

NOTICE

Decision filed 05/11/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0179

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> ESTATE OF MARY FERN KRUMMEL,) a/k/a FERN KRUMMEL, Deceased)) (Shirley Passley, Objector-Appellant, and Fred) Krummel, Executor-Appellee).)))	Appeal from the Circuit Court of Bond County. No. 05-P-29 Honorable John Knight, Judge, presiding.
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JUSTICE DONOVAN delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

R U L E 2 3 O R D E R

Held: The trial court properly denied an objection to a real estate transfer where there was no evidence of self-dealing or bad faith on the part of the executor/trustee.

Shirley Passley, appeals the denial of her objection to a real estate transaction and her request to set aside the sale, as well as the denial of her motion to reconsider her objection, as entered by the circuit court of Bond County. Passley argues on appeal that the court failed to correctly apply the law on fiduciary duty and self-dealing transactions in denying her objection to the real estate transaction. We affirm.

Decedent died September 19, 2005, leaving two surviving children, Passley and Fred Krummel. At the time of her death, decedent had a revocable trust that left her real estate to her two daughters. One of the daughters had predeceased decedent, and consequently, under the terms of the trust, a one-half beneficial interest passed to the deceased daughter's descendants. Fred Krummel has been the trustee of his mother's trust since its inception in the 1980s and remained so after her death. He was also appointed the executor of her probate estate.

Prior to his mother's passing, Fred farmed the property, consisting of 260 acres, along with his son. In fact, Fred had been farming the land since he was a boy. At some point in their relationship Fred paid his mother rent for the land, but later he stopped paying rent and paid the farm expenses. After the passing of his mother, Fred offered to rent the land left to Passley, but she declined. As was their custom, Fred and his son continued farming the land anyway. Consistent with the wishes of his mother as expressed in her trust, Fred also offered to buy the property for its appraised value. Passley and the deceased sister's descendants tentatively agreed to sell Fred the property. Fred proceeded to have the land appraised by appraiser James Wilson. The Wilson appraisal concluded that the land's value was \$694,000. Passley and the descendants acquiesced to the sale, and Fred sought financing to complete the transaction. No written agreement to sell the property was entered into by any of the parties. After Fred secured financing, Passley was informed that the transfer of the land would close in approximately 30 days. In December of 2006, Fred, with court approval, transferred the real estate into his own trust. In February of 2007, Passley received a partial estate distribution, at which point she learned that the land transfer had been completed. Passley contacted Fred's attorney about the sale and a lack of any trust accountings in connection with the decedent's estate. By August of 2007, Passley learned that there was a second appraisal of the land secured by the bank in connection with the financing of the sale to Fred. This appraisal conducted by James Richter valued the land at \$979,800. Passley testified that if she had been aware of the second appraisal, she would not have been willing to sell the land to Fred at the Wilson appraised price. Fred testified he did not know what value was attached to the Richter appraisal given that the appraisal was secured by the bank as part of the normal financing practices. The court ruled in favor of Fred, finding that his failure to reveal the Richter appraisal did not constitute bad faith under the circumstances. The court therefore denied Passley's objection to the sale and transfer of real estate and

declined her request for a rescission of the sale and/or for compensation or other relief as a result of the sale.

Passley argues on appeal that the court misapplied the law and misstated the facts in reaching its conclusion that Fred had not acted in bad faith in connection with the transfer of the trust real estate to himself. She contends that Fred did not comply with the standards of conduct required of a person acting as an executor or trustee and that he also failed in his separate duty of full disclosure. We disagree. As pointed out in *In re Estate of Talty*, upon which Passley relies, a trial court's factual findings pertaining to the actions of a trustee or executor are not to be disturbed on review unless those findings are against the manifest weight of the evidence. *In re Estate of Talty*, 376 Ill. App. 3d 1082, 1089, 877 N.E.2d 1195, 1204 (2007).

Fred was the son of the decedent. He was also the trustee of her revocable trust and the executor of her estate. He had been farming the land at issue for years and was to have preference in any sale of the land once decedent had passed. In accordance with his mother's wishes, Fred agreed to purchase the property that his sister, who inherited the land, was now interested in selling. He secured the services of a real estate appraiser to have the property appraised. Nothing in the record suggests that Wilson, the appraiser Fred secured to appraise the property, was unqualified to give a reliable real estate appraisal. Passley accepted the appraisal value as the sale price of the land. No one requested a second opinion or appraisal. Fred proceeded to secure financing to purchase the property. Fred's application for a loan triggered the bank processes, which resulted in the higher Richter appraisal. While the evidence revealed that Fred was aware generally that the bank secured its own appraisal for financing purposes, there was no credible evidence presented that he knew what land value was attached to that appraisal. In summary, the record presented does not show any evidence of fraud, bad faith, or an abuse of discretion in the real estate transaction on the part of Fred.

He did not engage in self-dealing in purchasing the property, because the trust itself expressly contemplated Fred being the purchaser of the farm. A trustee may occupy conflicting positions in handling a trust when the trust instrument contemplates, creates, or sanctions that conflict of interest. *In re Estate of Halas*, 209 Ill. App. 3d 333, 344, 568 N.E.2d 170, 178 (1991). He did not neglect to obtain a reliable appraisal of the land, and his lack of knowledge of the second appraisal value secured by the bank was credible. Fred did not violate any duties owed to Passley or any other beneficiary in connection with the real estate transaction. Accordingly, the court correctly ruled that, under the circumstances presented, the real estate transaction at issue here should not be set aside.

For the aforementioned reasons, we affirm the denial of the objection to the real estate transfer.

Affirmed.