J-A18012-14

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PETER S. GRAF,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
CARA NOLLETTI,	:	
	:	
Appellee	:	No. 2008 MDA 2013

Appeal from the Judgment entered on December 6, 2013
in the Court of Common Pleas of Lancaster County,
Civil Division, No. CI-07-11734

PETER S. GRAF,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CARA NOLLETTI,	:	
	:	
Appellant	:	No. 2068 MDA 2013

Appeal from the Judgment entered on December 6, 2013
in the Court of Common Pleas of Lancaster County,
Civil Division, No. CI-07-11734

BEFORE: LAZARUS, WECHT and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED JULY 25, 2014**

In these consolidated appeals in this partition action, Peter S. Graf ("Graf") appeals, and Cara Nolletti ("Nolletti") cross-appeals, from the Judgment directing that, upon the sale of real property owned by the parties as joint tenants with the right of survivorship, Graf shall receive $10,481.01 from the sale proceeds, and Nolletti shall receive $120,153.99. We reverse and remand with instructions.

The parties became romantically involved in 2000, and had one child together, but never married.[1] The parties initially resided in an apartment located in Lancaster County with their minor child, as well as Nolletti's two other children from a prior relationship. In 2004, when the parties became interested in buying a home, Nolletti's father, Raymond Nolletti ("Raymond"), assisted them in choosing and purchasing a home. The parties eventually decided to purchase a home located at 18 Quarry Drive, Millersville, Pennsylvania (hereinafter "the Property").

To facilitate the purchase of the Property, Raymond gave the parties $100,000, which funds Nolletti was entitled to under a trust ("the Trust") that was created by her mother and Raymond.[2] The parties applied the $100,000 as a down payment on the Property. Raymond subsequently gave Nolletti an additional $9,735.98 from the Trust, which she applied to the closing costs on the Property. We will hereinafter collectively refer to the $109,735.98 in down payment and closing costs as the "Purchase Money."

Graf's lender approved him for a $75,000 mortgage. The parties closed on the purchase of the Property in October 2004, for a final sale price of $175,000. The deed to the Property specifically conveyed it to the parties

[1] As discussed below, the parties were not engaged to be married at any time.

[2] Raymond gave the $100,000 to Graf via two separate checks, with the understanding that he and Nolletti would use this money as a down payment to be applied to the purchase of the Property. Pursuant to consultation with a mortgage broker, Raymond made the checks payable to Graf, rather than Nolletti, because Nolletti had no credit rating, and the parties planned to use Graf's credit history and bank account to secure a mortgage.

as "joint tenants with right of survivorship, not as tenants in common[.]" Complaint, 11/19/07, Exhibit A (the deed).

Both parties contributed to mortgage payments and real estate taxes concerning the Property. Specifically, the trial court found as follows regarding the parties' respective contributions:

> [Graf's] contributions to the Property during the Contribution Period total $21,467.92[,] and consist of: 1) $14,090.68 in mortgage payments, and 2) $7,377.24 for the construction of a deck and patio.[3] [Nolletti's] contributions to the [Property] total $124,662.48[,] and consist of: 1) $14,926.50 in mortgage payments, and 2) $109,735.98[,] representing the [Purchase Money]. Taxes are not an expense that may be claimed as a contribution to the [P]roperty for which credit can be claimed. ***Bednar***[, 688 A.2d at 1204].

Trial Court Opinion, 9/17/13, at 2 (unnumbered, footnote added).

Approximately 2½ years after purchasing the Property, the parties' relationship ended in April 2007. In May 2007, Graf was evicted from the Property after he had consented to a Protection From Abuse Order initiated by Nolletti.

In November 2007, Graf filed a Complaint against Nolletti, seeking partition of the Property and a 50/50 distribution of the equity. Nolletti filed an Answer and New Matter, asserting, *inter alia*, that she alone was entitled

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[3] The trial court ruled that because the construction of the deck and patio did not constitute "necessary" improvements to the Property, Graf was not entitled to credit for the money that he had paid for these improvements. ***See*** Trial Court Opinion, 9/17/13, at 3-4 (unnumbered) (citing ***Bednar v. Bednar***, 688 A.2d 1200, 1205 (Pa. Super. 1997) (where the home improvements for which the appellant sought credit were not "necessary" to preserve or safeguard the residence, holding that the appellant was not entitled to credit for these expenditures upon partition of the property)). Graf does not challenge this ruling on appeal.

to credit for the Purchase Money, and that "[a]t numerous times, Graf said to Raymond that [Graf] was not looking for any money from the [Property]." Answer and New Matter, 1/4/08, at 5. Nolletti also averred that, prior to purchasing the Property, the parties intended to be married, and they purchased it in anticipation of marriage; Graf disputed this assertion. Nolletti subsequently agreed to partition of the Property, and the trial court entered an Order directing partition on June 3, 2010. However, the matter of the parties' respective interests in the Property, and specifically, the Purchase Money, remained outstanding.

In April 2013, the case proceeded to a non-jury trial, after which the trial court issued an Opinion stating, in relevant part, as follows:

> The parties contest whether [the Purchase Money was] given by [Nolletti] to [Graf] as a gift and, if so, whether the gift was made in anticipation of marriage. The question in the case at bar is whether [Nolletti] paid the [Purchase Money] with donative intent. Having found no donative intent, the [trial c]ourt holds that [Nolletti] is entitled to credit for the [Purchase Money].
>
> [Graf] asserts that the [Purchase Money] associated with the purchase of the Property was not a gift in contemplation of marriage and each party is thus entitled to their one-half interest in the Property. [Graf] relies on ***DeLoatch v. Murphy***[, 535 A.2d 146 (Pa. Super. 1987),] in which the Superior Court found that the relative contributions of the parties to the purchase [of real property] were not relevant in determining the interests created by the deed. [***Id.*** at 149.] Therefore, [Graf] contends, despite the fact that the parties contributed unequal amounts to the purchase of the Property, the deed conveyed each party an equal interest in the Property.
>
> [Nolletti] argues that [Graf] did not meet his burden of proof that there was any gift at all to him. [Nolletti] relies on ***Moore v. Miller***[, 910 A.2d 704 (Pa. Super. 2006)], which

> determined that no donative intent may be inferred merely from the fact that a deed was put into the joint names of two unmarried people. [***Id.*** at 707.] More specifically, proof of a gift between non-related parties must be by clear, precise, direct, and convincing evidence. [Nolletti] argues that [Graf] has failed to meet this burden and is therefore not entitled to any portion of the [Purchase Money].
>
> The holding in ***Moore*** is applicable to the case at bar.[4] [Graf] and [Nolletti] are nonrelated individuals, and [Graf] must therefore prove donative intent on the part of [Nolletti] by clear, precise, direct, and convincing evidence. The [trial c]ourt finds that [Graf] has failed to do so. The only evidence before the [c]ourt on this issue is in the form of witness testimony. Furthermore, all of the testimony presented came from parties who have an interest in the outcome of this litigation. The [trial c]ourt may not infer donative intent nor base its decision solely on the self-serving testimony of the witnesses.
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> * * *
>
> Having determined each party's respective interest in the Property, the final issue before the [trial c]ourt is how the proceeds must be divided upon its sale. As of July 2010, the fair market value of the Property was $196,000. There is an outstanding balance on the Citi Financial mortgage in the amount of $65,428. Therefore, the equity in the Property to be divided between the parties is $130,572. As described above, [Nolletti] is entitled to $109,735.98, representing the [Purchase Money]. This leaves $20,836.02 to be divided equally between the parties.

Trial Court Opinion, 9/17/13, at 4-6 (unnumbered, footnote added). Accordingly, the trial court ordered that, upon the eventual sale of the Property, Graf was entitled to $10,481.01 (representing his contribution to the mortgage payments), and Nolletti was entitled to $120,153.99 (representing her contribution to the mortgage payments, plus the Purchase

[4] As discussed in detail below, we determine that the trial court misconstrued this Court's holding in ***Moore***.

Money).[5] In response to the trial court's ruling, both parties timely filed Notices of Appeal.

On appeal, Graf presents the following issues for our review:

> A. Whether the trial court erred by failing to find that the express language of the deed, which conveyed the [P]roperty to the parties as "joint tenants with the right of survivorship, not as tenants in common," granted each party an undivided interest in the [P]roperty, including the value of the [P]urchase [M]oney?
>
> B. Whether the trial court erred by crediting [Nolletti] with the full value of the [P]urchase [M]oney, rather than dividing it equally between the parties, in light of the express language of the deed and [Nolletti's] failure to produce evidence that the [P]urchase [M]oney was procured by fraud, accident, or mistake[,] or was a gift made in anticipation of marriage?

Brief for Graf at 5 (capitalization omitted).

In her cross-appeal, Nolletti presents the following issue: "Whether the trial court erred as a matter of law by finding that there could be no allocation and credit back of real estate taxes [that] Nolletti paid on [the Property?]" Brief for Nolletti at 7 (capitalization omitted).

We review the trial court's ruling and analysis for an abuse of discretion or error of law. ***Nicholson v. Johnston***, 855 A.2d 97, 100 (Pa. Super. 2004) (stating that "[t]he scope of appellate review of a decree in equity is limited. Absent an abuse of discretion or an error of law, we are bound to accept the findings of the trial court or master." (citation omitted)). Moreover, in reviewing the propriety of the trial court's legal conclusions, our

[5] Subsequently, the prothonotary entered Judgment in accordance with the trial court's September 17, 2013 Order.

standard of review is *de novo*, and our scope of review is plenary. ***In re Estate of Quick***, 905 A.2d 471, 490 (Pa. 2006).

We will simultaneously address Graf's two related issues. Graf argues that the trial court "erred by relying on parol evidence, rather than the express language of the deed, to determine the parties' respective interests in the Property." Brief for Graf at 19. Graf further contends that the trial court erred in mistakenly treating this case as one involving an *inter vivos* gift, stating as follows:

> Contrary to this Court's holding in ***Moore***[, ***supra***] …, the trial court required [] Graf to prove that [] Nolletti intended to make an *inter vivos* gift to him of the Purchase Money. In ***Moore***, this Court expressly held that, where the language of a deed is clear and unambiguous, it is *prima facie* evidence of the parties' intent[,] and parol evidence is not admissible to contradict the deed except in limited circumstances. [***Moore***, 910 A.2d] at 708.
>
> * * *
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> The correct application of ***Moore*** required the trial court to distribute the equity in the Property based upon the language of the deed unless [] Nolletti could prove she was entitled to the return of the Purchase Money.

Brief for Graf at 19, 25 (emphasis omitted).

We agree with Graf that the trial court erred in its interpretation and application of this Court's decision in ***Moore***, which is controlling in this case. The parties in ***Moore*** were not married, and owned real property as tenants in common. ***Moore***, 910 A.2d at 705. Similar to the facts in the instant case, only one party, Ms. Miller, paid the entire purchase price for the property. ***Id.*** Following Ms. Miller's death, her co-tenant, Mr. Moore,

filed a partition action seeking his one-half interest in the property. ***Id.*** The trial court stated that, since Ms. Miller had paid the entire purchase price for the property, her estate was entitled to a credit for this money, unless Mr. Moore could prove that Ms. Miller intended to make to him an *inter vivos* gift of the property. ***Id.*** at 706, 707. The trial court found that Mr. Moore had not carried his burden, as the deed granting the property to the parties as tenants in common "is the *only evidence* of an *inter vivos* gift[,]" and there was no evidence that Ms. Miller had donative intent. ***Id.*** at 707 (emphasis in original).

On appeal, this Court reversed, stating that it "t[ook] issue with the trial court's assessment of the case as one in the context of a gift *inter vivos*." ***Id.*** Rather, the Court held that the clear and unambiguous language in the deed was of primary consideration in determining Mr. Moore's ownership interest. ***Id.*** The Court observed that that

> [w]hen the language of the deed is clear and unambiguous, the intent of the grantees must be gleaned solely from its language. … In [the] absence of fraud, accident or mistake[,] parol evidence is inadmissible to vary or limit the scope of a deed's express covenants[,] and the nature and quantity of the interest conveyed must be ascertained by the instrument itself and cannot be orally shown[.]

Id. at 708 (citations, emphasis, brackets and ellipses omitted)). Since there was no allegation of fraud, accident, or mistake, the ***Moore*** Court held that the language of the deed controlled, and that the parties, as tenants in common, each held a one-half interest in the property, which included the purchase money contributed by Ms. Miller. ***Id.*** at 709.

In the instant matter, as was the case in ***Moore***, the trial court erred in requiring Graf to prove that Nolletti had donative intent and in "assess[ing] the case as one in the context of a gift *inter vivos*." ***Id.*** at 707; ***see also*** Trial Court Opinion, 9/17/13, at 4-5 (unnumbered). The deed clearly and unambiguously provides that the parties held the Property as joint tenants with the right of survivorship. ***See Nicholson***, 855 A.2d at 100 (stating that where parties own real estate as joint tenants with the right of survivorship, each joint tenant holds an undivided share of the whole estate). Accordingly, the language of the deed controls, and each party thus holds a one-half interest in the equity of the Property, absent proof of fraud, accident, or mistake (or an additional exception that we discuss below[6]). ***Moore***, 910 A.2d at 708. Here, it is undisputed that Nolletti did not plead fraud, accident or mistake.

In ***Moore***, this Court also observed that, where a deed is clear and unambiguous, any testimony or evidence pertaining to who paid the purchase money for the property is "irrelevant, immaterial and inadmissible to contradict the language of the deed." ***Id.*** (quoting ***Teacher v. Kijurina***,

[6] There is an additional exception where it is pled and proven that one party had paid the purchase money for jointly owned real property as a gift made in contemplation of marriage. ***See Nicholson***, 855 A.2d at 98, 102 (where the parties were engaged to be married when they purchased the disputed real property as joint tenants with the right of survivorship (prior to the collapse of their relationship and the initiation of a partition action), and one party had contributed all of the down payment money, holding that this money was not divisible because it constituted a conditional gift made in contemplation of marriage). Nolletti pled that she paid the Purchase Money as a gift made in contemplation of marriage.

76 A.2d 197, 200 (Pa. 1950) (where (1) the parties were unmarried but resided in the same property at issue for 18 years; (2) Kijurina had paid the entire purchase price for the property; (3) the deed clearly provided that the parties owned the property as tenants in common; and (4) upon Teacher's death, her estate sought one-half of the equity in the property; holding that parole evidence regarding who had paid the purchase money was "immaterial and inadmissible" to contradict the language of the unambiguous deed)); ***see also DeLoatch***, 535 A.2d at 149 (in a partition action where one party had paid the purchase money and all of the mortgage payments and other expenses associated with the jointly held property, stating that the "contributions of the parties … was not a relevant consideration in determining the interests created by the deed. [I]n the absence of fraud, mistake or accident, the [trial] court should have found that the wording of the deed … operated to convey a one-half interest to appellant in the land and partitioned the property accordingly."). Therefore, the trial court improperly considered evidence that Nolletti had paid the Purchase Money, as such evidence was not a relevant consideration in determining the interests created by the unambiguous language of the deed.

Additionally, we disagree with Nolletti's argument that Graf's reliance upon ***Moore*** is misplaced because, in that case, the parties held the real estate in question as tenants in common, not as joint tenants with the right of survivorship. ***See*** Brief for Nolletti at 8. This factual distinction is immaterial for our purposes, as both tenants in common and joint tenants

with the right of survivorship hold undivided, equal shares in the whole estate. ***In re Estate of Quick***, 905 A.2d at 474.

In response to Graf's claims, Nolletti argues, in the alternative, that she alone is entitled to the Purchase Money, as it constituted a gift in contemplation of marriage. Brief for Nolletti at 17 (asserting that the Purchase Money "was a gift made in anticipation of marriage (anticipated by [] Nolletti, if not by Graf)[.]"). Our review discloses that the evidence of record belies Nolletti's claim.

At trial, Nolletti stated that although she and Graf were never engaged to be married, at one point in May 2004, and sometime after the parties had purchased the Property, she had suggested to Graf the idea of getting married, and on both occasions, Graf had balked and refused to discuss the matter further. N.T., 4/1/13, at 61, 108. Additionally, the following exchange occurred upon cross-examination of Nolletti:

> Q. [Counsel for Graf]: Now, you testified about a brief conversation sometime in 2004 … [wherein] Graf supposedly said ["]what's the point of being married if you don't have a house[?"] He didn't ask you to marry him at that time, did he?
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> A. [Nolletti]: No. That's the only thing he said.
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> Q: So you knew at that time that he didn't ask you to marry him, right?
>
> A: Right.
>
> Q: And he also didn't say, if we get a house together, I promise I'll marry you. He didn't say that either, did he?
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> A: No.

> * * *
>
> Q: … [After purchasing the Property], you didn't then have a conversation with [] Graf about, okay, we've got the house, we're getting married now, right?
>
> A: No.

Id. at 119-20.

Moreover, Nolletti's father, Raymond, testified that, to his knowledge, the parties did not purchase the Property in anticipation of marriage, as the following exchange shows:

> Q. [Counsel for Nolletti]: … Was it your understanding in any way at that time[, *i.e.*, during the purchase of the Property,] that the [parties] were planning marriage?
>
> A. [Raymond]: To be honest with you, I don't really recall marriage ever [being] an issue here. I don't know [] if they discussed it. I would think they did, but –
>
> Q: You were not a part of those discussions?
>
> A: I was not a part of that discussion.
>
> Q: Nor was it understood that this hundred thousand dollar transfer was, at least in your mind, contingent upon them being married?
>
> A: No.

Id. at 75. Thus, the record shows that neither Nolletti nor Graf had any expectation that the purchase of the Property was conditioned upon marriage.

Accordingly, because the deed in the instant case unambiguously grants each party a one-half interest in the Property, and Nolletti did not supply the Purchase Money as a gift in anticipation of marriage, the

language of the deed controls, and the trial court erred in holding that Graf was not entitled to one-half of the Purchase Money. ***See Moore***, 910 A.2d at 708-09; ***DeLoatch***, 535 A.2d at 149. In so ruling, we are cognizant of Nolletti's assertion that such a holding will result in a windfall to Graf. ***See*** Brief for Nolletti at 17. While we empathize with Nolletti's plea, we are constrained to so rule, as a matter of law.

In her cross-appeal, Nolletti argues that she "should have been credited with one[-]half of the sum of $25,329.92, which was demonstrated at the bench trial to be excess of tax payments [*sic*] made by [] Nolletti [and Raymond], over those payments made by [] Graf, since October 2007[.]" Brief for Nolletti at 19. According to Nolletti, the trial court erred by ruling that real estate taxes "are not an expense that may be claimed as a contribution to the [P]roperty for which credit can be claimed." Trial Court Opinion, 9/17/13, at 2 (unnumbered); ***see also*** Brief for Nolletti at 19. Nolletti further argues that, in so ruling, the trial court erroneously relied upon this Court's decision in ***Bednar, supra***. Brief for Nolletti at 19. We disagree.

In ***Bednar***, this Court initially explained that, "[t]o entitle one to contribution [for amounts paid toward real estate taxes], the payment must be compulsory in the sense that the party paying was under legal obligation to pay." ***Bednar***, 688 A.2d at 1203 (citation omitted). The appellants claimed that the proportionate real estate tax obligations that they had paid on behalf of their fellow joint tenant constituted a legal obligation, in that the

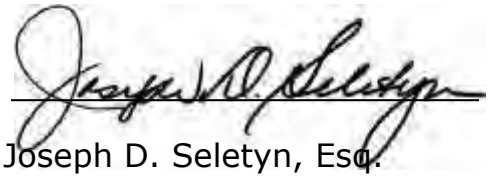
parties were required under the mortgage to pay the full amount of real estate taxes on the property. ***Id.*** at 1203-04. This Court disagreed, determining that the mortgage did not constitute a legal obligation to pay real estate taxes. ***Id.*** at 1204. The Court went on to hold that "a cotenant who assumes the tax obligations of his fellow tenant does so as a volunteer. [S]uch a volunteer is not entitled to contribution." ***Id.*** (citing 72 P.S. § 5511.12 (provision of Pennsylvania's Local Tax Collection Law providing that a joint tenant is only responsible for his or her proportionate share of real estate taxes due on a property)).

Upon review, we conclude that ***Bednar*** is on point and controlling, and the trial court properly applied it to this case. In both ***Bednar*** and the instant case, the parties claiming contribution for paying the proportionate real estate tax obligations of their fellow joint tenant were under no legal obligation to do so, and were thus not entitled to contribution for those payments. ***Bednar***, 688 A.2d at 1204.

Based upon the foregoing, and in light of the trial court's legal error, we must reverse the Judgment. We remand the case to the trial court for entry of judgment declaring that title in the Property (including the Purchase Money) is declared to have vested in Graf and Nolletti as joint tenants with the right of survivorship, and that, upon sale of the Property, the parties are each entitled to distribution of their one-half interests in the equity of the Property.

Judgment reversed; case remanded for proceedings consistent with this Memorandum; Superior Court jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/25/2014