

IN THE COURT OF APPEALS

FILED
December 12, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

CURTIS R. DETHARIDGE,)	CUMBERLAND CHANCERY
)	C. A. NO. 03A01-9507-CH-00245
)	
Plaintiff - Appellant)	
)	
)	
)	
)	
vs.)	HON. VERNON NEAL
)	CHANCELLOR
)	
)	
)	
)	
GWENDOLYN J. DETHARIDGE,)	VACATED AND REMANDED
)	
Defendant - Appellee)	

BRIAN O. BOWHAN, Morrow, Bowhan & Associates, Nashville, for the Appellant.

S. ROGER YORK, York & Wilkerson, Crossville, for Appellee.

O P I N I O N

McMurray, J.

This action was instituted by the filing of a complaint designated as a "Quia Timet" declaratory judgment action. In his

complaint, the plaintiff sought, in essence, an interpretation of a provision in a property settlement agreement dated June 16, 1977, entered into between him and his former wife, the defendant here. Specifically, he sought a court order requiring the defendant to release her interest in a tract of land in Cumberland County containing 43.65 acres, more or less, of which he claims to be a one-third owner. The defendant answered and admitted that she would not release her interest until she received what she was entitled to receive under the property settlement agreement. In addition, the defendant filed a counterclaim seeking, inter alia, a distribution of the proceeds of sale as required by the property settlement agreement.

The plaintiff alleged that he had procured a cash buyer for the property at a purchase price of \$34,600.00, and that under the terms of the property settlement agreement the defendant here was to receive one-half of the proceeds of the sale to which he (the plaintiff here) would otherwise be entitled. On the other hand, the defendant claimed that the property settlement agreement provided for the purchase of a home for her from the proceeds of the sale with the purchase price of the home being not more than \$35,000.00. She asked the court to determine if the purchase price of the tract of land was fair and equitable, and if so, that the proceeds be paid into court for distribution as required by the property settlement agreement.

The defendant filed a motion for summary judgment in which she asserted that there were no material facts in dispute between the parties. The trial court granted the motion for summary judgment and entered judgment in favor of the defendant-counter-plaintiff in the amount of \$34,600.00. It is from this action of the trial court that this appeal resulted. We remand the case to the trial court for reasons hereinafter stated.

The pertinent provision of the property settlement agreement under consideration here provides as follows:

4. CURTIS R. DETHARIDGE hereby agrees and contracts with GWENDOLYN J. DETHARIDGE that upon the sale of the 43.65 acre farm located at Pleasant Hill that one-half of the proceeds therefrom shall be used as a down payment on a home not to exceed thirty-five thousand dollars (\$35,000.00) purchase price. The remaining one-half of the proceeds from said sale shall remain the property of CURTIS R. DETHARIDGE. CURTIS R. DETHARIDGE further agrees that upon the purchase of the home for GWENDOLYN R. (sic) DETHARIDGE that he shall have the same financed and agrees to make all payments thereon until the same shall be paid in full.

The record reflects that some small parcels of land had been severed from the main tract and sold. There is some dispute as to whether or not the defendant accepted or refused to accept partial payments or whether or not partial payments have been made. Additionally, the parties purchased a house for the purchase price of \$34,500.00. Title was taken to the property in the names of Curtis R. Detharidge and Gwendolyn Detharidge. Curtis R.

Detharidge subsequently executed a quitclaim deed to Ms. Detharidge for his interest in the house.

Ms. Detharidge, in her affidavit filed in support of her motion for summary judgment, acknowledges the validity of the property settlement agreement. She states that she made the down payment on the house that the parties purchased and made all payments with the exception of two (2) which were paid by Mr. Detharidge.

It is difficult for us to see how the purchase of the house affects the property settlement agreement. Obviously, unless the parties entered into a second agreement, (which is not established by the record) the plaintiff was under no obligation to purchase a house nor make payments thereon under the literal terms of the property settlement agreement. Since the parties do not seem to be in disagreement concerning the validity of the contract (other than the appellant's argument that paragraph 4 of the agreement is so ambiguous as to render it unenforceable), we accept the property settlement agreement, for purposes of this appeal, as the agreement between the parties. Therefore, the sale of the property referred to in the property settlement agreement is clearly a condition precedent to the plaintiff's obligation to purchase a house for the defendant and to make the payments thereon.

In our view, the provisions of the property settlement agreement are not so ambiguous as to render the agreement unenforceable. It is well-settled that words in contracts expressing the parties' intentions should be given their usual, natural and ordinary meaning and neither party is to be favored in their construction. Brown v. Tennessee Auto. Ins. Co., 192 Tenn. 60, 237 S.W2d 553, 554 (1951); Ballard v. North American Life & Casualty Co., 667 S.W2d 79, 83 (Tenn. App. 1983). The cardinal rule for interpretation of contracts is to ascertain the intention of the parties and give effect to the intention consistent with legal principles. Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc., 521 S.W2d 578 (Tenn. 1975); Park Place Center Enterprises, Inc. v. Park Place Mall Associates, L.P., 836 S.W2d 113, 116 (Tenn. App. 1992); HMF Trust v. Bankers Trust Co., 827 S.W2d 296, 299 (Tenn. App. 1991) In the absence of fraud or mistake, a contract must be interpreted and enforced as written, even though it contains terms which may be thought harsh and unjust. APAC-Tennessee, Inc., v. J. M Humphries Const. Co. 732 S.W2d 601, 604, (Tenn. App. 1986); Ballard, supra; E. O. Bailey & Co. v. Union Planters Title Guar. Co., 33 Tenn. App. 439, 232 S.W2d 309, 314 (1949).

We are of the opinion that the record before us does not justify a summary judgment in favor of the defendant. We vacate the judgment of the trial court and remand the case for a trial on

the merits, to determine, among other things, if the price for which the property is to be sold is fair and reasonable and for an accounting between the parties if deemed necessary to do justice under the principles of equity. In so doing, we express no opinion on any issue in the case other than to find that the defendant is not entitled to judgment as a matter of law.

Costs are taxed to the appellee.

Don T. Murray, J.

CONCUR:

Houston M. Goddard, Presiding Judge

Herschel P. Franks, J.

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ORDER

This appeal came on to be heard upon the record from the Chancery Court of Cumberland County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was reversible error in the trial court.

We vacate the judgment of the trial court and remand the case for a trial on the merits.

Costs are taxed to the appellee.

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