

IN THE COURT OF APPEALS 04/23/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-01130 COA

ROBERT G. MORAN

APPELLANT

v.

**SANDRA G. MORAN (OWEN), WILLIAM R. MORAN AND MELISSA G. MORAN, AND
THE FEDERAL LAND BANK OF NEW ORLEANS, MORTGAGOR**

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JASON H. FLOYD, JR.

COURT FROM WHICH APPEALED: HANCOCK COUNTY CHANCERY COURT

ATTORNEY(S) FOR APPELLANT:

GAIL D. NICHOLSON

CHESTER D. NICHOLSON

ATTORNEY FOR APPELLEE:

MALCOLM F. JONES

NATURE OF THE CASE: DIVORCE/PROPERTY DEED DECREE

TRIAL COURT DISPOSITION: FINAL DIVORCE DECREE DETERMINED FEE SIMPLE
TITLE TO PROPERTY

BEFORE FRAISER, P.J., MCMILLIN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This case involves the question of whether a property settlement agreement of an irreconcilable differences divorce operated as a deed reserving only a life estate for the parties and conveying fee simple interest to the parties' children. A second question concerns whether the court properly corrected the legal description of the property to effectuate the parties' intent. We find that the chancery court did not err in its judgment and therefore affirm.

FACTS

Robert G. Moran and Sandra G. Moran were divorced in March 1987. The parties owned an unimproved forty-acre tract of real property and an adjacent improved thirty-acre tract that also included their marital home. Their irreconcilable differences divorce included a property settlement agreement in which they: (1) agreed to own their homestead property as tenants in common and (2) conveyed a vested remainder in the one-half interest of each to their two children as joint tenants, to take effect upon the Morans's deaths. Paragraph VI of the agreement described the real property as follows:

That certain parcel of land being the SW 1/4 of the NE 1/4 of Section 25, Township 5 South, Range 15 West, less and except the NW 1/4 of the SE 1/4 of the NW 1/4 of Section 25, Township 5 South, Range 15 West, situated in Hancock County, Mississippi.

This description positively recited the SW 1/4 of the NE 1/4, which is a forty-acre tract of unimproved land. It did not recite the SE 1/4 of the NW 1/4, which is an adjacent forty-acre improved tract on which the marital home and improvements exist. It did, however, also recite the ten-acre exception to the adjacent forty-acre improved tract as "less and except the NW 1/4 of the SE 1/4 of the NW 1/4." The description created an ambiguity because it referred to a second, non-described quarter-quarter section. Although the paragraph VI description did not recite the second improved tract of approximately thirty acres, the agreement directly and indirectly described the thirty-acre tract within its other paragraphs. The chancery court's judgment and its relationship to the description omission are the basis for this appeal. The court's judgment stated that the parties' property settlement agreement reserved for Robert and Sandra life estates in each parties' one-half interest. It stated that the agreement operated as a deed conveying both parties' fee simple interest, in both the unimproved forty-acre tract and the improved thirty-acre tract, to their two children as tenants in common and not as joint tenants with right of survivorship. Finally the judgment stated that the court would correct the agreement's property description, which was incorrect due to a scrivener's error, to reflect a conveyance of all seventy acres. Robert now appeals the court's decisions regarding the real property.

ANALYSIS

I. DID THE CHANCERY COURT ERR BY REFORMING THE LANGUAGE OF THE FINAL DIVORCE DECREE AND PROPERTY SETTLEMENT AGREEMENT?

Robert frames this issue in terms of whether the court erred in adding the improved thirty-acre tract to the property description within the property settlement agreement. However in his argument, he also contends that it was never his intent to transfer any of the seventy acres to his children. He argues that the court should not have reformed the language of the property settlement agreement to include all seventy acres in the land that was conveyed. He believes that he only wished to provide security against his obligation to pay child support in the event that he or Sandra died before the children reached age twenty-one, in which case the children would get the property. He believes that no mistake occurred in the writing of the agreement, that he never intended to convey his interest in any of the seventy acres, and that Sandra failed to prove his intent to convey the property to the children. Therefore, he directly argues that he never intended to transfer his fee simple title in any of the seventy acres to his children, and he indirectly infers that the court should not have added the thirty-acre tract to the property settlement agreement.

The Mississippi Supreme Court has stated that an appellate court is required to follow the substantial evidence/manifest error standard of review. *Murphy v. Murphy*, 631 So. 2d 812, 815 (Miss. 1994) (citation omitted). Therefore, this Court "will not disturb a chancellor's findings of fact when supported by substantial evidence unless an erroneous legal standard has been applied or is manifestly wrong." *Id.* (citations omitted). When substantial evidence supports the chancellor's findings, an appellate court shall not disturb those conclusions even if it would have originally found otherwise. *Id.* (citation omitted); *see also Lenoir v. Lenoir*, 611 So. 2d 200, 203 (Miss. 1992) (a chancellor's findings of fact will not be disturbed if substantial evidence supports those factual findings).

Mississippi statutory law states that a divorce granted on the ground of irreconcilable differences assumes that all matters regarding property rights have been settled within a property settlement agreement. Miss. Code Ann. § 93-5-2(3) (1972 & Supp. 1994). The statute states:

No divorce shall be granted pursuant to this subsection [divorce on grounds of irreconcilable differences] until *all* matters involving custody and maintenance of any child of that marriage and property rights between the parties raised by the pleadings have been either adjudicated by the court or agreed upon by the parties and found to be adequate and sufficient by the court and included in the judgment of divorce.

Id. (emphasis added).

On the issue of construing written instruments and contracts, the Mississippi Supreme Court has said that it will read the contract as a whole. *Brown v. Hartford Ins. Co.*, 606 So. 2d 122, 126 (Miss. 1992) (citations omitted). Such a reading gives effect to all clauses of the contract. *Id.*; *see also Glantz Contracting Co. v. General Elec. Co.*, 379 So. 2d 912, 917 (Miss. 1980) (courts must construe contracts to give effect to all provisions so that results are fair and reasonable); *Texaco, Inc. v. Kennedy*, 271 So. 2d 450, 452 (Miss. 1973) (considering a written instrument as a whole prevents interpreting the meaning of a contract from fragmentary parts only).

"Where the scrivener, or draftsman, who prepares the instrument sought to be reformed has . . . through inadvertence . . . failed to express in the instrument the intentions of the parties thereto, the

courts may grant relief by reformation." 66 Am. Jur. 2d *Reformation of Instruments* § 21 (1973).

The main object of equity should be to effectuate the intention of the parties to the instrument and that any mistake, made by the way the scrivener prepared the instrument, that would defeat their intentions should be corrected, whether the mistake is one of law or of fact. *Id.* Mississippi caselaw has approved of reformation of deeds based on scrivener's errors. *S & S Dragline Serv., Inc. v. Baker*, 400 So. 2d 930, 934 (Miss. 1981); *Sunnybrook Children's Home, Inc. v. Dahlem*, 265 So. 2d 921, 925 (Miss. 1972).

In the present case, the chancery court made a finding of fact that the misdescription was a scrivener's error. We are bound to accept this finding because substantial evidence supports it. A simple review of the property settlement agreement itself shows that both the forty-acre and thirty-acre tracts were discussed and contemplated throughout the agreement to be the subject of the interest transferred. Paragraph VI of the property settlement agreement described the unimproved forty-acre tract, less the ten-acre section of the adjacent forty-acre tract, which is in reality the Morans's adjacent improved thirty-acre tract. Moreover, the agreement used the terms "homestead," "residence," "marital domicile," and "improvements" within paragraphs VI, VII, and X, clearly referring to the improved thirty-acre tract. Finally, in paragraph XI, Robert granted a lien against his interest in the property to Sandra, as trustee for the children's benefit, to secure payment of child support. The lien portion of paragraph XI described the property as the "SW 1/4 of NE 1/4, and SE 1/4 of NW 1/4, less and except the NW 1/4 of the SE 1/4 of the NW 1/4" The property described is in reality the unimproved forty-acre tract and the improved thirty-acre tract, respectively.

Robert read the agreement and signed it. Based on the language used throughout the agreement, we believe that he understood that the document transferred a remainder interest in all seventy acres. Finally, an irreconcilable differences divorce contemplates the disposition of *all* property between the parties. Therefore, the agreement by necessity should have dealt with *all* of Robert and Sandra's property. The property settlement agreement itself was a contract between Robert and Sandra. The court was therefore correct in reading the provisions of that contract together and not as separate and fragmentary portions. The court's reformation of the property description within Paragraph VI of the property settlement agreement, to include the improved thirty-acre tract, was not manifestly wrong and was within its power to correct. Its determination that Robert intended to transfer his remainder interest in the entire property was supported by substantial evidence.

II. DID THE CHANCERY COURT ERR BY FINDING THAT THE PROPERTY SETTLEMENT AGREEMENT ACTED AS A DEED THAT CONVEYED FEE SIMPLE TITLE, AS A VESTED REMAINDER INTEREST, TO THE TWO CHILDREN AND THAT RESERVED A LIFE ESTATE IN ROBERT AND SANDRA?

Robert contends that the property settlement agreement did not operate as a deed conveying fee simple title of the property to his children and reserving a life estate for him and Sandra. He argues that the instrument he signed dissolving his marriage, and necessarily also the property settlement agreement, contained no attributes of a deed.

The Mississippi Supreme Court has stated that it will not disturb a chancellor's findings of fact if

those findings are supported by substantial evidence, even if it would have originally found otherwise. *Murphy*, 631 So. 2d at 815 (citation omitted). Therefore, it can reverse a chancellor only if those findings are based on an erroneous legal standard or are manifestly wrong. *Id.* (citations omitted).

In the present case, we believe that Robert's argument regarding the lack of deed attributes is irrelevant. First, the supreme court has stated that a court may divest title to real property in a divorce case when equitably dividing marital assets. *Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994); *Draper v. Draper*, 627 So. 2d 302, 305 (Miss. 1993). The chancery court therefore clearly has the authority to divest title to real property when equitable considerations are at stake. Second, the court made a finding of fact that paragraph VI of the property settlement agreement reserved for Robert and Sandra life estates in each party's undivided one-half interest in the property. It also found that the agreement operated as a deed conveying the fee simple remainder interest of Robert and Sandra in all seventy acres to their two children. It based these findings on the evidence and testimony presented. The record clearly shows that both Robert and Sandra signed the property settlement agreement that terminated their tenancy by the entirety in the property and began their tenancy in common. The parties further conveyed unto their two children *a vested remainder*, to take effect at each party's death, in that party's one-half undivided interest in the property. We believe the court's determination, that the agreement language operated as a deed, was supported by substantial evidence and was not manifestly wrong.

This Court takes note of the fact that the original decree vested the remainder interest in the property in the children as "joint tenants," which is normally interpreted to carry with it a right of survivorship. However, the chancellor's judgment before us on appeal states that the remainder interest is vested as "joint tenants in common, and not as joint tenants with a right of survivorship." The issue of this apparent change in the status of the remainder interest of the children was not raised on appeal. Since the only parties actually affected by that apparent change were not parties to this proceeding, we would seriously question the jurisdiction of the chancellor to interpret or alter the terms of the tenancy of the remaindermen. Without expressing an opinion as to what that form is, we are of the opinion that the form of the tenancy of the remaindermen would remain the same as that created by the original divorce decree. We simply observe that the issue of whether the original decree did or did not create survivorship rights in the children is an issue that must be resolved by them, either by mutual agreement or by appropriate litigation in which they are parties.

CONCLUSION

The court based its findings of fact on substantial evidence, and we believe these findings were not manifestly wrong. We therefore affirm the judgment of the chancery court. However, the chancery court judgment should be reformed to reflect that the parties' children possess vested remainder interests as joint tenants of the property, with a right of survivorship.

THE JUDGMENTS OF THE CHANCERY COURT OF HANCOCK COUNTY ARE AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

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

