

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

JEREMY STARKS,

Defendant Below, Petitioner

ICA EFiled: Jun 27 2023
12:33PM EDT
Transaction ID 70268359

v.

No. 23-ICA-128

PUTNAM COUNTY COMMISSION,
a political subdivision of Putnam County,

Plaintiff Below, Respondent

PETITION FOR APPEAL

Jeremy Starks,
Defendant Below, Petitioner



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I. ASSIGNMENT OF ERROR

1. The Circuit Court erred in holding that the 1977 Deed did not grant, but rather reserved, a reversionary interest in the Grantor, Diamond Shamrock Corporation.

II. STATEMENT OF THE CASE

The narrow issue in this appeal relates solely to the Circuit Court's interpretation of the April 22, 1977 ("1977 Deed") from Diamond Shamrock Corporation to Michael E. Corey and Janette E. Corey; said Deed is of record in the Office of the of the County Commission of Putnam County, West Virginia in Deed Book 223, at page 332. It is not in dispute that whatever interest Diamond Shamrock conveyed to the Coreys eventually became vested in Petitioner Jeremy Starks.

On the 26th day of August, 1947, the United States of America granted and conveyed unto Diamond Alkali Company, that certain 1,426 acre tract, more or less, situated in Union and Buffalo Districts, Putnam County, West Virginia (hereinafter "the Original Tract"). A copy of the August 26, 1947 Deed is recorded in the Office of the Clerk of Putnam County, West Virginia, in Deed Book 88, Page 319. By Deed dated February 10, 1967, Diamond Alkali Company granted and conveyed unto the County Court of Putnam County, West Virginia, among other things, a specific 100 acre tract out conveyance from the original 1,426 acre tract. A copy of the February 10, 1967 Deed is recorded in the Office of the Clerk of Putnam County, West Virginia, in Deed Book 164, Page 397.

The February 10, 1967 Deed conveying the 100 acre tract to the County Court of Putnam County contained a reversionary interest clause which stated, "It is expressly understood and agreed by the parties hereto that the land hereby conveyed is to be held and used by the party of the second part for public recreation and other public purposes, and if the party of the second part attempts to dispose of all or any part of said land, or to use all or any part thereof

for other than a public purpose, then, upon the happening of either or any such event or events, title to the land hereby conveyed shall revert to the party of the first part, its successors and assigns, who shall have the right forthwith to re-enter and take possession of said land without process of law."^{1 2}

In or about 1967, Diamond Alkali Company merged with Shamrock Oil and Gas Corporation to create Diamond Shamrock Corporation. By Deed dated April 22, 1977, Diamond Shamrock Corporation, granted and conveyed the remaining 1,126 acre residue to Michael E. Cory and Jeanette L. Cory. A copy of the April 22, 1977 Deed may be found in the Office of the Clerk of Putnam County, West Virginia, in Deed Book 223, Page 332. The granting clause of the April 22, 1977 Deed read:

“...the party of the first part,...hereby grants, conveys,...all that certain tract or parcel of land, together with any improvements thereon and the appurtenances thereunto belonging...”

Because a new survey was not performed, a metes and bounds legal description of the remaining 1,126 acre residue was not provided. The legal description contained in the April 22, 1977 Deed read:

There is excepted from this conveyance 300 acres, more or less, of surface within the foregoing boundaries which have heretofore been conveyed in two tracts as follows:

1. Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia

¹ No determination has been reached, nor argued yet, as to the “...public recreation...public purposes...” clause of the reversionary interest clause.

² It is inconceivable that Petitioner Jeremy Starks is the eventual “successor and assign” to Diamond Alkali Company. This correct interpretation of the language mirrors the legal principal that reversionary interests pass with the land. Putnam County has never and could never have a fee simple interest in those 100 acres, it is impossible. Putnam County had a specific limitation or condition precedent that had to be honored at all times if the County’s interest in the 100 acres was to remain intact: public use only, and do not ever contemplate sale of the property. If Putnam County ever failed to satisfy those requirements, and all interest previously conveyed to Putnam County in those 100 acres would revert back to whomever owns the Original Tract. That person is Petitioner Jeremy Starks.

by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.

2. Tract of 200 acres, more or less, from Diamond Shamrock Corporation to the Town of Eleanor, by deed dated June 12, 1968 and recorded in the office of the aforesaid Clerk in Deed Book No. 170, page 13.

Through subsequent conveyances of identical language³, the 1126 acres, more or less, tract eventually became vested in Petitioner Jeremy Starks; said deed to Petitioner is of record in the aforesaid Clerk's Office in Deed Book 606, at page 369.

Since the Putnam County Commission had leased the 100 acre tract to Putnam County Park Gun Club, Inc., a private corporation, by letter dated June 3, 2022, Petitioner Jeremy Starks stated he was giving notice of his intention to exercise the automatic reversionary interest in the 100 acre tract and informed the Putnam County Commission and Putnam County Park Gun Club, Inc., "that its lease is terminated and/or revoked effective Friday, June 10, 2022."

On June 8, 2022, a suit was filed whereby the Putnam County Commission sought a Permanent Injunction prohibiting Petitioner Jeremy Starks from exercising the automatic reversionary interest in the 100 acres, passed down from the April 22, 1977 Deed. Numerous pleadings and memoranda were filed by all parties, and numerous hearings were held.

³ The chain of title and identical language of all subsequent deeds, were not, and have never been in dispute. To the contrary, all parties agree thereto.

On February 27, 2023, the Circuit Court of Putnam County entered an Order Granting Permanent Injunction in favor of the Putnam County Commission. In the ORDER, the Circuit Court held:

In the present instance, Diamond Shamrock Corporation expressly, in plain and unambiguous language, excepted out or withheld from its conveyance to Mr. and Mrs. Corey the “[t]ract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, at page 397.” Diamond Shamrock Corporation did not convey its interest in the possibility of reverter clause to the subject 100 acre tract owned by the County Court of Putnam County to Mr. and Mrs. Corey.” (Appendix, page 236).

... and

“Diamond Shamrock Corporation withheld any right it had to the 100 acre subject tract, i.e. the possibility of reverter clause, in itself by operation of the exceptions contained in the 1977 Deed to Mr. and Mrs. Corey. Thus, neither the Corey’s nor any subsequent grantees of the original tract, including Mr. Starks, were ever vested with any interest in the 100 acre subject tract.” (Appendix, page 237).

Petitioner Jeremy Starks is seeking the proper legal interpretation of the April 22, 1977 Deed and the reversal of the February 27, 2023 Order of the Putnam County Circuit Court. (Appendix, page 226).

III. SUMMARY OF THE ARGUMENT

The Circuit Court erroneously applied the rules of deed construction in determining the reversionary interest in the subject property did not pass with the land from Diamond Shamrock Corporation in the conveyance of the remaining 1126 acres, first to the Corey's, and through subsequent conveyances to Petitioner Jeremy Starks.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is appropriate under the criteria of W. Va. R. App. P. 19(a) as it would aid in the decisional process and the time permitted is sufficient. This case is appropriate for Rule 19 oral argument because it involves an assignment of error in the application of settled law and involves a narrow issue of law. Because memorandum decisions reversing the decision of a lower tribunal should be issued in limited circumstances, a memorandum decision is not appropriate.

V. ARGUMENT

a. **The Circuit Court erred in holding that the 1977 Deed did not grant, but rather reserved, a reversionary interest in the Grantor, Diamond Shamrock Corporation.**

i. **The granting clause of the 1977 Deed clearly and unambiguously conveyed the entirety of all interests held, including the possibility of reverter should the property not be operated for public use.**

The instant action is solely governed by the interpretation of the specific language of the relevant Deeds. Beginning with the reversionary interest contained in the 1967 Deed from Diamond Alkali Company to the County Court of Putnam County the specific language of which stated:

“It is expressly understood and agreed by the parties hereto that the land hereby conveyed is to be held and used by the party of the second part for public recreation and other public purposes, and if the party of the second part attempt to dispose of all or any part of said land, or to use all or any part thereof for other than a public purpose, then, upon the happening of either or any such event or events, title to the land hereby conveyed **shall revert to the party of the first part, its successors and assigns**, who shall have the right forthwith to re-enter and take possession of said land without process of law.” (emphasis added)

And subsequently, the granting clause of the April 22, 1977 Deed which read:

“...the party of the first part,...hereby grants, conveys,...all that certain tract or parcel of land, together with any improvements thereon and the appurtenances thereunto belonging...” (a copy of said Deed, of record in the Office of the Clerk of the County Commission of Putnam County, West Virginia in Deed Book 223, at page 332.

The Circuit Court erroneously concluded that the 1977 Deed from Diamond Shamrock Corporation (successor legal entity to Diamond Alkali Company) reserved, and did not

subsequently grant "...the possibility of reverter clause, in the Putnam County Commission's 100 acre tract to Michael E. Corey and Jeanette E. Corey." This is an entirely erroneous legal conclusion based upon the specific language of the 1977 Deed and hundreds of years of the most basic American jurisprudence on legally accepted rules of deed construction.

The granting clauses contained within all four (4) conveyances of the remaining 1,126 acre tract mirror the 1977 Deed from Diamond Shamrock Corporation to Michael E. Cory and Jeanette L. Corey which contains the following granting clause:

"...the party of the first part,...hereby grants, conveys,...**all that certain tract or parcel of land, together with any improvements thereon and the appurtenances thereunto belonging...**" (emphasis added).

Pursuant to the specific language in the Granting and/or habendum clause, Diamond Alkali Corporation granted to Michael E. Corey and Jeanette E. Corey, and subsequent owners, the 1,126 acre tract, as well as the right of reverter in the 100 acres. A habendum clause is "[t]he part of a deed that defines the extent of the interest being granted and any conditions affecting the grant." Black's Law Dictionary (7th Ed.) at 716; see *Ontelaunee Orchards v. Rothermel*, 139 Pa. Super. 44, 11 A.2d 543, 545 (1940) ("The purpose of the habendum clause in a deed is to determine what estate passes."). The general principle of Deed construction has been stated as, where a grantor uses the words "Together with all and singular, the ... reversions and remainders, ... and also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever of the [grantor] in law or equity or otherwise," he parted with all of his interest, present and expectant, **including any reversionary interest** (emphasis added). London v. Kingsley 368 Pa.109, 81 A. 2d 870 (1951); see also, Lacy v. Montgomery 124 A.2d 492 (Pa 1956) (discussing London), and Douglas v. Kingsley, 386 Pa. 59, 124 A.2d 107 (1956) (relying

on London to resolve ejectment case brought by London's descendants). There is no law that strictly requires that a reversionary interest be mentioned in order to transfer it via a land transaction. Fitch v. State, 139 Conn. 456, 461 95 A.2d 255 (1953). Courts have consistently found that the term “all” real estate includes not only the physical property but also the interests that accompanied it. Dodge v. Nichols, 5 Allen 548, 87 Mass. 548, 1863 WL 3304. This is consistent with the well-established legal principle of Deed construction that “all” means all right title and interest unless specifically excepted and reserved. Paxton v. Bendeum-Trees Oil Co., 80 W.Va. 187, 94 S.E. 472 (1917). The Paxton Court wrote further, in interpreting Deed language and Deed construction that a grant of “**all**” without specific reservation and exception transfers “**all**” interests which the Grantor possess. (Id.) (emphasis added). Furthermore, “[w]hen any real property is conveyed or devised to any person, and no words of limitation are used in the conveyance or devise, such conveyance or devise shall be construed to pass the fee simple, or the whole estate or interest, legal or equitable, which the testator or grantor had power to dispose of, in such real property, unless a contrary intention shall appear in the conveyance or will.” Sally-Mike Properties v. Yokum, 175 W.Va. 296, 365 S.E. 2d 2&6 (1986) (emphasis added).

Thus, under West Virginia law, the April 22, 1977 Deed to the Corey’s would have needed explicit language to the effect of the following: The party of the first part (Grantor Diamond Shamrock Corporation herein) hereby excepts and reserves and does not convey, the reversionary interest (possibility of reverter) which it possesses in that certain 100 acres parcel previously conveyed. Because such “words of limitation” were not included in the April 22, 1977 Deed, the reversionary interest passed with the land to the Corey’s and eventually the Petitioner Jeremy Starks.

ii. The Circuit Court's reliance upon language in the legal description of the property in the 1977 Deed as the basis for a valid reservation and exception of the reversionary interest was erroneous and contrary to the laws of deed construction.

The Circuit Court's reliance upon the language in the legal description of the 1977 Deed as a valid reservation and exception is misguided to the point of potential bad faith, and entirely contrary to West Virginia (and every single other state in the Union) law regarding deed interpretation and construction (Id.) All deeds require a sufficient legal description of the real property. W.Va. Code § 36-3-5.

In order to transfer ownership of real estate, a deed must contain a unique legal description of the property that identifies it. If the property cannot be identified, then the deed is invalid. According to Blacks Law Dictionary:

“A deed of conveyance, in order to pass title, must contain description of property being conveyed which sufficiently identifies the land, either by language of granting clause itself or by reference to extrinsic facts which render the description certain, and same rule applies to exceptions from granting clause of deed.” Blacks Law Dictionary, (2nd Ed.) “a formal description of real property, including a description of any part subject to an easement or reservation, complete enough that a particular piece of land can be located and identified.”

Again, the specific language contained with the legal description of the property in the April 22, 1977 Deed is woefully and legally insufficient to identify and withhold only the County's reversionary interest:

“There is excepted from this conveyance 300 acres, more or less, of surface within the foregoing boundaries which have heretofore been conveyed in two tracts as follows:

1. Tract of 100 acres, more or less, from Diamond Alkali Company to the County Court of Putnam County, West Virginia by deed dated February 10, 1967 and recorded in the office of the aforesaid Clerk in Deed Book No. 164, page 397.

2. Tract of 200 acres, more or less, from Diamond Shamrock Corporation to the Town of Eleanor, by deed dated June 12, 1968 and recorded in the office of the aforesaid Clerk in Deed Book No. 170, page 13” (emphasis added).

is legally insufficient to identify and withhold the reversionary interest. It must be noted that the legal description above is completely silent as to any reversionary interest. As stated, this language merely served, in the absence of a more detailed legal description, to reduce the total amount of surface acreage being conveyed from 1426 acres to 1126 acres. Thus, the legal description did not, “in plain and unambiguous language, excepted out or withheld from its conveyance ...the...reversionary interest” Paxton v. Bendeum-Trees Oil Co., 80 W.Va. 187, 94 S.E. 472 (1917). Therefore, Diamond Shamrock Corporation did not “with[o]ld **any** right it had to the 100 acre subject tract...” (emphasis added) (Id.).

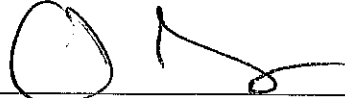
According to the West Virginia Supreme Court of Appeals, in applying the rules of Deed construction and interpretation to cases involving reservations and exceptions, **any remaining doubt as to intent should be resolved in grantee's favor.** Sally-Mike Properties v. Yokum, 175 W. Va. 296, 304, 332 S.E.2d 597, 604 (1985) (emphasis added). Grantee in this instance being the Corey’s, and subsequently Petitioner Jeremy Starks. Because in the 1977 Deed, Diamond Shamrock Corporation granted “all” interest which it possessed in the subject tract, the right of reverter was conveyed as well, eventually and finally vesting in Petitioner Jeremy Starks as the last and current “successor and assigns.”

Any other interpretation leads to the ludicrous result that Diamond Shamrock Corporation conveyed the remaining 1126 acres, completely left the State in 1977, but retained only a reversionary interest that was never expressly contemplated, that reversionary interest somehow falling outside “all” interests conveyed, for forty-six years and counting. Fortunately, the proper application of legal principles relating to deed construction eliminates this ludicrous result. Adopting the Circuit Court’s improper interpretation is contrary to time honored rules of deed construction and establishes a dangerous precedent which could have a chilling effect on altruistic conveyances to public entities.

VI. CONCLUSION

For the foregoing reasons, Petitioner Jeremy Starks respectfully requests that the Court vacate and reverse the February 27, 2023, Order Granting Permanent Injunction.

Jeremy Starks
Defendant below, Petitioner



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JEREMY STARKS,

Defendant Below, Petitioner

v.

No. 23-ICA-128

PUTNAM COUNTY COMMISSION,
a political subdivision of Putnam County,

Plaintiff Below, Petitioner

CERTIFICATE OF SERVICE

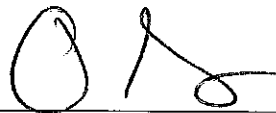
I, O. Gay Elmore, Jr., counsel for Petitioner, do hereby certify that on the 27 day of June, 2023, I served the foregoing "Petition for Appeal" upon the parties to the underlying matter through their respective counsel, by depositing a copy of the same in the U.S. Mail, First-Class, postage prepaid, as follows:

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