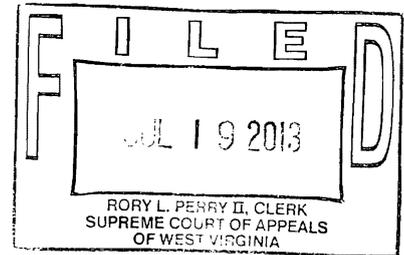


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 13-0387



GEORGE GROOMS and
ANNIE GROOMS,

PETITIONERS

v.

Appeal from a final order of the
Circuit Court of Kanawha County
(09-C-AP-132)

MILDRED GROOMS,

RESPONDENT

Petitioners' Brief

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ASSIGNMENTS OF ERROR

- 1. THE CIRCUIT COURT ERRED IN GRANTING A LIFE ESTATE TO THE RESPONDENT IN THE REAL PROPERTY OWNED BY THE PETITIONERS**
- 2. IN THE ALTERNATIVE IF THE CIRCUIT COURT WAS CORRECT IN ITS RULING, THEN THE ORDER OF THE COURT FAILS TO PROVIDE DETAILS WITH REGARD TO THE USE AND MAINTENANCE OF THE REAL PROPERTY OWNED BY THE PETITIONERS IN WHICH THE RESPONDENT MAY HAVE SOME FORM OF EQUITABLE OWNERSHIP INTEREST**

STATEMENT OF THE CASE

The Petitioners, George Grooms and Annie Grooms, in 2009, filed a Petition for Eviction of the Respondent in the Kanawha County Magistrate Court, and said Petition was granted. (D.R. Vol. I., P. 4). The Petition was filed pro se. (D.R. Vol. I, P.3).

The Respondent raised the issue of ownership, in the real property and appealed the Magistrate Court decision to the Circuit Court of Kanawha County. (D.R. Vol. I, P. 4).

The Honorable Judge Tod Kaufman was assigned the case. (D.R. Vol. I, P. 1). The matter came on for hearing on December 18, 2009, and the Court ordered the parties to mediation. (D.R. Vol. I, P. 8).

That at a hearing held on May 4, 2010, and the Court found that the Respondent had a life estate in the real property owned by the Petitioners, situate at 11637 Kanawha Avenue, Chesapeake, West Virginia. (D.R. Vol. V, P. 1). The Court found that the Respondent should pay rent in the amount of \$125.00 per month, and the Court

subsequently ordered the Respondent to insure the home in which she resides and to designate the Petitioners as beneficiaries. (D.R. Vol. V, P. 32).

The Petitioners filed a motion for the court to reconsider its ruling with regard to the finding of a life estate, and in the alternative the Petitioners requested that the Court determine the terms of the life estate with regard to rent, insurance, taxes and clarification as to inspection and direction as to the number of individuals allowed to dwell on the real property. (D.R. Vol V, P. 2).

That two subsequent contempt hearings were held, one on September 8, 2010, and one on January 23, 2013, in which the Petitioners attempted to establish a privacy fence, and the Court ordered that the fence be removed. The Petitioners were building a privacy fence on their real property separating the real property of the Petitioners and Respondent. (D.R. Vol. III, P. 1-9).

On January 23, 2013, the matter came on for hearing again on contempt, and the Court found that the Petitioners were in contempt, and at that hearing the Court denied the Petitioners' Motion to Reconsider the finding of a life estate, and this is the Order from which the Petitioners appeal. (D.R. Vol. III, P. 73).

SUMMARY OF ARGUMENT

The Petitioners assert that the Circuit Court of Kanawha County erred in granting the Respondent a life estate in the real property owned by the Petitioners. The Petitioners assert that it is long established in West Virginia Case Law that a life estate can only be granted by a deed or a will, and said document must be the express intent of the party or parties.

In the alternative, if the Circuit Court of Kanawha County is found to have been correct in its ruling, that the Respondent has some form of equitable ownership in the real property, then the forced establishment of a life estate situation is not the appropriate remedy, or a further detailed order establishing rent modification, insurance coverage, tax payments, number of occupants allowed to live on the life estate real property, and maintenance of the life estate real property is warranted.

Thus the Petitioners request that the Supreme Court reverse the Circuit Court's ruling with regard to a life estate and remand this matter for further proceedings.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Because the record is confusing, and the issues are fact driven, oral argument under Rev. R.A.P. 18(a) would be necessary unless the Court determines that this matter can be resolved from the record. If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 argument and disposition by a memorandum decision.

ARGUMENT

1. THE CIRCUIT COURT ERRED IN GRANTING A LIFE ESTATE TO THE RESPONDENT IN THE REAL PROPERTY OWNED BY THE PETITIONERS

A conventional life estate is one created by the express act of the parties, by deed or will. Koen v. Bartlett, 41 W.Va. 559, 23 S.E. 664 (1895). The Petitioners and the Respondent to this appeal never created a life estate by will or deed. The Petitioners, George Groom and Annie Grooms, own two houses situated in Chesapeake,

Kanawha County, West Virginia. The home occupied by the Respondent at 11637 Kanawha Avenue, Chesapeake, West Virginia, and the home occupied by the Petitioners at 11639 Kanawha Avenue, Chesapeake, West Virginia. The Petitioner, George Grooms, built the home located at 11637 Kanawha Avenue, then he built the home located at 11639 Kanawha Avenue. (D.R. Vol II, P. 10-12). The Petitioner borrowed money against the real property located at 11637 Kanawha Avenue to build the home located on the real property at 11639 Kanawha Avenue. (D.R. Vol. II, P. 15). The testimony from the four hearings in the Circuit Court of Kanawha County is confusing. The Petitioners' contention is that the Respondent provided money for the lumber for the house situated at 11637 Kanawha Avenue. (D.R. Vol. II, P. 52). The total amount of money paid by the Respondent was over \$10,000.00. (D.R. Vol. II, P. 52). The Petitioners have a deed for the land on which 11637 Kanawha Avenue and 11639 Kanawha Avenue are situated. (D.R. Vol. V, P. 14-15). The Petitioners never conveyed a deed to the Respondent. There is no will from which the Respondent claims a life estate. The life estate that the Respondent possesses was created by a ruling of the Kanawha County Circuit Court. (D.R. Vol. V, P. 1).

The Respondent commenced living at 11637 Kanawha Avenue in the year 1975. (D.R. Vol. I, P. 4). The intention of Petitioner, George Grooms, was to provide his sister, the Respondent, with a place to live and to permit her to establish herself financially. At some point after the Respondent had lived at 11637 Kanawha Avenue, the Petitioners requested that the Respondent pay the sum of \$400.00 per month as

rent, and the Respondent refused and counter-offered the sum of \$200.00 per month as rent. (D.R. Vol. II, P. 16).

The Respondent's basis for her right to live at 11637 Kanawha Avenue is an equitable argument. (D.R. Vol. I, P. 5). Her argument is not one based on a will or a deed granting a life estate. The Respondent asserts that she paid over Ten Thousand Dollars (\$10,000.00) toward construction of the home, and the Petitioners let her live there for over thirty years. (D.R. Vol. I, P. 5). Respondent's argument is that equity gives her the right to live at 11637 Kanawha Avenue, not a specific document granting a life estate.

2. IN THE ALTERNATIVE IF THE CIRCUIT COURT WAS CORRECT IN ITS RULING, THEN THE ORDER OF THE COURT FAILS TO PROVIDE DETAILS WITH REGARD TO THE USE AND MAINTENANCE OF THE REAL PROPERTY OWNED BY THE PETITIONERS IN WHICH THE RESPONDENT MAY HAVE SOME FORM OF EQUITABLE OWNERSHIP INTEREST

A life tenant has the right of use and enjoyment, "the immediate freehold, and therefore the sole right to hold; use, and enjoy". McDonald v. Jarvis, 64, W.Va. 62, 60 S.E. 990 (1908). Additionally, the life tenant has the duty to spare and preserve the corpus, and the remainderman has the duty not to injure the life estate. Their respective duties yield their respective rights. Koen v. Bartlett, 41 W.Va. 559, 23 S.E. 664 (1895).

With the Circuit Court establishing a life estate between the parties by Order (D.R. Vol. V, P. 1). The rights and duties of the life tenant and remainderman of old case law now spring to life to determine the rights and duties of the present parties.

The Order entered by the Circuit Court on May 6, 2010, and which created the life estate thinly addresses the rights and duties of the parties. (D.R. Vol. V, P. 1).

That in the aforesaid Order the Court held as follows:

That the Defendant, Mildred Grooms, shall be entitled to a life estate in the residence situated at 11637 Kanawha Avenue, Chesapeake, West Virginia, 25315.

That title to said real estate shall remain in the name of the plaintiff.

That the defendant shall pay unto the plaintiffs the sum of \$125.00 per month said payment to be payable on the first day of each month beginning June 1, 2010.

That the plaintiff shall be responsible for the upkeep of the real estate in question and the defendant shall be responsible for the upkeep of the residence situate thereon.

That the defendant shall be entitled to enjoy quiet possession of the premises for so long as she shall live or desires to have it the same, without interference from the plaintiffs or anyone on their behalf.

The Petitioners filed a "Motion to Reinstate This Civil Action and Modify and/or Clarify the Court's Order of May 6, 2010" to clarify the rights and duties under the judicial life estate. (D.R. Vol. V, P. 2).

The Petitioners, as the remaindermen, have the right to the use and enjoyment of their real property not affected by the Respondent's life estate, yet the Petitioners are met with resistance and interference. (D.R. Vol. IV, P. 56). The Circuit Court Order from the hearing on January 23, 2013, found the Petitioners in contempt for interfering with the Respondent's life estate by obstructing the Respondent's driveway. (Vol. V, P 31). The Petitioners would assert that the Circuit Court failed to recognize that the

driveway is the property of the Petitioners, it was built by the Petitioners on their land which leads to their house, and the driveway runs across their real property which they own and upon which they pay real property taxes. (D.R. Vol 5, P. 14-15).

An additional issue which was failed to be addressed by the Circuit Court Order of January 23, 2013, is the insurable interest of the Petitioners, as the remaindermen to the house situated at 11637 Kanawha Avenue. The Circuit Court held that the Petitioners have an insurable interest, yet the Respondent only has herself listed as the beneficiary on the policy. (D.R. Vol. V, P. 23)¹.

The issue concerning real property taxes for 11637 Kanawha Avenue in which the Respondent has a judicial life estate is another issue which was not resolved by the two previous Circuit Court Orders. A life tenant must pay the taxes upon the real property. Irwin v. Zane, 15 W.Va. 646 (1879). Richmond v. Mckinney, 194 Va. 427, 73 S.E.2d 414 (1952). The Petitioners are assessed and pay the real property taxes for the house in which the Respondent has a life estate (D.R. Vol V., P. 15).

A life tenant is liable for committing waste and causing injury to the estate of inheritance. University v. Tucker, 31 W.Va. 621, 8 S.E. 410 (1888). The Respondent has an additional adult person living with her, having moved in after the Respondent came to live at 11637 Kanawha Avenue. (D.R. Vol II, P. 17). The Petitioners assert

¹The Duty to insure by the life tenant for the benefit of the remainderman is uncertain) See Kincheloe v. Gibson, 115 Va. 119, 78 S.E. 603 (1913).

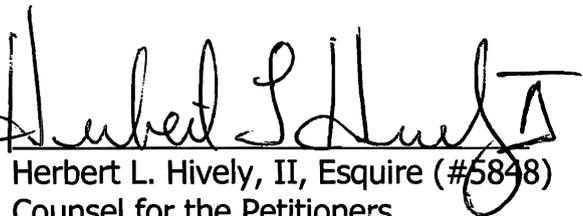
that the extra occupant creates additional wear and tear on the structure and should reflect an increase in the "rent" imposed by the Circuit Court.

The issues of the use of the real property at 11637 Kanawha Avenue, Chesapeake West Virginia, the real property taxes, insurance and additional occupants created by the judicial life estate are all issues indicative of the need that another remedy is needed. A partition sale; the purchase of the Respondent's "life estate"; or a lease with terms of rental would all be remedies offering an improvement over the present Order.

CONCLUSION

Based upon the foregoing arguments, the Petitioners hereby request that this Honorable Court reverse and remand this case to the Circuit Court of Kanawha County.

SIGNED:

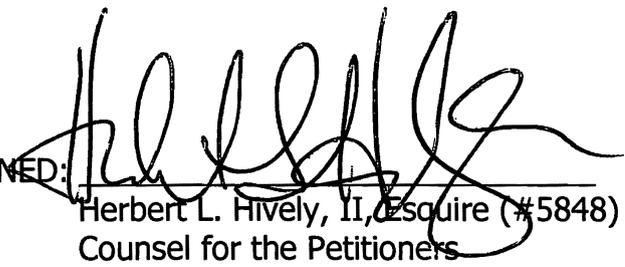


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CERTIFICATE OF SERVICE

I, Herbert L. Hively, II, counsel for the Petitioners, do hereby certify that I have served the foregoing **PETITIONERS' BRIEF** by placing a true and exact copy thereof in an envelope and by depositing said envelope in the United States Mail, Postage First Class Pre-Paid, this 4 day of July, 2013, addressed as follows:

John R. Mitchell, Sr., Esq.
Counsel for Respondent
206 Berkeley Street
Charleston, WV 25302

SIGNED: 

Herbert L. Hively, II, Esquire (#5848)
Counsel for the Petitioners