

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1505

September Term, 2015

VICKI L. MAGNUS

v.

DAWN MOREE DUGAN, et. al.

Eyler, Deborah S.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: September 27, 2016

This case arises from a dispute regarding the propriety of a Deed executed by Appellee, Dawn Moree Dugan, as Attorney-in-Fact for Marion Glendene Johnson. The Deed in question severed a joint tenancy between Johnson and Appellant, Vicki Magnus, and created a tenancy in common, removing Appellant's right of survivorship.

After Johnson's death, Dugan filed a Complaint for Sale of the Property and Magnus filed a Petition for Construction of Power of Attorney and Injunctive Relief, challenging the validity of the Deed. Both parties filed motions for summary judgment and the circuit court subsequently denied Appellant's motion and granted Appellee's motion. On appeal, this Court held that although Dugan had authority under the Power of Attorney to execute the Deed, the circuit court erred in granting her motion for summary judgement because there was a dispute regarding material facts as to Johnson's "reasonable expectations and her estate plan." The case was remanded for trial and following the presentation of evidence, the circuit court entered judgment in favor of Appellee.

On appeal, Appellant presents the following questions for our review:

1. Whether the circuit court properly interpreted the provisions of Marion Glendene Johnson's will in determining whether Appellee Dawn Moree Dugan had authority, as attorney-in-fact, to execute the deed dated February 4, 2011.
2. Whether the circuit court properly evaluated whether Appellee's execution of the February 4, 2011 deed was in violation of the Maryland General and Limited Power of Attorney Act.

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

In 1981, Marion Glendene Johnson met appellant Vicki Magnus, who was a student at Charles Community College, where Johnson worked. They became friends and the

following year, Magnus came to live with Marion and her husband George, on a parcel of land the Johnsons owned in Port Tobacco, Maryland (the “Property”), located at 7910 Port Tobacco Road, Port Tobacco, MD 20677. That same year, Johnson met Appellee Dawn Moree Dugan at a car show and they remained “best friends” until Johnson’s death in 2011. They often went to car and on camping trips together. Dugan testified that her children viewed the Johnsons as their aunt and uncle.

Magnus lived with the Johnsons for approximately four years and, according to her, Johnson “introduced me to people as her daughter.” After moving, Magnus and her husband regularly visited the Johnsons, who liked to entertain friends at the Property. Sadly, in September of 1997, George Johnson was tragically killed in an automobile accident, leaving Marion as the sole owner of the property in fee simple. Magnus continued to visit Johnson “more or less, but at least every pay period we were there.” According to her, they were “very close.”

On December 5, 2003, Johnson executed a Deed (the “2003 Deed”) granting the Property to herself and Magnus as joint tenants with rights of survivorship. At the time, the value of the Property was listed as \$136,636, and the total payment given was zero.

In 2005, Johnson developed a health condition that left her with limited use of her right hand. Magnus began assisting her with routine bill payments and as a result, Mr. and Mrs. Magnus were added to Johnson’s bank account. When Magnus learned more about Johnson’s debt, she decided to remove herself and her husband from the account, citing her concern with the amount of debt Johnson had acquired. She continued, however, to try to help Johnson obtain assistance with debt counseling until 2009.

In 2008, unbeknownst to Magnus, Johnson asked Dugan to assist her with budgeting, and she agreed to do so. Dugan also accompanied Johnson to a meeting with attorney Robert Moreland in January of 2008, and he created a new Will (the “Will”) for Johnson. In relevant part, Section 6 of the Will provided that Johnson’s nephew, Marshall Bryan Crawford, was to inherit “all the rest, residue and remainder of [Johnson’s] property, real, personal and mixed, of every kind, character and description.” Section 7, concerning joint property, provided that any “property, real or personal, tangible or intangible...held, at the time of my death, jointly in the names of myself and any other person,” shall pass to the named joint owner of that property.

Johnson also executed, on the same day, a Power of Attorney naming Dugan as her Attorney-in-Fact. Dugan testified she continued to assist Johnson in the managing of her finances until her death in 2011. During this time, according to Dugan, Johnson would occasionally ask what could be done about changing the 2003 Deed. Dugan admitted that she did not know how to respond as they had already visited Mr. Moreland’s office.

Several years later, Johnson’s health began to decline and she was transferred to a nursing home for care. Dugan testified, “she told me toward the end, when she got sick, that she wanted me to find out if anything could be done.” As a result, during the business hours of February 4, 2011, Dugan, acting as Johnson’s Attorney-in-Fact, executed a Deed (the “2011 Deed”) whereby Johnson conveyed to herself “a one-half undivided fee simple interest, the remaining one-half undivided interest remains owned by Magnus, now being tenants in common and not joint tenants with” Johnson. That night, Johnson passed away.

Subsequently, Dugan, as Johnson's personal representative, filed a Complaint for Sale in Lieu of Partition of the Property. Magnus, in response, filed a Petition for Construction of Power of Attorney and Injunctive Relief, arguing that the 2011 Deed Dugan executed was outside the scope of her powers as Johnson's Attorney-in-Fact and was executed in violation of the duties Dugan owed Johnson under the Maryland General and Limited Power of Attorney Act. Magnus asked that the court either set aside the 2011 Deed or impose a constructive trust on the one half interest in the land owned by Johnson's estate. The cases were consolidated, and, following discovery, the parties each filed a motion for summary judgment.

On September 16, 2013, the Circuit Court held a hearing at which time Appellee's motion for summary judgment was granted. The court thereafter signed an order for summary judgment, an order for sale of the Property, and a consent order to stay the sale pending appeal. Appellant then filed her first appeal, arguing that an Affidavit offered by Magnus¹ would raise a material issue of fact that would have prevented the entry of Summary Judgment. This Court agreed and held:

¹ In addition to drafting the Will, Mr. Moreland sent a letter to Ms. Magnus, advising her that Ms. Johnson was requesting that Ms. Magnus return to Ms. Johnson the interest in the Property that Ms. Johnson gifted to Ms. Magnus by the 2003 Deed. Ms. Magnus did not respond to the letter. Ms. Magnus submitted an affidavit by her husband, Mr. Cliff Magnus, stating that, shortly after January 31, 2008, Ms. Johnson called him and advised him that Ms. Magnus was going to receive a letter from a lawyer. Mr. Magnus' affidavit would further testify that Ms. Johnson told him to get the letter from the mailbox before Ms. Magnus saw it, and he should not let Ms. Magnus read it, as it was Ms. Johnson's intention that Ms. Magnus receive the farm when Ms. Johnson died. The letter was not admitted into evidence below, nor did Mr. Magnus testify. Joint Record Extract at E146-47, E167, *Magnus v. Dugan*, 08-C-13-343, No. 1505, 15 (Md. Ct. Spec. App. 2015).

Because the issue here involves Ms. Johnson’s reasonable expectations and her estate plan, *i.e.*, her intent regarding disposition of Property, and because there is a dispute regarding this material fact, it was not appropriate for the contention regarding a violation of [the Maryland Power of Attorney Act] to be resolved by summary judgment.

Magnus v. Dugan, No. 1540, slip op. 14-15 (Md. Ct. Spec. App. filed Oct. 17, 2014) (unreported).

This Court also held, however, that “the circuit court properly concluded that the execution of the 2011 Deed was not a gift,” and “as a matter of law, the 2011 Deed was not beyond the scope of Ms. Dugan’s authority as Attorney-in-Fact for Ms. Johnson.” “Accordingly, the 2011 Deed was executed within the scope of Ms. Dugan’s powers under the Power of Attorney.”

The case was remanded for trial. At the close of all evidence, the circuit court held, given the provisions in the Will, that it was Johnson’s testamentary intent that her nephew receive an interest in the Property, and that Dugan had not violated the duties owed to Johnson under the Maryland General and Limited Power of Attorney Act. This appeal followed.

STANDARD OF REVIEW

We review the trial court’s legal conclusions subject to a *de novo* standard of review.

Burson v. Capps, 440 Md. 328, 342 (2014). Maryland Rule 8-131(c) states

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

DISCUSSION

I. The Circuit Court properly interpreted the provisions of Marion Glendene Johnson’s will in determining that Appellee Dawn Moree Dugan had authority, as attorney-in-fact, to execute the deed dated February 4, 2011.

Appellant Magnus argues that the circuit court committed error in its interpretation of Johnson’s will and as a result, Dugan violated the Maryland General and Limited Power of Attorney Act in executing the 2011 Deed. She contends that Section 7 of the Will “clearly indicates that it was Johnson’s intention that upon her own death, the Appellant would acquire full title to the disputed property.” Appellant further argues that Section 6 of Johnson’s will “has no application to the facts which were before the trial court,” because Section 6 created a general legacy for the benefit of Johnson’s nephew, and Section 7 created a specific legacy for the co-owners of any of Johnson’s property, real or personal. Appellee Dugan disagrees, and argues that the 2011 Deed was consistent with the testamentary intent of Johnson’s Will.

When construing a will, “the paramount concern of the court is to ascertain and effectuate the testator’s expressed intent.” *Pfuefer v. Cyphers*, 397 Md. 643, 649 (2007) (quoting *Emmert v. Hearn*, 309 Md. 19, 23 (1987)). Generally, that intent is “gathered from the four corners of the will, with the words of the will given their ‘plain meaning and import.’” *Id.* (internal citations omitted).

In *Pfuefer*, the Court of Appeals was asked to resolve “whether a testator may provide in his will” how inheritance taxes are to be paid, as opposed to the manner provided

by the Maryland Tax Code which would have been more beneficial to some of the legatees.

Id. at 651. The Court, in reviewing the language of the will, noted,

[t]he testamentary language clearly designates the fund from which the inheritance taxes due in this case were to be paid – from the residuary estate – and also when the payment is to be made – prior to apportionment among the residuary legatees.

Id. at 656. Even if the language were “boiler plate,” the Court found it sufficiently expressed the testator’s intent. *Id.* at 657. Thus, the Court held “it is immaterial that under the Tax Code, some of the legatees would not have been obligated...to pay taxes,” “the intent of the testator, as ascertained from the language of the will, controls.”

In the present case, Johnson’s Will was admitted into evidence. It provides in relevant part:

SECTION 6 – GIFTS:

I give, devise and bequeath all the rest, residue and remainder of my property, real, personal and mixed, of every kind, character and description...unto my nephew, MARSHALL BRYAN CRAWFORD. In the event that my nephew predeceases me then, and in that event, I give, devise and bequeath all the rest, residue and remainder of my property, real, personal, and mixed, of every kind, character and description...unto COLLEGE OF SOUTHERN MARYLAND.

SECTION 7 – JOINT PROPERTY:

I hereby confirm my intention that the beneficial interest in all property, real or personal, tangible or intangible, including joint checking or savings accounts in any bank or savings and loan association which is registered or held, at the time of my death, jointly in the names of myself and any other person, shall pass by right of survivorship or operation of law and outside the terms of this Last Will and Testament to such other person named a joint owner on such account, personal property or real property.

In addition, there was testimony from Dugan wherein she provided details regarding her relationship with Johnson, as well as conversations where Johnson continually

expressed her desire to remove Magnus from the deed to the Property. She also relayed that she was present in 2008, when Johnson met with an attorney to discuss the situation. During that meeting, Johnson signed the new Will, naming her nephew as sole beneficiary. At the same time, she executed a power of attorney, naming Dugan as her Attorney-in-Fact. Dugan’s testimony regarding her conversations with Johnson and her belief that Johnson wanted to change how the Property was titled was uncontroverted. Magnus offered no testimony regarding Johnson’s testamentary intent. She testified only that Johnson “begged me not to” respond to Mr. Moreland’s letter regarding changing the deed to the Property in 2008.

The trial court, in ruling, stated,

You know, I feel that [the 2011 Deed] really was in conformity with the Will. I see the Section 7, joint property, but I look at Section 6...It seems to me that, again, taking these bits of evidence and putting together that it was Mrs. Johnson’s hope to give as much of her estate as she could to her nephew.

On review, we do not find that the holding of the circuit court was clearly erroneous. The language of the Will is specific and unambiguous. Further, the testimony elicited at trial established that Dugan’s actions comported directly with the express language of the Will as well as her understanding of Johnson’s desires to remove Magnus from the deed to the Property. Under these circumstances, we find no error.

“[A testator’s] expressed intention must be gathered from language of the *entire* will, particularly from the clause in dispute, read in light of the surrounding circumstances when the will was made.” *LeRoy v. Kirk*, 262 Md. 276, 280 (1971) (emphasis added).

Johnson’s expressed intention was to leave her property to her nephew, and the court’s interpretation was in accordance with that intent.

Appellant also contends the circuit court erroneously found that Section 7 of the Will did not apply to real property. However, the court actually held that it did not find that Section 7 of the Will evidences Johnson’s “estate plan was for [Magnus] to have a surviving interest in that property” based on Section 6 of the Will. The court further remarked that Section 7 “doesn’t reflect, to me, a statement that I wish to keep my farm with a survivor to my, to my friend [Magnus].” Section 7 of the Will simply states what is to be done with any joint property, including real property, held at the time of Johnson’s death. Because the Property was no longer held as a joint-tenancy, but as a tenancy-in-common, at the time of Johnson’s death, Johnson’s interest in the Property “passed by operation of law” to her estate, and Magnus retained her interest in the property. As such, Appellant’s argument lacks merit.

II. The Circuit Court properly evaluated whether Appellee’s execution of the February 4, 2011 deed was in violation of the Maryland General and Limited Power of Attorney Act.

In Appellant’s first appeal, this Court reversed the trial court’s grant of summary judgment as to the question of Johnson’s intent, but held in an unreported opinion that Appellee had authority under the Power of Attorney to grant the deed.² Appellant now contends that despite having authority under the Power of Attorney, the execution of the 2011 Deed violated the duties Dugan owed under the Maryland General and Limited Power

² The Court also found that the 2011 Deed did not constitute a gift.

of Attorney Act. Appellee disagrees, arguing the 2011 Deed was loyal to Johnson’s best interest and preserved her estate plan, and therefore not violative of the Act.

“[A] power of attorney is a written document by which one party, as principal, appoints another as agent (attorney in fact) and confers upon the latter the authority to perform certain specified acts or kinds of acts on behalf of the principal.” *King v. Bankerd*, 303 Md. 98, 105 (1985). The Maryland General and Limited Power of Attorney Act, ET § 17-113, (the “Act”) provides in pertinent part:

(a) *In general.* – Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

- (1) Act in accordance with the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal’s best interest;
- (2) Act with care, competence, and diligence for the best interest of the principal;

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

- (1) Act loyally for the principal’s benefit;

(5) Attempt to preserve the principal’s estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal’s best interest based on all relevant factors, including:

- (i) The value and nature of the principal’s property;
- (ii) The principal’s foreseeable obligations and need for maintenance;
- (iii) The extent to which the principal’s liability for taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes, can be minimized; and
- (iv) The principal’s eligibility for a benefit, a program, or assistance under a statute or regulation.

In the case at bar, appellant contends that Dugan did not adhere to Johnson’s testamentary intent that Magnus have a surviving full interest in the Property, and therefore, was not acting in Johnson’s best interest. As discussed, the evidence was to the contrary.

The circuit court, in making its findings, addressed the duties owed under the Act and did not find Dugan had violated any. The trial judge held:

I find that [Dugan] acted with care. Care. I think we can underscore that. I think the evidence is that she was devoted to her friend and motivated by care and love for her friend. I think she was competent and diligent.

The Court continued,

I see no evidence that she did anything against the expectations of her princip[al]. I don't think she acted against the princip[al's] best interest. There was some question that it, that it may have had impact on her estate, the value of her estate. I don't find that to be the case.

Finally, the court found Dugan had preserved the principal's estate plan "[t]o the extent actually known by the agent."

This court's review is based on the trial court's findings of both the law and the evidence, with deference to the trial court's opportunity to assess and judge the credibility of the witnesses. We find that the judge's decision was fully supported by the evidence and was not clearly erroneous. Dugan did not violate the duties required of an Attorney in Fact under the Maryland General and Limited Power of Attorney Act. In fact, she acted fully in compliance with her statutory responsibility and in the best interests of Johnson.

Finally, appellant requests that, in the absence of a finding of a violation of the Act, we impose either a constructive or resulting trust on the Property in favor of appellant. We decline to do so.

A constructive trust is an equitable remedy employed to convert a holder of legal title to property into a trustee for another who, in good conscience, should be in possession of the property. *Wimmer v. Wimmer*, 287 Md. 663, 668 (1980). "The remedy is applied

by operation of law where the property has been acquired by fraud, misrepresentation, or other improper method, or where the circumstances render it inequitable for the party holding title to retain it.” *Id.* “The purpose of the remedy is to prevent unjust enrichment.” *Id.* “In the ordinary case, there must be clear and convincing evidence not only of wrongdoing, but also of the circumstances which render it inequitable for the holder of legal title to retain the beneficial interest.” *Id.* (citing *Peninsula Meth. Homes v. Cropper*, 256 Md. 728 (1970)).

A resulting trust

arises upon the presumed intention of the parties where the terms of the disposition or accompanying facts establish that beneficial interest is not to go with legal title. In a suit to establish a resulting trust in real estate, the complainant has the burden of proof to establish the trust by plain, unequivocal and convincing evidence.

Siemiesz v. Amend, 237 Md. 438, 441 (1965). In the present case, there has been no evidence that Johnson, Dugan, or Crawford were engaged in fraud or any of the other circumstances that would mandate either a constructive or resulting trust.

Accordingly, we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**