

IN THE COURT OF APPEALS 4/23/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00515 COA

**WILLIE T. GREENLEE POUNDS, WILLIE EUGENE POUNDS, JOHNNY L. POUNDS,
GERALDINE POUNDS, DOC POUNDS AND SHIRLEY POUNDS**

APPELLANTS

v.

**STELLA HUGHES, ADMINISTRATRIX OF THE ESTATE OF PRISCILLA POOLE,
DECEASED**

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT L. LANCASTER

COURT FROM WHICH APPEALED: LOWNDES COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS:

P. NELSON SMITH, JR.

ATTORNEY FOR APPELLEE:

THOMAS L. SEGREST

NATURE OF THE CASE: PROPERTY - EQUITABLE LIEN

TRIAL COURT DISPOSITION: FOUND EQUITABLE LIEN IN FAVOR OF ESTATE

BEFORE BRIDGES, P.J., COLEMAN, DIAZ, AND KING, JJ.

KING, J., FOR THE COURT:

This case comes to this Court from the Chancery Court of Lowndes County on appeal of Jessie Tom Pounds' heirs, aggrieved at the chancellor's decision to impress an equitable lien against an acre lot titled to decedent, Jessie Tom Pounds, and a house constructed on Pounds' land, with funds from the decedent, Priscilla Poole. We conclude that the chancellor's decision is well-supported by the evidence and, accordingly, we affirm.

I.

In June of 1989, Priscilla Poole, now deceased, contacted her cousin, Shirley Pounds, Jessie Tom Pounds' daughter, and told Shirley that she wanted to leave the nursing house and live with her and her family. After informing Poole that they did not have room for her, Shirley suggested that Poole contact her father, Pounds, and ask him to find a handicapped accessible trailer and place it on the one-acre lot that Monica Porter, Poole's deceased daughter, had owned in Lowndes County. Poole followed Shirley's advice and called Pounds. Pounds was unable to find a trailer to accommodate Poole's physical limitations. However, Pounds suggested that Poole build a house on her daughter's lot.

On July 5, 1989, Poole wired \$23,000.00 from Suburban Trust and Savings Bank in Oak Park, Illinois, to Pounds, for the construction of the house. On July 6, 1989, Pounds signed a contract with Jim Walter Homes Corporation, and paid the cash price of \$21,450 to have the house built to 90% completion. Pounds had the house built on one of twenty-three acres of land titled to him. Pounds acquired a warranty deed to the house in his name.

In November of 1989, Poole moved into the house. Initially, Pounds' wife and daughter took care of Poole. However, after Mrs. Pounds and her daughter assisted Poole on several occasions, Poole changed all of the locks on the house and gave keys to two of her cousins, Amaree Richardson and Emma Heard.

Subsequent to her moving in the house, Poole asked Pounds for a deed to the property. Pounds refused. On February 27, 1991, Poole's attorney, Dudley H. Carter, sent Pounds a letter requesting a deed to the property. In the letter, Carter wrote "Mrs. Poole tells me that you have never given her a deed to this property after having been requested to do so. Unless you contact this office and make arrangements to give Mrs. Poole the deed to the property which she paid for, we will have no choice but to file suit against you in the Chancery Court of Lowndes County, Mississippi, to compel performance." Upon receipt of Carter's letter, Pounds visited Carter at his office and told Carter that he was not going to give Poole a deed to the property. Pounds explained that Poole could live on the property as long as she wanted to, but that when she died, the property was his.

Carter informed Poole that Pounds refused to give her a deed and that Poole would probably have to compel performance through the judicial system. However, when Carter told Poole how much the litigation would cost, Poole responded, "Well, I'll just move it." Thereafter, Poole asked Eugene Poindexter to move the house from Pounds' land to the one-acre lot titled in her daughter's name. However, because Poole did not have title, Poindexter refused to move the house.

In June of 1991, after Poole's health began failing, Poole was moved into a nursing home in

Starkville, Mississippi, where she remained until her death on August 29, 1991.

On September 23, 1992, Stella Hughes, Poole's sister and only heir, filed a complaint in the Chancery Court of Lowndes County, Mississippi, in which she sought to impose a lien against the house and land. In her complaint, Hughes alleged that 1) on or about June 1, 1989, Poole mailed \$23,000.00 to Pounds to be used to construct a house for Poole; 2) that Pounds contracted with Jim Walter Corporation to build the house for Poole on one acre of land owned by Pounds; and 3) that after Poole moved from Chicago, Illinois, to Columbus, Mississippi, Pounds was to convey to Poole the land upon which the house was constructed. Hughes further alleged that Pounds had been unjustly enriched in the sum of at least \$23, 000.00 plus interest or the appraised value of the house, whichever is greater.

In his answer, Pounds admitted that the house was constructed on land that he owned, that Poole paid for most of the construction of the house, and that Poole lived in the house for some time prior to her death. However, Pounds counterclaimed that he was the sole owner of the real estate and any improvements in question pursuant to an oral agreement between him and Poole. Pounds requested a decree confirming his ownership in the property.

After filing his answer, but prior to trial, Pounds died. His heirs, Willie T. Greenlee Pounds, Pounds' surviving wife, together with Pounds' children, Willie Eugene Pounds, Johnny L. Pounds, Geraldine Pounds, Doc Pounds, and Shirley Pounds, were substituted as Defendants.

After a hearing on the matter, the chancery court found *inter alia* that (1) Pounds was in a fiduciary relationship with Poole and had violated his instructions to have the house constructed on Poole's deceased daughter's land; (2) The subject \$23,000.00 was trust funds traceable into the subject house; and (3) Poole, through her heir, was entitled to an equitable lien upon the house and the one acre of land upon which the house sits.

II.

WHETHER THE CHANCERY COURT ERRED WHEN IT IMPRESSED AN EQUITABLE LIEN ON THE SUBJECT PROPERTY?

Appellants contend that the evidence in the instant case clearly and convincingly shows that an equitable lien should not have been imposed against the improvement on the one acre of land in question. Appellants argue that there was no proof introduced at trial that the house was not to be owned by Jessie Tom Pounds upon Poole's death, and that the evidence supports a finding that there was an oral agreement between Pounds and Poole. Appellants first explain that Poole's efforts to move the house, are consistent with their contention that upon Poole's death, the house would become Pounds' property if Poole had not moved the house off Pounds' property prior to Poole's death. Appellants next explain that Pounds' statement to Poole's attorney, Dudley Carter, that the house would be his upon Poole's death supports the oral agreement between the parties. Appellants conclude that the fashioning of an equitable lien against the improvements made by Poole upon the land owned by Pounds, now his heirs, is unsupported by substantial credible evidence and is reversible error. Appellants also contend that the chancellor erred in finding that Pounds was Poole's

agent. We disagree.

First, Appellants' contention that the chancellor erred in finding that Pounds acted as Poole's agent to build a house on Poole's daughter one acre is without merit. It was established, without dispute, that at the time Poole contacted Pounds, she was in a nursing home, and that both of her legs had been amputated. The evidence clearly established that Poole authorized Pounds to act for or on her behalf in finding her a place to live. First, Poole requested Pounds to find her a handicapped accessible trailer. After Pounds was unable to find such a trailer, Poole entrusted Pounds with \$23,000.00 to have a house built on her deceased daughter's land. Based on these facts, the chancellor acted within his discretion in finding that Pounds acted as Poole's agent to have a house built for her on her deceased daughter's land, and that Pounds violated Poole's instructions when he contracted with Jim Walter Homes to build the house on his land.

Second, Appellants' contention that the chancellor erred in impressing an equitable lien upon the house and the land where the house sits is also without merit. An equitable lien is defined as a "right, not existing at law, to have specific property applied in whole or in part to payment of a particular debt or class of debts." *BLACK'S LAW DICTIONARY* 539 (6th ed. 1990). "A lien may also be impressed out of recognition of general principles of right and justice." *Lindsey v. Lindsey*, 612 So. 2d 376, 379 (Miss. 1992). "A principal reason for impressing an equitable lien is to prevent unjust enrichment, i.e., where it would be contrary to equity and good conscience for an individual to retain a property interest acquired at the expense of another." *Neyland v. Neyland*, 482 So. 2d 228, 230 (Miss. 1986) (citations omitted).

The following evidence was presented during a hearing on this matter: (1) in June of 1989, Poole contacted Pounds and asked him to find her a mobile home, which was handicapped accessible, and to place the mobile home on her deceased daughter's land; (2) after Pounds was unable to find a trailer to accommodate Poole's physical limitations, Pounds suggested that Poole build a house on her daughter's land; (3) on July 5, 1989, Poole wired Pounds \$23,000.00 to have a house built on her daughter's land; (4) on July 6, 1989, Pounds signed a contract with Jim Walter Homes Corporation and paid the cash price of \$21,450 to have the house built to 90% completion; (5) Pounds had the house built on one of twenty-three acres of land titled to him; (6) in November of 1989, Poole moved into the house; (7) after receiving assistance from Pounds' wife and daughter on several occasions, Poole changed all of the locks on the house; (8) Poole asked Pounds to give her a deed to the property and Pounds refused; (9) on February 27, 1991, Pounds received a letter from Poole's attorney requesting a deed to the property; (10) upon receipt of the letter, Pounds told counsel that he was not going to give Poole a deed to the property, but that Poole could live in the house and when she died, the house would belong to him; and (11) after Pounds refused counsel's request to deed the property to Poole, Poole contacted Eugene Poindexter to remove the house off Pounds' land; however, because Poole did not have a deed to the house in her name, Poindexter refused to move the house.

Additionally, there was a dispute as to whether Poole agreed to have the house built on Pounds' land. Appellants testified that the house was not constructed on Poole's deceased daughter's land because of title problems and that Poole agreed to have the house built on Pounds' land. Poole's sister, Stella Hughes, testified that Pounds told her that Poole wanted the house built on her daughter's land, but that he chose to build the house on his land so that his wife and daughter could look after Poole. The

chancellor found that Pounds violated Poole's instructions to have the house built on her daughter's land and impressed a lien upon the house and the land on which the house was built.

The standard of review of chancery courts' decisions is well-settled. "On appeal, this Court will not overturn the chancery court unless its findings were manifestly wrong." *Kennedy v. Kennedy*, 662 So. 2d 179, 183 (Miss. 1995) (citing *Daigle v. Daigle*, 626 So. 2d 140, 144 (Miss. 1993)).

Based on the evidence presented in this case, the chancellor was not manifestly wrong when he impressed a lien against Pounds' interest in the property. Poole's efforts to get title to the property, both through counsel and Poole's own actions, also support the chancellor's finding that Poole did not intend to give Pounds the house. Moreover, under the specific facts and circumstances of this case, it would be inequitable and a case of unjust enrichment to permit Appellants to maintain title to a house built with Poole's money, without returning to Poole's heir the value of such property.

For the foregoing reasons, we affirm the judgment of the chancery court.

THE JUDGMENT OF THE CHANCERY COURT OF LOWNDES COUNTY IMPRESSING AN EQUITABLE LIEN ON APPELLANTS' PROPERTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. APPELLANTS ARE TAXED WITH ALL COSTS OF THIS APPEAL.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.