J-A07030-14

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

WILLIAM P. RUNKLE,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ARTHUR G. HAHN AND LISA HAHN,	:	
	:	
Appellants	:	No. 1376 MDA 2013

Appeal from the Order entered July 3, 2013,
Court of Common Pleas, Berks County,
Civil Division at No. 10-24648

BEFORE: GANTMAN, P.J., DONOHUE and STABILE, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED APRIL 21, 2014**

Arthur G. Hahn and Lisa Hahn (collectively, "the Hahns") appeal from the July 3, 2013 order entered by the Court of Common Pleas, Berks County, granting a permanent injunction requested by William P. Runkle ("Runkle"). After careful review, we affirm.

The trial court summarized the factual and procedural histories of this case as follows:

> On April 4, 1985, [Runkle] and his former wife, Betsy Runkle, purchased real property in fee simple. The Runkles sold four parcels of the property in 1987 and kept 41.18 acres that contained the marital residence and a pool (hereinafter, Property).
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> On July 15, 2002, the Runkles agreed to lease a portion of Property to Sprint for a cell tower. The initial rent was $1,020.00 per month which was increased annually by three percent. The lease was for five years and was automatically renewed for four additional terms of five years each unless Sprint or

its successor provided the Runkles with notification of its intention not to renew. SBA Communications Corporation is the successor in interest to Sprint.

The Runkles divorced in 2006. The Property had to be sold to satisfy Mrs. Runkle's share of the marital proceeds. The prospective buyer was a developer who was planning to put in a bypass road for the development. [Runkle] did not want to sell his Property to the developer, and he wished to live on the Property. He therefore approached [the Hahns], who owned the adjacent property with an offer he thought would please everyone: [the Hahns] could buy Property for $207,500.00 which was Betsy Runkle's half of the proceeds, and he would live on Property for the rest of his life and receive the cell tower rent for the duration of his life in order to pay the expenses, including taxes associated with the Property. In return, [the Hahns] would receive the Property at approximately one-half of its value and prevent a development from disturbing their privacy. [The Hahns] accepted [Runkle's] offer and the parties entered into a handwritten agreement (Agreement) which provided that [Runkle] would sell Property to [the Hahns] and reserve a life estate for himself. Defendant Arthur Hahn drafted the Agreement, and all parties signed it. Agreement provides for [the Hahns] to purchase Betsy Runkle's share of Property for $207,500.00; [the Hahns] paid this money directly to Betsy Runkle. [The Hahns] gave [Runkle] a life estate in Property and the right to receive the cell tower rent (Rent) for the remainder of [Runkle's] life in exchange for [Runkle's] transferring all of his ownership interest in Property to [the Hahns]. [Runkle] had a duty to pay all property taxes, insurance, and utilities for Property while he resided on it. If he ceased to reside on Property, [Runkle] had to pay only the property taxes. Agreement is dated May 3, 2006, and was signed by both [the Hahns] and [Runkle]. Although Property was owned by both [Runkle] and his wife, Betsy Runkle, as tenants by the entireties,

Mrs. Runkle was not a signatory to this first agreement because she was not an interested party.

[Runkle] and [the Hahns] signed a final typewritten agreement of sale dated June 30, 2006. [Runkle] transferred his interest to Property by deed dated June 30, 2006. Paragraph 16 states *inter alia*, that 'William P. Runkle will reside in the Premises for a duration of time and terms agreed upon by William P. Runkle and Purchaser.' [Runkle] was not the scrivener of any of the agreements.

According to [Runkle], since June 2006, he has not received any Rent because [the Hahns] required the cell tower company to issue the checks to them. [The Hahns] contend in their proposed findings of fact that they began to collect the Rent in November 2006. [The Hahns] used the funds to pay for the property taxes, insurance, and utilities that were [Runkle's] obligation under Agreement. [The Hahns] also required [Runkle] to pay $3,500.00 in cash and $500.00 in labor for one-half of the cost of replacing the pool liner on Property.

[Runkle] alleged in his complaint that while residing in Property under the life estate, [the Hahns] interfered with his right to possess Property, because they occupied the pool late at night and played a radio loudly. He also alleged that [the Hahns] discharged firearms on Property. On May 2, 2011, at approximately the age of 76, [Runkle] was removed from Property and forced to reside in charitable housing for several months. [Runkle] sought injunctive relief to have the Rent returned to him and to be allowed to return to Property through the enforcement of his life estate.

FIRST PRELIMINARY INJUNCTION HEARING—(December 18, 2012)

Although [the Hahns] received notice of this hearing by court order, they did not appear. The hearing was therefore conducted in their absence. The value of

Property is over $400,000.00. [Runkle] testified that he had owed his wife, Betsy Runkle, $207,500.00 under the post nuptial agreement. Before the life estate agreement, he had been living at a charity and had wanted to return to Property, but he could not afford to buy out his wife's interest. He therefore made a deal with [the Hahns] to live on Property for the rest of his life and for [the Hahns] to pay Betsy Runkle the money owed under the post nuptial agreement in exchange for [Runkle's] transfer of Property to [the Hahns]. [Runkle] then returned to Property. [The Hahns] immediately took over the pool and began cashing the Rent checks.

[Runkle] testified that due to [the Hahns'] actions he was committed involuntarily on May 2, 2011, and removed from Property. [Runkle] was not allowed by [the Hahns] to return to Property following his release and is still barred from Property.

While committed involuntarily, [the Hahns] ultimately had the Property condemned as uninhabitable for tenancy by a lessee. The condemnation notice was dated May 3, 2011, and gave [Runkle] ten days to give a proposed plan and sixty days to fix the problems. [Runkle] was not able to act, because he had been involuntarily committed from May 2, 2011, to May 14, 2011. Since he was not allowed back on Property after [the Hahns] entered into a lease agreement with their daughter and son-in-law, he was again forced to seek charitable housing.

Based on [Runkle's] uncontroverted testimony, this court granted the preliminary injunction. [The Hahns'] attorney immediately thereafter contacted [Runkle's] attorney and an agreement was reached by the parties in which [Runkle] agreed not to enforce the injunction until a rehearing. [The Hahns] filed a motion for reconsideration. [The Hahns'] attorney stated that he had been unavailable for the hearing on the preliminary injunction because he had been participating in a trial in federal court and had

not known about the date of the hearing. Although no emergency existed due to the agreement between counsel, [the Hahns] subsequently appeared before the emergency motions judge who stayed this court's [o]rder dated December 18, 2012.

SECOND PRELIMINARY INJUNCTION HEARING—(January 3, 2013)

This court then conducted a second evidentiary hearing on January 3, 2013, to allow [the Hahns] the opportunity to present evidence in their case.

Defendant, Arthur E. Hahn, testified that in 2006 he had agreed to buy Property from [Runkle] because [Runkle] had said that he had a cell tower and would be responsible for paying taxes and the homeowners insurance. There was a second mortgage on Property. [Runkle] was originally going to secure a loan to pay it; however, he had no collateral, so the loan would have cost nineteen per cent and would have required a $2,000.00 per year insurance policy to insure the loan due to [Runkle's] age. Therefore, Mr. Hahn testified that he had drafted a second agreement of sale dated May 8, 2006, which gave him the Rent to pay the taxes, homeowners insurance, and the loan. [The Hahns], however, do not have any documentation from [Runkle] authorizing the Rent to go to them.

* * *

Mr. Hahn also testified that he had discovered damage to Property when he had entered the residence. The building inspector condemned the Property as being unfit for a tenant. The last time that Mr. Hahn had been inside the residence was approximately two years earlier when the residence had been satisfactory. Mr. Hahn went to the Magisterial District Judge (MDJ) and filed a landlord/tenant complaint to evict [Runkle] from his

> residence. The MDJ granted [the Hahns] possession on May 25, 2011. [Runkle] did not appeal the order.
>
> Mr. Hahn testified that he had spent $220,000.00 to rebuild the residence; however, he said the damage that [Runkle] caused the Property was approximately $100,000.00. The additional expenses were incurred for the cost of upgrading the home. Following the subsequent work to the Property, [the Hahns] rented the Property to their daughter and son-in-law for $1,200.00 per month. This lease agreement continues today. […]
>
> **PRELIMINARY INJUNCTION HOLDING**
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> This court issued its preliminary injunction order on January 18, 2013. This court ordered that [the Hahns] may remain in possession of the real estate and continue to lease Property and collect the Rent. [The trial court] further ordered that [the Hahns] are to pay [Runkle] $1,500.00 per month, or in the alternative, [the Hahns] may agree to allow [Runkle] to reoccupy Property. If [Runkle] returned to Property, he had to maintain the real estate in good condition. Cell tower rent was to be paid to [the Hahns] except for the months of October 2012 through December 2012. […]

Trial Court Memorandum, 7/2/13, at 1-6.[1]

The trial court conducted hearings on the permanent injunction on April 18 and May 13, 2013. The trial court accepted post-hearing submissions by both parties and held argument on June 17, 2013.

[1] On February 1, 2013, the Hahns filed a timely notice of appeal from the trial court's order granting the preliminary injunction. On November 14, 2013, this Court dismissed the appeal as moot based upon the trial court's issuance of a permanent injunction. ***See Runkle v. Hahn***, 237 MDA 2013 (Pa. Super. November 14, 2013) (unpublished memorandum).

Thereafter, the trial court granted Runkle's request for a permanent injunction and ordered the following:

> 1. [The Hahns] shall remain in possession of [the Property] and may continue to lease the said premises and collect rent from the tenants.
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> 2. [The Hahns] shall pay to [Runkle] the sum of $1,672.80 per month, payable on the first day of each month beginning on August 1, 2013, and delivered to [Runkle] in the care of his attorneys […]. Beginning on January 1 of each year these payments shall increase by two percent (2%). These payments represent the fair market rental value of Property and are owed to [Runkle] due to his life estate in Property.
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> 3. The payments due in Paragraph 2 are waived, if [the Hahns] agree to allow [Runkle] to reoccupy said premises. Upon [Runkle's] re-entry:
>
>   a. [Runkle's] attorney shall prepare a written guarantee for [Runkle's] peaceful enjoyment of his Property that [the Hahns] must sign.
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>   b. [The Hahns] are responsible for the payment of all real estate taxes past due and owing in the future.
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>   c. [Runkle] shall maintain the real estate in good condition.
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>   d. [The Hahns] may inspect the premises once per month with at least twenty-four (24) hours advance notice provided to [Runkle]. [The Hahns] shall not enter the Property for any other purpose.
>
>   e. [Runkle] shall resume his previously agreed to status of living in the said real estate until his demise.

f. [Runkle] shall receive the cell tower rent in lieu of the fair market rental value of Property.

g. [Runkle] shall pay the utilities associated with Property.

h. The swimming pool on Property cannot be used by [the Hahns] unless [Runkle] agrees to their use and [the Hahns] agree to any conditions, including times and hours, imposed by [Runkle].

4. [The Hahns] shall pay [Runkle] $25,000.00 by October 1, 2013, for the inconvenience and humiliation suffered by [Runkle] due to [the Hahns'] illegal eviction of [Runkle] from the Property and his forced residence in charitable housing. Said payment shall be delivered to the office of [Runkle's] attorney.

5. No other damages are ordered because the parties' respective claims for the other damages are equal in value.

Trial Court Order, 7/3/13.

The Hahns filed a notice of appeal to this Court on July 29, 2013. On August 5, 2013, the trial court issued an order requiring the Hahns to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) and the Hahns timely complied. On appeal, the Hahns raise one issue for our review:

> Whether the lower court erred as a matter of law when it granted a permanent injunction ordering the Hahns to pay monthly rental and damages of $25,000 for an illegal eviction because Mr. Runkle did not retain a life estate in the property which the Runkles sold to the Hahns[?]

The Hahns' Brief at 6.

When reviewing the grant of a permanent injunction, our scope of review is plenary. ***J.C. Ehrlich Co., Inc. v. Martin***, 979 A.2d 862, 864 (Pa. Super. 2009). Our standard of review is limited to determining whether the trial court committed an error of law. ***Id.*** "In order to establish a claim for a permanent injunction, the party must establish his or her clear right to relief. […] [A] court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law." ***Id.*** (citation omitted).

The Hahns contend that the trial court committed an error of law by granting the preliminary injunction because Runkle did not possess a life estate in the Property. The Hahns' Brief at 16-18. They assert that the May 3, 2006 agreement was invalid as the Runkles owned the Property as tenants by the entirety, and because Mrs. Runkle was not a signatory, the May 3 agreement "was an illegal attempt by Mr. Runkle to transfer the property without [Mrs. Runkle's] consent as she was never informed of the agreement." ***Id.*** at 17. The Hahns further contend that because the June 30, 2006 deed was silent regarding Runkle's reservation of a life estate in the Property, according to 21 P.S. § 3,[2] no life estate exists. The Hahns' Brief at 17-18.

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[2] This statute states:

> All deeds or instruments in writing for conveying or releasing land hereafter executed, granting or

A life estate is "an estate whose duration is limited to the life of the party holding it, or some other person." ***In re Paxson Trust I,*** 893 A.2d 99, 115 (Pa. Super. 2006) (citations omitted), *appeal denied*, 588 Pa. 759, 903 A.2d 538 (2006). "[T]he use of any particular phrases or words of art is not required in order to create or reserve a life estate." ***Id.*** (citation omitted).

> A life estate arises when a conveyance or will expressly limits the duration of the created estate in terms of the life or lives of one or more persons, or when the will or instrument creating the interest, viewed as a whole, manifests the intent of the transferor to create an estate measured by the life or lives of one or more persons.

Id. (citation omitted).

The Hahns are correct that the deed to the Property does not contain any language that could be construed to reserve a life estate for Runkle. It has long been held, however, that a deed must be read together with a

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> conveying lands, unless an exception or reservation be made therein, shall be construed to include all the estate, right, title, interest, property, claim, and demand whatsoever, of the grantor or grantors, in law, equity, or otherwise howsoever, of, in, and to the same, and every part thereof, together with all and singular the improvements, ways, waters, watercourses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

21 P.S. § 3.

contemporaneously executed agreement. ***Swartz v. Hafer***, 354 Pa. 320, 324, 47 A.2d 224, 227 (1946). As our Supreme Court stated in ***Swartz***, "[t]he fact that the agreement […] was contained in a separate formal instrument executed contemporaneously with the deed does not make the agreement any less important in the ascertainment of the purpose and intent of the grant." ***Id.***

The record reflects that the June 30, 2006 sales agreement accompanying the deed included the following relevant provisions:

* * *

> **2. <u>Delivery of Deed and Possession</u>**. Seller shall deliver a deed for the Premises on the date of settlement. The parties agree that Betsy A. Runkle shall vacate the Premises on June 30, 2006, and William P. Runkle shall move into an occupy the Premises on July 1, 2006 in accordance with paragraph 16 hereof.

* * *

> **16. <u>Personal Property</u>**. Seller is divorcing. William P. Runkle will reside in the Premises for a duration of time and terms agreement upon by William P. Runkle and Purchaser. […].

Answer to Complaint with New Matter, 11/13/12, at Exhibit B (June 30, 2006 Agreement).

The record further reflects that the parties entered into an agreement on May 3, 2006, which provides, in relevant part, that as consideration for Runkle agreeing to sell his share of the Property to the Hahns, the Hahns

would permit Runkle to "live on said property until his demise." Complaint, 10/25/12, at Exhibit B (May 3, 2006 Agreement). The May 3 agreement further states that Runkle would continue to receive the cell tower rent until his death, at which time the cell tower rent would be paid to the Hahns, and that Runkle would be responsible for paying the taxes, homeowners insurance and a loan associated with the Property and for the upkeep of the Property. ***Id.***

The trial court found that the June 30, 2006 agreement that was executed at the time of the deed indicates that Runkle and the Hahns entered into a separate agreement regarding Runkle's continued interest in the Property, the May 3, 2006 agreement. Trial Court Opinion, 9/13/13, at 3. The trial court further found that the May 3, 2006 agreement manifested the parties' intent to create a life estate for Runkle in the Property. ***Id.*** at 3-4; Trial Court Memorandum, 7/3/13, at 11-12.

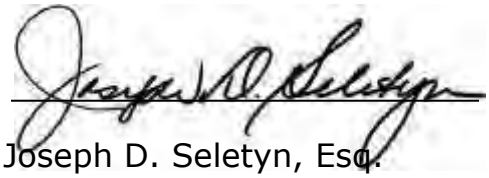
On appeal, the Hahns do not contend that the language contained in the May 3 agreement was insufficient to create a life estate. Rather, they claim only that the agreement was invalid because Mrs. Runkle did not sign it, and thus it was an invalid "agreement of sale." ***See*** the Hahns' Brief at 16-17. As noted above, however, the trial court did not view the May 3 agreement as the agreement of sale for the Property, but as a statement of the parties' agreement regarding Runkle's rights and responsibilities following the sale of the Property pursuant to the June 30 sales agreement.

Our review of the documents at issue comports with the trial court's findings. The June 30, 2006 sales agreement, which was executed along with the deed to the Property, provides for the Hahns' purchase of the Property for approximate one-half of its fair market value. The sales agreement further permits Runkle to live on the Property pursuant to a separate agreement reached between Runkle and the Hahns. The parties signed the May 3 agreement, which indicates that the Hahns will purchase the Property for one-half of its fair market value, payable directly to Betsy Runkle for her interest in the property. As consideration for Runkle's sale of his half of the property to the Hahns, he is permitted to live on the Property for the rest of his life; he is not required to pay rent; he is entitled to rental income from the cell tower on the Property; he is required to pay the property taxes, homeowners insurance, and a loan associated with the property; and he is responsible for the property's upkeep during his lifetime.

The June 30, 2006 sales agreement referenced an outside agreement between Runkle and the Hahns regarding Hahns' continued interest in the Property after the sale. The May 3, 2006 agreement reveals the parties' intention, in writing, to create a life estate for Runkle in the Property. The claim by the Hahns to the contrary is without merit. Finding no error of law, we affirm the trial court's decision.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/21/2014