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2015 IL App (3d) 140043-U

Order filed February 25, 2015

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

BARBARA A. WYMAN,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff,	)	Peoria County, Illinois
	)	
v.	)	
	)	
RICHARD E. SHANE, ROBERT J. SHANE,	)	
KRISTIE S. DUTTON, MICHAEL DUTTON,	)	
GREGORY SMITH, JEFFERY RULE, and Other	)	
Unknown Owners and Claimants,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	Appeal No. 3-14-0043
KRISTIE S. DUTTON,	)	Circuit No. 11-CH-533
	)	
Counter-Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
BARBARA A. WYMAN,	)	
	)	
Counter-Defendant-Appellant,	)	
	)	
and	)	
	)	
RICHARD E. SHANE and ROBERT J. SHANE,	)	
	)	Honorable Michael Brandt,
Counter-Defendants.	)	Judge, Presiding



remainder of his undivided one-half interest was to be distributed equally between his three children: Barbara, Richard, and Robert.

¶ 6 After Ervan's death in 1978, Julia lived alone in the farmhouse on the farm real estate. In April 2004, while Julia occupied the farmhouse, Julia designated her granddaughter, Kristie S. Dutton (Kristie), to be Julia's power of attorney (POA).<sup>1</sup> A few months later, in November 2004, Julia broke her pelvis. This injury required Julia to undergo surgery, followed by a short period of rehabilitation in a nursing home. After Julia's release from the nursing home in 2005, Julia began residing with Barbara and Barbara's husband. While Julia was living with Barbara in 2005, Barbara learned her deceased uncle, Jerry Shane, willed all of his real estate to Barbara's brothers, Richard and Robert, but left nothing to Barbara. Barbara discussed this inequity with her mother, Julia. Consequently, on March 15, 2005, Julia executed a quitclaim deed conveying Julia's one-half interest in the farm real estate to Barbara, thereby excluding her sons from receiving a share of their mother's one-half interest.<sup>2</sup> At that time, Julia had an undivided one-half interest in the farm real estate in fee simple, and had a life estate interest in Ervan's undivided one-half interest in the farm real estate.

¶ 7 Julia continued to reside in Barbara's home from 2005 until 2008, when Barbara's own health issues made it difficult for Barbara to continue to care for her mother. In April 2008, Barbara asked Kristie, who was Julia's POA, to place Julia in a nursing home.

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<sup>1</sup> Kristie is Barbara's daughter.

<sup>2</sup> Kristie, as Julia's POA, filed a complaint with the circuit court alleging Barbara exerted undue influence over Julia, causing Julia to execute the quitclaim deed to Barbara in Peoria County case No. 08-CH-615, *Julia A. Shane v. Barbara Wyman*. The trial court found Julia was of sound mind when she executed the quitclaim deed and Barbara did not exert undue influence over Julia. The trial court ruled Julia's quitclaim deed to Barbara was valid. This court, in an appeal from that judgment, affirmed the trial court's ruling in favor of Barbara. See *Shane v. Wyman*, No. 3-10-2151 (2011) (unpublished order under Supreme Court Rule 23).

¶ 8            Rather than making arrangements to move Julia into a nursing home, Kristie and Michael agreed to provide residential care for Julia in their home while Richard and Robert made arrangements with a contractor to renovate Julia’s farmhouse to make it wheelchair accessible for Julia. Later, in August 2008, after the farmhouse renovations were completed, Kristie and her husband moved into the farmhouse together with Julia. Under Kristie’s care, Julia was able to remain at home in her farmhouse for the last three years of her life. Julia died testate on June 20, 2011. Kristie and Michael continued living in the farmhouse following Julia’s death and throughout these proceedings.

¶ 9            On October 19, 2011, Barbara filed a “Complaint for Partition and Accounting” (complaint for partition) regarding the farm real estate, including the farmhouse, located at 9804 North Princeville-Jubilee Road, Brimfield, Illinois. Barbara’s complaint for partition requested the court to order Kristie and Michael to pay rent for living in the farmhouse until all matters could be resolved. This complaint for partition alleged Kristie and her husband had no legal interest in the farm real estate.

¶ 10           On May 10, 2012, Kristie filed a “Counter and Cross Complaint” (counter-complaint) seeking declaratory relief asking the court to declare that Kristie was entitled to receive a deed to approximately two acres of the farm real estate, consisting of the farmhouse and garage, pursuant to a fulfilled 2008 verbal agreement between Kristie, Julia, Barbara, Richard and Robert. Her counter-complaint also requested a court order separating the real estate consisting of the farmhouse and garage from the partition action and awarding it to Kristie.

¶ 11           On January 10, 2013, the court held a bench trial on Kristie’s counter-complaint for declaratory relief before conducting further proceedings on Barbara’s partition action. First, Kristie called Barbara as an adverse witness. Barbara’s testimony established Barbara and her brothers, Richard and Robert, each owned a one-third interest in her father’s one-half share of

the farm real estate. Barbara also testified that she owned her mother's one-half interest in the farm real estate based upon a quitclaim deed executed by Julia to Barbara on March 15, 2005.

¶ 12 Barbara testified that Julia was in very good health until 2007, when Julia developed dementia at age 96 and could no longer make decisions for herself. In April 2008, Julia was residing with Barbara and her husband when Barbara was hospitalized due to an illness. While Barbara was in the hospital, Barbara hired a person to provide for her mother's care. Barbara compensated this caregiver from Julia's funds. Since Kristie was Julia's POA at that time, Barbara testified that she initiated a phone call with Kristie and requested Kristie to arrange for Julia's placement in a nursing home, in spring of 2008, because Barbara could no longer care for her.

¶ 13 Barbara recalled a conversation when Julia expressed to Kristie and Barbara that Julia wanted to return to live at the farmhouse and would like someone to move in with her to assist her. Barbara testified that Kristie told Julia she would move in with Julia if Julia would give Kristie title to the farmhouse on the farm real estate. Julia initially agreed. However, according to Barbara's testimony, this conversation took place in 2004 and caused Barbara to make arrangements to have the property surveyed at that time. However, Barbara testified that Julia later changed her mind and the survey was not completed in 2004.

¶ 14 Barbara denied participating in any subsequent family discussion in April 2008 addressing Julia's wishes to return to the farmhouse. Barbara testified, in June 2008, Kristie unilaterally decided Julia should move back into the farmhouse. Barbara further denied she participated in any agreement that authorized Kristie to receive title to the real estate containing the farmhouse, in exchange for Kristie's promise to provide for Julia's residential care at the farmhouse until Julia's death.

¶ 15 According to Barbara, after Kristie and Michael moved into the farmhouse with Julia in August of 2008, Barbara was not allowed to visit Julia at the farmhouse. Barbara testified she observed a contractor's truck on the property performing work at the farmhouse in 2008, but did not know or ask what type of work was performed. Barbara said her brothers did not discuss these renovations with her at any point in time.

¶ 16 Next, Kristie testified that she was employed as a teacher's assistant at Farmington Grade School during the spring of 2008. Kristie said Julia lived with Kristie's mother, Barbara, in the spring of 2008 and Julia needed constant care due to dementia. Kristie testified that a conversation occurred in April 2008 between Barbara, Julia, and Kristie regarding Julia's care. According to Kristie, Barbara said she was unable to continue caring for Julia and asked Kristie if she and Michael would be willing to live with Julia back at the farmhouse. Kristie testified that Barbara agreed the farmhouse would be deeded to Kristie if Kristie cared for Julia and she resided with her grandmother in the farmhouse. Kristie testified that Barbara also agreed the garage would be deeded to Kristie. However, the parties did not discuss the precise amount of acreage this transfer of property would include or require.

¶ 17 Kristie said she did not discuss this plan with her uncles, Richard and Robert, in April of 2008, but only discussed this arrangement with Barbara. However, Barbara told Kristie that Barbara discussed this plan with both brothers.

¶ 18 Kristie testified, in June 2008, she personally discussed the verbal agreement regarding the deed to the farmhouse property with her uncles. Thereafter, Richard and Robert made arrangements for the improvements to be completed at the farmhouse to make the farmhouse wheelchair accessible for their mother. Julia's funds paid for some of the improvements to the farmhouse and Richard and Robert paid the remainder of the costs for the improvements. Kristie said she and her husband moved to the farmhouse with Julia on August 10, 2008, and that living

arrangement continued until Julia's death in June of 2011. During that time period, Kristie said she took care of all of Julia's needs.

¶ 19 Kristie recounted an incident that occurred at the farmhouse between Barbara, Julia, and Kristie during Julia's birthday party in 2009. According to Kristie, Barbara kept asking Julia if she wanted to leave the farmhouse and return to Barbara's house. Kristie asked Barbara to stop that conversation because Julia was upset and crying. Barbara refused to end this discussion. Consequently, Kristie said she asked Barbara to leave the farmhouse. Kristie said Barbara physically slapped Michael and Kristie's 16-year-old daughter before leaving the birthday party. According to Kristie's testimony, Barbara also had an argument with Richard and Robert outside the residence on that day.

¶ 20 Kristie's uncle, Robert, testified about the existence of the April 2008 verbal agreement between Julia, Kristie, Barbara, Richard, and himself. Pursuant to that agreement, Kristie and Michael would move into the farmhouse to care for Julia and, when Julia died, Kristie would inherit the farmhouse. Robert stated Kristie fulfilled her obligations pursuant to that agreement. Before Kristie and Julia moved into the farmhouse, Richard and Robert hired a contractor to make the farmhouse wheelchair accessible. The construction included providing both a bedroom and bathroom for Julia on the main floor and widening the doorways. Robert said the 2008 improvements to the farmhouse cost \$40,000. According to Robert, Richard and Robert paid for the majority of the costs, but Julia's funds paid for a small portion of the improvements.

¶ 21 Robert testified he had a conversation with Barbara about having a survey completed and this conversation would have occurred before Kristie, Michael, and Julia moved into the farmhouse in 2008. Robert said Ron Cluskey completed a survey to identify a parcel consisting of approximately 1.9 acres. This small parcel, as surveyed, included only the farmhouse and garage. Robert said he took the completed survey to the zoning department at the courthouse,

and he told Barbara she needed to go to the courthouse to sign the survey. Robert did not know if Barbara signed the survey.

¶ 22 Next, Kristie's uncle, Richard, testified he was a part of the 2008 agreement. According to Richard, Kristie and Michael agreed to move into the farmhouse with Julia, and care for Julia until her death, and the family agreed Kristie would inherit the farmhouse after Julia died. This agreement was reached in April or May of 2008. Richard said he and Robert felt this was the best plan of care for their mother.

¶ 23 Richard said he had a conversation with Barbara in the spring of 2008. During this conversation, Barbara told him the survey needed to be completed because Barbara was going to give the house to Kristie if she cared for Julia at the farmhouse. He also discussed the need for improvements to accommodate Julia's physical limitations with Barbara. Richard agreed that they did not discuss specific issues, as part of the 2008 verbal agreement, regarding who would pay for the costs of caring for Julia after moving into the farmhouse with Kristie. Since Kristie could not be at the farmhouse with Julia 100 percent of the time, additional costs were required to have someone else stay with Julia at times Kristie was working and could not be present. According to Richard, Barbara thought Kristie paid too much for the additional caregivers and Barbara would not contribute to those costs. Richard said he and Robert obtained a loan for approximately \$110,000, which covered the costs of the improvements and additional costs for Julia's caregivers when Kristie was not present in the home. Richard and Robert repaid this loan, but Barbara did not contribute to the repayment. In Richard's opinion, Kristie fully performed her part of the verbal agreement.

¶ 24 Richard said he did not personally request the survey in 2008 and believed Robert made those arrangements. Richard lived across the road from the farmhouse and talked to the surveyor in 2008 about making the separate parcel of land to include the farmhouse and garage. Richard

said he had a discussion with the surveyor to make sure the newly-defined parcel was under two acres according to county zoning rules.

¶ 25 At the close of the evidence and arguments, the court found Julia was “in her 90’s” with severe dementia and required substantial care in 2008. The court found the evidence supported the existence of an agreement between Kristie and the “three owners” of the farmhouse property, Barbara, Richard and Robert.

¶ 26 The court first noted Kristie and her husband voluntarily left their current home in 2008, for no other reason than to move into the remodeled farmhouse to care for Julia. Second, the court observed that the improvements to the farmhouse had “the various indicia of ownership that’s already been outlined,” and were consistent with the verbal agreement. Additionally, the court found the testimony showed a survey was undertaken by the homeowners that was consistent with the terms of the purported verbal agreement. However, the court noted that although the parties did not provide the court with a copy of that survey, the court believed that the survey was initiated to determine proposed boundaries for the small parcel, including the farmhouse and garage, consisting of less than two acres of the total farm real estate. Further, the court was mindful that a family argument occurred involving Richard, Robert, Barbara and Kristie in April of 2009. Following this 2009 argument, the court noted that Barbara did not take any action to have Kristie and Michael evicted from the farmhouse or to establish Barbara’s interest and rights to the farmhouse.

¶ 27 The court found the deciding factor was that the agreement involved all three owners of the property, Richard, Robert and Barbara, not just one owner. The two brothers did not unilaterally make this agreement with Kristie, and both brother’s testified before the court that Barbara was involved, in the spring of 2008, and agreed to the terms of this verbal agreement. The brothers took action to renovate the farmhouse property based on the agreement, and

Barbara allowed the renovations to occur. The court observed Kristie vacated the residence where she had previously lived for a long period of time based on the agreement, and that Kristie fulfilled her part of the agreement. The court found the verbal agreement existed, and Kristie fully complied with that agreement. Accordingly, the court found Kristie was entitled to the deed for approximately 1.99 acres encompassing the farmhouse and garage consistent with the boundaries established by the Cluskey survey discussed by the parties during the testimony. The court entered the written order documenting its decision on July 29, 2013. A copy of the unsigned Cluskey survey, dated 7/8/2009, was attached as an exhibit to this written order of the court. This attached survey showed a parcel of property consisting of 1.1 acres that included the farmhouse and a “shed.”

¶ 28 On August 20, 2013, Barbara filed a motion asking the court for an Illinois Supreme Court Rule 304(a) finding for purposes of appeal. Ill. Sup. Ct. R. 304(a) (eff. Feb. 26, 2010). On December 9, 2013, the court found there was no just reason for delaying an appeal of the July 29, 2013, order granting the conveyance of the farm real estate at issue to Kristie. This court granted Barbara leave to file a late notice of appeal of that order on February 5, 2014.

¶ 29 ANALYSIS

¶ 30 On appeal, Barbara argues that the evidence was insufficient to support the court’s finding that a verbal agreement existed for the transfer of the farmhouse real estate to Kristie. Kristie argues that the verbal agreement existed, she relied on that agreement, and she performed her end of the agreement completely and fully. Therefore, Kristie submits the court correctly declared Kristie was entitled to receive a deed for the property containing the farmhouse and garage pursuant to the fulfilled verbal agreement.

¶ 31 In contrast, Barbara denies entering into a verbal agreement concerning the farmhouse. Alternately, even if a verbal agreement existed between Barbara, Robert, Richard, and Kristie,

Barbara submits that the terms of that verbal contract were not sufficiently “certain, definite and unequivocal in its terms” to be an enforceable verbal contract for the conveyance of real estate. See *Adkins v. Adkins*, 332 Ill. 422, 426 (1928). Further, Barbara contends that a copy of a survey was not tendered to the trial court during the trial, which defeats the request for declaratory relief because the conditions of the verbal agreement concerning the exact boundaries for the farmhouse property were too vague to be enforced by the court.

¶ 32 First, we consider whether a verbal agreement for the transfer of real property can be subject to transfer pursuant to a declaratory action. We are fully aware that the Frauds Act (740 ILCS 80/0.01 *et seq.* (West 2012)) requires contracts for the sale of land to be in writing, providing as follows:

“No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized in writing, signed by such party.” 740 ILCS 80/2 (West 2012).

However, it is well established that the doctrine of full performance provides, “where one party completely performs a contract, the contract is enforceable and the statute of frauds may not be used as a defense.” *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (quoting *Greenberger, Krauss & Tenenbaum v. Catalfo*, 293 Ill. App. 3d 88, 96 (1997)); see also *B and B Land Acquisition, Inc. v. Mandell*, 305 Ill. App. 3d 1068, 1072 (1999).

¶ 33 The existence of a verbal contract, its terms, and the intent of the parties are questions of fact, and, on review, the trial court's findings will be disturbed only if they are against the manifest weight of the evidence. *Anderson*, 397 Ill. App. 3d at 785. A finding is against the

manifest weight of the evidence if the opposite conclusion is clearly evident or the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Id.* On review, we give deference to the trial court's findings of fact because the trial judge, who sees the witnesses and hears the evidence, is in a far superior position to find the truth than is a court of review. *Johnston v. Suckow*, 55 Ill. App. 3d 277, 280 (1977). Thus, a trial court's findings of fact based on conflicting evidence will not be disturbed on review unless those findings are clearly erroneous. *Horn v. Horn*, 5 Ill. App. 2d 346, 354-55 (1955).

¶ 34 Next, we consider whether the trial court's findings were contrary to the manifest weight of the evidence. The record reveals that the court found it very persuasive that Richard and Robert both agreed that all three property owners reached a verbal agreement for Kristie to receive the farmhouse and garage in exchange for providing care for Julia during the latter part of her life. The trial court relied on the testimony of Richard and Robert, which indicated a survey was undertaken in 2008 and found this testimony was compelling evidence of the agreement to transfer the farmhouse and a parcel of less than two acres to Kristie. The trial court found it particularly telling that Barbara failed to take action, from 2008 until Julia's death in 2011, to address renovations to the property or to remove Kristie and Michael from the property after the 2009 argument. The court observed that it was significant that Barbara allowed Kristie to take on the burden of caring for Julia until her death before taking any action to assert her ownership rights to the property. Based on these matters of record, the trial court found all "three owners," Barbara and her brothers, entered into a verbal agreement with Kristie to transfer less than two acres of land to Kristie, which included the farmhouse and the garage, if she fulfilled her promise to reside and care for her grandmother in the farmhouse. Finally, the trial court concluded this verbal agreement had been fully performed by Kristie and declared that Kristie should receive title to the small parcel of property containing the farmhouse and garage.

