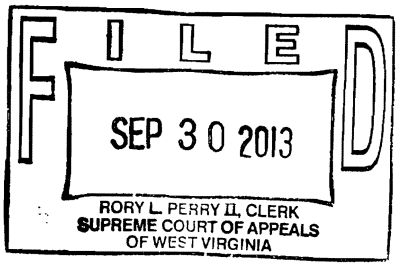
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



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' Reply Brief

Counsel for Petitioners, George Grooms and Annie Grooms

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TABLE OF CONTENTS

STATEMENT OF CASE 1

SUMMARY OF ARGUMENT 2

REPLY ARGUMENT 3

CONCLUSION 5

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.

REPLY ARGUMENT

1. PEITIONERS ARE NOT LOOKING TO BE UNJUSTLY ENRICHED AS ASSERTED IN THE RESPONDENT'S BRIEF

The Petitioners, George Grooms and Annie Grooms, are not looking to be unjustly enriched by asking for relief before this Court for the home built by George Grooms on his real property in Chesapeake, Kanawha County, West Virginia. The Petitioners are asking for an Order which renders the situation workable and manageable, and addresses the future of the real property. The Petitioners assert that the appropriate remedy is in all likelihood a partition suit to sell the house which has become a fixture on the real property owned by the Petitioners. The Petitioner, George Groom, provided labor and money, which fact is undisputed, to erect the house at 11637 Kanawha Avenue, Chesapeake, West Virginia. (D.R. Vol. II, P. 15). It is further undisputed that the Respondent provided money for material for the construction of said home.

That in thirty-five (35) years the Respondent has never filed any lawsuit to establish that she was to be conveyed a deed to the real property on which the home that she occupies is situated. Petitioners would assert that that was never an agreement between the parties.

The factual situation is muddied and made awkward by the parties' actions. The appropriate course of action would have been a survey to designate a lot and deed

conveying the lot to the Respondent upon which she could build her home, and upon which she would have been required to pay to the Petitioners the purchase price for the said real property, and the Respondent could have paid the Petitioner, George Grooms, for his labor in building the house. Or, if at the time, it was the intent of the Petitioner, George Grooms, to provide the labor free of charge, then the only money that would have changed hands was the purchase price of the real property.

2. PETITIONERS ARE REQUESTING THE ENTRY OF A CIRCUIT COURT ORDER WHICH WOULD GOVERN THE ISSUES OF RENT, TAXES AND MAINTENANCE OF THE SUBJECT REAL PROPERTY

The Circuit Court entered an Order which granted the Respondent a life estate. The life estate, however, does not mirror a traditional life estate, but more resembles a landlord/tenant arrangement. However, the Order does not address the future costs of increasing real property taxes, the aspect of the fact that the Petitioners are the remaindermen and have a right to inspect their interest and to confirm that their interest is insured, and to have an input in activities they believe will affect and cause waste to the remainder.

The present Order does not address the noted issues. The Order directs the Respondent to pay rent in the amount of $125.00 per month; however, it does not address any way in which either party would have a way to increase or decrease the monthly rent.

3. PETITIONERS HAVE NOT WILFULLY VIOLATED ANY COURT ORDERS

The Respondent asserts that the Petitioners have willfully violated the existing Court Order. The Petitioners would assert that the Orders are unclear and are awkward

and ambiguous. The Petitioners would assert that there is need for the entry of a more specifically detailed Order governing this quasi landlord/life-tenant arrangement fashioned by the Kanawha County Circuit Court.

That it is clear that the Respondent is attempting to assert additional ownership rights over real property owned by the Petitioners. The Respondent may have contributed money for the construction of the home, she has not contributed any money to the purchase of the land. Even if the Petitioner and Respondent were neighbors, the existing Court Order prohibits the Petitioners from exercising their property rights in the form of erecting a fence, and using their front yard and driveway as they would deem appropriate, and thus the remedy of partition sale, the purchase of the Respondent's life estate, or terms of rental would be remedies offering 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' REPLY 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 30th day of September, 2013, addressed as follows:

John R. Mitchell, Sr., Esq.
Counsel for Respondent
206 Berkeley Street
Charleston, WV 25301

SIGNED: _____
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Counsel for the Petitioners