

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

ESTATE OF: KATHLEEN KRIEBEL, DEC'D

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: SCOTT TRAVALINE

No. 2885 EDA 2012

Appeal from the Order Entered July 31, 2012  
In the Court of Common Pleas of Montgomery County  
Orphans' Court at No(s): 2011-2525

BEFORE: STEVENS, P.J.,\*\* LAZARUS, J., and COLVILLE, J.\*

MEMORANDUM BY LAZARUS, J.

**FILED OCTOBER 25, 2013**

Scott Travaline appeals from the order entered in the Court of Common Pleas of Montgomery County, Orphans' Court Division, denying his petition to enforce an alleged agreement to purchase real estate. Travaline sought specific performance through enforcement of an alleged written agreement of sale or, in the alternative, enforcement of an oral contract pursuant to an exception to the statute of frauds. After careful review, we affirm.

The real estate at issue was owned by Kathleen Kriebel, Deceased ("Decedent"), and located at 1052 Bridge Road, Creamery, Montgomery County ("Property"). Travaline, Decedent's nephew, operated a self-described "antiques business" out of the Property and also lived there, having moved there in February 2009 due to a pending divorce. Decedent

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\* Retired Senior Judge assigned to the Superior Court.

\*\* President Judge Stevens did not participate in the consideration or decision of this case.

had vacated the Property and moved nearby to live with her son, Charles Kriebel, in September 2006. However, Decedent left her personal property, as well as that of other family members, in the house when she left.

When Travaline moved into the Property, the taxes were delinquent and a sheriff's sale was imminent. In or about June 2009, a family meeting was held to discuss the Property, at which time Decedent, Travaline, Charlene Cassel (Decedent's daughter and executrix of Decedent's will), Charles and his wife, Agatha, were present. Travaline agreed to enter into a "lease/purchase agreement"<sup>1</sup> on the Property and pay back taxes. Thereafter, Travaline made three tax payments totaling \$13,294 for the year 2008. Travaline never made any tax payments for the years 2009 or 2010.

The "lease/purchase" agreement, drafted by Travaline, read as follows:

December 15, 2009

To whomever it may concern,

Today 12/15/09 Scott J Travaline as per agreement with executor of Kathleen Kriebel's Estate (1052 Bridge rd Creamery Pa) Charlene Kriebel Castle [sic]. I Scott J Travaline have paid the sum of 4,300 for back taxes, which will be given credit towards purchase of said property (1052 Bridge Road, Creamery Pa). Sum of Sale of Property 250,000.00. In the event the sale agreement between the Estate of Kathleen Kriebel and Scott Travaline becomes void or any act of God happens this sum of

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<sup>1</sup> We refer to this document as a "lease/purchase agreement" for the sake of convenience only. The Orphans' Court determined that the document was invalid, and Travaline has not challenged that finding on appeal.

4,300.00 will be refunded from Kathleen Kriebels [sic] estate or heirs of said estate.

Lease/Purchase Agreement, 12/15/09. Handwritten by Charlene Cassel beneath the foregoing was the following:

Added 12/15/09 CC

Any property damage incurred by Scott Travaline or any back rent not paid will be deducted per sale of house off the amount of paid taxes.

***Id.*** The document was signed by Charlene Kriebel Cassel and Scott John Travaline. Although the document refers to the "Estate of Kathleen Kriebel," Decedent was still alive at the time it was signed. Moreover, although Charlene Cassel did possess a power of attorney on behalf of Decedent, it was a "springing" power which had not yet come into effect pursuant to its own terms. No closing date was ever set.

Travaline paid no rent during the time he occupied the Property. However, he asserted that he made several improvements to it. He testified that he fixed holes in the porch, painted the exterior of the building, performed repairs on a gable, painted an interior room, installed a light fixture, and installed new electrical wiring in the bathroom. Travaline presented no receipts, time records or other documentation to substantiate the claimed improvements.

Travaline stated that his desire to renovate the property was twofold: (1) to make sure the property did not "decline into squalor any more than what it had" and (2) to potentially enable his aunt "to come back and live in her own house." N.T. Trial, 5/2/12, at 42.

Cassel testified that, even after Travaline moved into the Property, the house was still “crammed full” of the Decedent’s and other family members’ belongings. Cassel also stated that, in or about August of 2009, Travaline made a \$1000 “good faith” downpayment on the Property in anticipation of a settlement the following month; that settlement never occurred. She further testified that the parties agreed if Travaline “could come up with the money that it could be sold to him.” **Id.** at 67. She stated that Travaline “believed he was going to receive a settlement from his divorce proceedings” and “[a]t that time we would move forward on the purchase of the house.” **Id.** at 69. However, as of the date of the hearing, Travaline’s divorce was still not finalized. **Id.** at 29 (“I am still involved in a divorce proceeding[.]”).

Cassel also testified that, at a family meeting in September 2009, Travaline agreed to pay Decedent monthly rent in the amount of \$500. However, he never made any rental payments. As to Travaline’s payment of delinquent taxes on the Property, Cassel testified that “if the [purchase of the Property for] \$250,000 . . . came into fruition . . . [the tax payments] would go towards the purchase price of the house. If the house was sold to someone else, [Travaline] would receive the back taxes out of the payment that we got for the house.” **Id.** at 70.

Although Travaline characterized his work on the Property as “improvements,” Cassel testified that his work could more accurately be described as “destructive.” **Id.** at 76. Cassel stated that Travaline “ripped out the kitchen, ripped out the bathroom” and that the painting was “poorly

done.” ***Id.*** at 74-75. Moreover, Cassel testified that she told Travaline not to perform electrical work on the Property because he was not a certified electrician. She did not believe that any of Travaline’s renovations “added any value to the house whatsoever.” ***Id.*** at 76.

In March 2011, the Property was “severely damaged by fire and the parties have since been embroiled in disagreements over their entitlement to the insurance proceeds for the property and its contents.” Trial Court Opinion, 7/31/12, at 4.

Following trial, on July 31, 2012, the Honorable Stanley R. Ott issued an opinion and decree denying Travaline’s request for specific performance. The Orphans’ Court found the “lease/purchase agreement” to be invalid and unenforceable and that Travaline had not presented sufficient evidence to satisfy the exception to the statute of frauds. Travaline filed exceptions to Judge Ott’s decree, which were heard by the Orphans’ Court en banc. By order dated September 25, 2012, the exceptions were dismissed. This timely appeal follows, in which Travaline raises the following issue for our review:

Did the [Orphans’ Court] commit an error of law or abuse of discretion in denying [Travaline’s] [p]etition to force the sale of real property by finding that [Travaline] did not meet the elements of the statute of fraud’s partial performance exception, when [Travaline] presented sufficient evidence proving [he] had continuous and exclusive possession of the subject property, made vast structural and aesthetic improvements and because of [sic] the unique nature of the property was not readily compensable in money[?]

Brief of Appellant, at 4.

We begin by noting:

Our standard of review of the findings of an [O]rphans' [C]ourt is deferential. When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion.

***Estate of Devoe***, 2013 PA Super 228, \*2 (Pa. Super. 2013) (citations and quotation marks omitted).

As an appellate court we can modify an Orphans' Court decree only if the findings upon which the decree rests are unsupported by competent or adequate evidence or if there has been an error of law, an abuse of discretion or a capricious disbelief of competent evidence. The test to be applied is not whether we, the reviewing court, would have reached the same result, but whether a judicial mind, after considering the evidence as a whole, could reasonably have reached the same conclusion.

***In re Gumph***, 840 A.2d 318, 321 (Pa. Super. 2003).

The Statute of Frauds<sup>2</sup> directs that agreements for the sale of real estate are unenforceable unless they are in writing and signed by the seller. ***Hostetter v. Hoover***, 547 A.2d 1247, 1250 (Pa. Super. 1988). The purpose of the statute is to prevent perjury and fraudulent claims. ***Id.*** As a general rule, the effect of the statute is to render oral contracts for the sale of real estate unenforceable, although not invalid. ***Id.*** Therefore, such

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<sup>2</sup> 33 P.S. § 1.

contracts cannot be specifically enforced, even though they may form the basis for an action to recover monetary damages. **Id.**

However, “there is an exception to the [S]tatute of [F]rauds which holds that specific performance of an oral contract for the sale of real estate may be ordered where it appears that continuous and exclusive possession of the subject property was taken under the oral contract and improvements were made by the buyer which are not readily compensable in money.” **Id.**, citing **Zlotziver v. Zlotziver**, 49 A.2d 779, 781 (Pa. 1946). In such cases, equity will enforce the contract to prevent greater injustice. **Id.** Where this “partial performance” exception is invoked, the terms of the contract must be shown by full, complete, and satisfactory proof. **Zuk v. Zuk**, 55 A.3d 102, 108 (Pa. Super. 2012).

Here, Travaline argues that he lived on the Property continuously from 2009 to 2011, the parties agreed to a purchase price, he made payments of back taxes, and he made “substantial improvements” to the property. Thus, he claims to have satisfied the “partial performance” exception to the Statute of Frauds and is entitled to specific performance.

The Orphans’ Court disagreed, concluding that Travaline presented no specific evidence regarding the time or money he expended on his alleged improvements, and that the improvements themselves were not of such “intrinsic worth that it would be inequitable to deprive him of the fruits of his labor.” Trial Court Opinion, 7/31/12, at 7. Based upon our review of the

record, we find no abuse of discretion on the part of the Orphans' Court in concluding that Travaline failed to establish an entitlement to specific performance.

In ***Hostetter***, the sole case upon which Travaline relies, the buyers "presented specific evidence that they had expended over three thousand . . . dollars on material costs and at least 452 hours of labor in making improvements to the interior of the home alone." ***Hostetter***, 547 A.2d at 1251. The Court found that the buyers "took a once-dilapidated house and transformed it into a comfortable home in which they lived for more than eight years." ***Id.***

Conversely, here, the record contains substantial testimony by Cassel, credited by the Orphans' Court, that the "improvements" Travaline performed on the Property were substandard and actually destructive to the Property. He "ripped out" the kitchen without replacing it and performed electrical work despite not being licensed to do so. Moreover, although the parties appear to have agreed upon a purchase price, the record supports a finding that any potential future purchase by Travaline was contingent upon the finalization of his divorce, at which point he hoped to obtain funds with which to purchase the Property. The record is devoid of evidence that Travaline actually possessed the means to purchase the Property at any time. Finally, it is not clear that Travaline exercised "exclusive possession" of the Property, ***see id.***, as it remained "crammed full" of the Decedent's

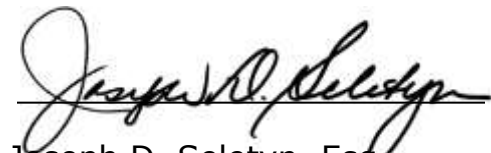


belongings. In fact, Travaline himself testified that he hoped that Decedent would, one day, return to the Property. **See** N.T. Trial, 5/2/12, at 42 (“[I]t was my hope that my aunt might decide to come back and live in *her own house.*”) (emphasis added).

In sum, Travaline failed to show by “full, complete, and satisfactory proof,” **Zuk, supra**, that he exercised (1) continuous and exclusive possession (2) under an oral contract and (3) made improvements which are not readily compensable in money.<sup>3</sup> **See Hostetter, supra**. Accordingly, we can discern no abuse of discretion or error of law on the part of the Orphans’ Court in refusing to grant a decree of specific performance.

Decree affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 10/25/2013

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<sup>3</sup> Indeed, as Judge Ott noted in his opinion, because the Property was “ravaged by fire,” currently the only way to compensate Travaline for his “improvements” would be in money.