No. 30400 – Deborah H. Jividen v. Dale R. Jividen

Starcher, Justice, dissenting:

**FILED**
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OF WEST VIRGINIA

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I dissent from the majority opinion because I believe that the appellant, Deborah H. Jividen, did not get a "fair shake" from the court system.

The family law master in the instant case set the value of the parties' house at $13,000.00. Ms. Jividen attempted to introduce evidence that the fair market value of the house was $28,168.00. While her attorneys "dropped the ball" and did not introduce this evidence until after the circuit court signed the family law master's recommended order, simple fairness and justice suggest that this case could easily have been remanded to the family law master for reconsideration. If the property increased in value by $15,000.00 (more than doubled in value) during the parties' marriage, that increase in value of marital property is certainly subject to equitable distribution.

Furthermore, I question the family law master's conclusion that appellee Dale R. Jividen intended for the house to be titled solely in his name, a conclusion that resulted in a total disregard for a written, recorded deed showing both Mr. and Ms. Jividen were the grantees to the property. While the house was purchased in April 1999 using money Mr. Jividen inherited, Mr. Jividen did not have a deed on the property prepared until September 1999. Mr. Jividen contends that Ms. Jividen "schemed" to deceive the lawyer who prepared

the deed and improperly had her name "secretly" affixed to the deed as a joint tenant with right of survivorship.

It is well-established law that, for a grantor to complete the transfer of ownership of real estate to another person, the grantor must only *deliver* a deed to the grantee (in this case, Mr. and/or Ms. Jividen). Delivery is a simple act: the deed is transferred out of the control of the grantor and into the control of the grantee. Delivery of the deed is the consummation of the transfer of ownership, and is the moment that ownership vests in the people designated in the deed as grantees. *See Holland v. Joyce,* 155 W.Va. 535, 185 S.E.2d 505 (1971) and *Lang v. Smith*, 37 W.Va. 725, 17 S.E. 213 (1893). Recording a deed is evidence that a deed was actually delivered by the grantor to the grantee. Syllabus Point 1, *Liggett v. Rohr*, 122 W.Va. 166, 7 S.E.2d 867 (1940).

Additionally, the parties to a deed have a duty to actually read the document. The parties – both grantors and grantees – are charged with knowing what is in the deed as a matter of law. *See, e.g., Southern v. Sine,* 95 W.Va. 634, 643, 123 S.E. 436, 439 (1924) ("[D]efendant will not be heard to say he did not know what the deeds contained. It was his duty to know. The law says that he shall know. If he did not read the deeds at any time before acceptance it was clearly his fault and negligence."); *R.D. Johnson Milling Co. v. Read*, 76 W.Va. 557, 566, 85 S.E. 726, 730 (1915) ("She can not be heard to say that she was ignorant of its contents, or did not know, when she executed it, that it embraced the 80 acre tract of land. It was her duty to know what was in the deed."); *Whittaker v. South West Virginia Imp. Co.*, 34 W.Va. 217, 228, 12 S.E. 507, 511 (1890) ("One is never required to, and never should,

execute any written instrument without first becoming fully acquainted with its contents. He should read it, if able; or if illiterate, have it read to him. And when he has signed a written contract, the law *prima facie* presumes that he discharged this duty; therefore, whether in fact he did it, or chose to waive the privilege, his signature binds him.").

The purpose of a deed is to enshrine in stone, for all the world to see, the parties' agreement to buy and sell a piece of land. Centuries of Anglo-Saxon jurists have frowned upon the use of oral testimony to contradict the unambiguous, explicit, written terms contained in a deed, and in which all parties have joined. "The uncertain, slippery memory of man does not have weight to contradict or set aside that which is written and which is made for the purpose of recording the agreement and perpetuating it beyond question." *Southern v. Sine*, 95 W.Va. at 642, 123 S.E. at 439.

Applying these time-worn legal principles to the instant case, it is clear that a deed conveying the property to Mr. and Ms. Jividen was delivered by Richard Harris. Delivery is clear because the Jividens filed the deed with the county clerk. Mr. and Ms. Jividen had a duty to read and know what was in the deed; if they did not, it was clearly their "fault and negligence." *Southern v. Sine*, 95 W.Va. at 643, 123 S.E. at 439. For a grantee to come back months or years after the transaction and argue that a fellow grantee should be removed from the deed – primarily because the grantees never read the deed – goes against these legal principles.

I therefore respectfully dissent.