and wife.” *Id.* Further, the court stated, “A severance of a joint tenancy may be made, and the estate thereby turned into a tenancy in common, by any one of the joint owners, at his will. Of the estate of husband and wife, there can be no severance.” *Id.* No Tennessee cases are cited for these propositions. Indeed, these statements are dicta, for they are not necessary to the court’s decision. The issue in *Tindell* was whether the brother and his wife held the property as tenants by the entireties or as tenants in common. The court provided a very direct answer to this question: “Her husband owned a half interest in the land here in question, by inheritance. She subsequently received a deed to another half interest from her husband’s sister, who was the owner of that other half. This made the husband and wife tenants in common. The chancellor so held, and we affirm his decree.” *Id.* at 1108. We do not view *Tindell* as controlling this case.¹

Ms. Bryant’s intent, as evidenced by the language she used in her deeds, determines the outcome in this case. In her deed to Darryl Jr., dated September 2, 2010, Ms. Bryant expressly referenced her earlier deed to Darryl Sr. The 2010 deed contains the provision: “Reference is also made to instrument number 20090611-0054308.” As explained above, Ms. Bryant’s deed to Darryl Sr., dated June 9, 2009, is stamped with the number 20090611-0054308. Based on the language Ms. Bryant used in the two deeds, we find Ms. Bryant first intended to convey to Darryl Sr. a joint tenancy with the right of survivorship. Then, in 2010, Ms. Bryant intended to convey to Darryl Jr. her interest in the Property, including her right of survivorship, but only in the event that she outlived her son, Darryl Sr. Ms. Bryant would have had no reason to reference expressly her earlier deed to Darryl Sr. unless she wanted Darryl Jr. to be aware of the joint tenancy and survivorship interest she had already conveyed to his father. If Darryl Sr. had predeceased Ms. Bryant, then Darryl Jr. would have become the fee simple owner of the Property upon Darryl Sr.’s death. *See Sloan v. Sloan*, 184 S.W.2d 391, 392 (Tenn. 1945) (“A deed which purports to convey a greater estate than the grantor has will be void only as to the excess and will be construed as a conveyance of that

¹*Bunch v. Bunch*, No. 02A01-9705-CH-00106, 1998 WL 46217, at *2 (Tenn. Ct. App. Jan. 8, 1998), quotes *Tindell* for the proposition in question, but notes that the discussion in *Tindell* is in the context of “comparing and contrasting joint tenancies with tenancies by the entirety” and that the issue is discussed only “tangentially or in dicta.” *Id.*

which it was in his power to convey.”) (citations omitted). Because Ms. Bryant predeceased Darryl Sr., however, Darryl Sr. is the sole surviving joint tenant, and he now owns the Property in fee simple.

CONCLUSION

The trial court’s judgment is affirmed. Costs of this appeal shall be assessed against the appellant, Darryl F. Bryant, Jr., for which execution shall issue, if necessary.

ANDY D. BENNETT, JUDGE