

DISTRICT COURT, BOULDER COUNTY, COLORADO

Case No. [REDACTED]

ORDER RE STATUS OF [REDACTED] PROPERTY IS MARITAL PROPERTY

FILED Document
CO Boulder County District Court 20th JD
Filing Date: Jul 14 2005 10:27AM MDT
Filing ID: 6212654
Review Clerk:

Petitioner: [REDACTED]

Respondent: [REDACTED]

And Concerning: [REDACTED] Third Party Respondent



Appearances: Innes-Brown, Petitioner
Motycka, Respondent
Ridgeway and Rodriguez, Third Party Respondent.

This matter came on for hearing on June 1, 2005, on the issue of whether [REDACTED] Longmont, Colorado, the home of [REDACTED], is marital property. The Court heard testimony and ordered written closing arguments from the Petitioner, the Respondent, the Third Party Respondent. All closing arguments were filed on or before June 29, 2005. The Court now rules.

FINDINGS OF FACT

[REDACTED] is the mother of the Petitioner in this dissolution of marriage action. Ms. [REDACTED] is married to [REDACTED]. [REDACTED] and [REDACTED] were married in July, 1968, and [REDACTED] and [REDACTED] have known each other for almost 40 years. [REDACTED] has another child, [REDACTED], who is disabled.

[REDACTED] lives in a home at [REDACTED] Longmont, Colorado. She and her husband bought the land and built the home in 1965. She has lived there continuously since that time and continues to pay the mortgage, insurance, maintenance, utilities, and property taxes.

During the 40 years over which [REDACTED] and [REDACTED] have known each other, they became very close to the point that [REDACTED] trusted and treated [REDACTED] like a son. She thought she could trust him completely. He always did the "right thing" for her. She named him her power of attorney because he was the only one she thought would be able to take care of financial and medical affairs in the event that she became unable to care for them herself. In addition, [REDACTED] helped her through the death of her husband in 1994 including making funeral arrangements and selling property. She consulted him from time to time on financial matters.

In late 1999, [REDACTED] was diagnosed with congestive heart disease. She had 10-15% heart function. Her heart was too weak for surgery and to take all the medication prescribed. She was hospitalized for a week. The doctors gave her the impression that she was going to die. She was frightened at night especially because her heart stopped for several seconds at a time. She could not find a pulse at those times.

Her house was on her mind all the time during this period because she believed that if she died, the house would go into probate and that probate would cost as much as the property was worth. She had heard that from real estate people. She also knew that her husband's parents had left property to her husband much of which was "eaten up" in probate. The house was her only legacy. She wanted to leave the house to someone who could take care of it legally and provide half of it to [REDACTED] for his share of the inheritance and half to her daughter.

She believed that her son [REDACTED] could not handle property or financial matters if she died. Her concern was that he would not have a place to live when she died. He is bipolar and cannot work. He is on SSI.

[REDACTED] talked on several occasions in late 1999 with her daughter and [REDACTED] about her concerns about the house. She expected [REDACTED] to give her suggestions about what to do, and she trusted his judgment. She trusted him because he had business experience and was "out in the world" more than she. At some point, she even gave him power of attorney to make medical and financial decisions in the event of disability. She told [REDACTED] that she needed to do something to keep the house out of probate.

[REDACTED]'s sole goal was that the house would not go into probate, and her children would get their inheritance. Her initial idea was to give the property to [REDACTED] only and expect him to take care of her daughter and son at her death because "who else would take care of business for her after her death?"

According to [REDACTED] recollection, [REDACTED] suggested that she quitclaim the property to him and her daughter and that they would take care of [REDACTED]. At that time, [REDACTED] thought that a quitclaim deed was a "quick claim deed," because it was a deed she was to sign quickly before she died. She understood that when she died, someone else's name would be on the deed and the house would not go into probate.

[REDACTED] has worked in real estate as a licensed realtor for fifteen years. He admits that at the time of the execution of the quitclaim deed, [REDACTED]'s health was not good and that she was considering going into an assisted living center.

In February, 2000, [REDACTED] signed the quitclaim deed deeding the property to [REDACTED]. [REDACTED] prepared the deed, and [REDACTED] signed it at [REDACTED] Title, where [REDACTED] worked. Neither of the [REDACTED] paid any money for the property. They did not assume the mortgage or ever pay the property taxes. [REDACTED] continued to make all of those payments.

[REDACTED] did not think that she was giving the [REDACTED] her house during her lifetime. She never conceived of the possibility that the [REDACTED] could have her removed from the house if they wished to or that they could have required her to pay rent. In fact, at one point, she went to the bank to borrow \$10,000 against the equity of the house in order to give the [REDACTED] money to keep their own house out of foreclosure and was

surprised to learn that she could not do so because the house was no longer legally hers. As it was, the parties stipulated to put the home back in [REDACTED]'s name temporarily until she could borrow the money to help her son-in-law and daughter keep their house.

The [REDACTED] did not move into the house. [REDACTED] did help with outside upkeep. He helped install a sump pump that [REDACTED] paid for. He trimmed trees, grass, and weeds. He tilled the garden and cleared away debris. He finished the sides on the pole barn. He enclosed the back of it. He put two more stalls in. He installed gates and worked on the fence. He bought a five horse-power weed wacker. After he began boarding the horses on the property, he started spending the weekends there.

[REDACTED] helped with the property before and after the quitclaim deed was signed. He boarded his horses on the property and did work that supported their presence such as working on the fences and barn. [REDACTED] did not charge him boarding costs. The [REDACTED] never charged [REDACTED] rent.

After 1999, [REDACTED]'s health surprisingly improved. She decided that her plan to leave the house to the [REDACTED] who would then care for [REDACTED] was ill-advised especially when it was becoming clear that the [REDACTED] were having problems. She asked an attorney to draw up a new quitclaim deed and asked [REDACTED] to sign it about six months before the [REDACTED] separated. He refused. Both parties agree that there was never any discussion about reconveyance of the property in the event that [REDACTED]'s health improved. Later, [REDACTED] filed for divorce.

[REDACTED] states that [REDACTED] told him that she wanted her name off the deed altogether and wanted to deed the property to him and her daughter. He admits that she was worried about probate. He testified that he suggested that she put her children's names on the deed, not his, but [REDACTED] did not want [REDACTED]'s or her own name on the deed because owning property might make him ineligible for SSI and keeping her name on the deed would defeat her estate planning goals. [REDACTED] initially wanted only [REDACTED]'s name on the deed, but later decided to put both him and her daughter on the deed. [REDACTED] explained to her that the property would go to whomever was on the deed at her death without the need for probate. [REDACTED] further admits that [REDACTED] never spoke in terms of making them a gift of the house.

[REDACTED] does and did not believe that her mother was giving her and her husband the house. She thought that she would receive the house upon her mother's death. She testified that "it was my mother's house."

In late 1999, [REDACTED] and the [REDACTED] sat down together to figure out what to do about [REDACTED]. It was apparent that there was not enough money to buy him his own condo, and the [REDACTED] did not have enough money to buy her mother's house. They decided to execute the quitclaim deed as a way to transfer the house as an inheritance without the necessity of probate.

FINDINGS AND CONCLUSIONS

There is no doubt in this case that the quitclaim deed was intended as an estate-planning device. [REDACTED] was attempting to cause her home to pass to her family upon her death without the complications and expense of probate. She expected that the [REDACTED] would care for [REDACTED] and provide for him out of his share of her estate. She was worried that she was going to die around February, 2000; in fact, there was a significant basis for her belief that she would.

Further significant evidence that [REDACTED] thought she was signing a deed that gave the property to her daughter and son-in-law upon her death and believed that she still owned the property until she died is as follows: (1) she attempted to borrow money against the equity of the house, (2) she first planned to deed the land and house to her son-in-law alone with directions to care for her daughter and son, and (3) she continued to pay the mortgage, upkeep, maintenance, taxes, and insurance on the house. [REDACTED]'s naïve belief about the deed process is underscored by her belief that she was signing something called a "quick claim deed," which one signs quickly before impending death.

A resulting trust is one that is implied in law and arises "when the circumstances surrounding the transfer of the property raise the inference that the parties intended to create a trust." *Mancuso v. United Bank of Pueblo*, 818 p.2d 732 (Colo. 1991) citing Rest. (2d) of Trust Section 404 (1959) which has been updated by Rest. (3d) of Trusts Section 7.

In *Martinez v. Gutierrez-Martinez*, 77 P. 3d 827 (Colo. App. 2003), the sister of a wife participating in a dissolution of marriage began having financial difficulties and could not pay the mortgage on the home she had owned for some time. When she was unable to refinance her mortgage, she transferred her home to her sister (the wife), who was able to refinance the mortgage on her sister's behalf. The sister continued to live in the house and to pay for maintenance, insurance, and the mortgage. The transfer was without consideration or benefit to the wife. Under these facts, the trial court and the appellate court found that the sister was the owner of property notwithstanding that the property was titled in the wife's name.

Martinez further held that the form of the title was not dispositive in determining whether the property is marital. The Court found that a resulting trust arose when the sister conveyed title to the wife, citing *Mancuso*. Here, [REDACTED] deeded her property to her son-in-law and daughter but retained all the obligations of ownership. She, like the sister in *Martinez*, paid the mortgage, maintenance, upkeep, insurance, and taxes. [REDACTED] transferred the property in order to create a trust for her son and daughter, so that, upon her death, they would receive the full benefit of her property without reduction by probate fees, which she believed would substantially decrease or even eliminate the value of her property.

Furthermore, there is no evidence of intent to give [REDACTED] a gift. One of the essentials of an *inter vivos* gift is that the person giving the gift manifest a clear and

unmistakable intention to make a gift. *Hardy v Carrington*, 288 P. 620, 623 (Colo. 1930). Even [REDACTED] admits that the transfer of the property was never spoken of in terms of a gift; but rather, as a way to transfer the property at [REDACTED]'s death without probate.


Although [REDACTED] asserts that he performed work on the property because he believed he owned it, it is just as likely that [REDACTED] provided improvements to the property because 1) he was boarding horses there, 2) he would have done so anyway because he had helped [REDACTED] for many years before the quitclaim deed was signed, and 3) he expected to receive the property upon [REDACTED]'s death. His statements that he believed he owned the property are belied by the fact that [REDACTED] made all the mortgage, utility, and tax payments.

The Court finds that all the circumstances surrounding the transfer of property give rise to the inference that the parties intended to create a trust. The Court further finds that a resulting trust arose from this transfer. The Court also finds that [REDACTED] has clearly manifested the intent to repudiate the trust. The Court orders that both [REDACTED] and [REDACTED] sign quitclaim deeds transferring the property back into the sole name of [REDACTED] within seven days. Both parties are prohibited from transferring their interest in the property to any other person. In the event that either or both refuse to sign the deed, the Clerk of the Court is authorized to sign the deed under CRCP Rule 70 upon order of the Court to do so.

The Court does not find, however, that the claim was frivolous and groundless and declines to award attorney's fees under C.R.S. 13-17-101.

Dated: July 14, 2005

By the Court


R. Bailin, District Judge