

[J-26-2017]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

IN RE: ESTATE OF ALFRED E. PLANCE, : No. 25 WAP 2016
JR., DECEASED :
: Appeal from the Order of the Superior
: Court entered December 8, 2015, at No.
APPEAL OF: JOY PLANCE : 1379 WDA 2014, reversing the Order of
: the Court of Common Pleas of Beaver
: County entered July 22, 2014, at No.
: 04-13-00855 and remanding.
:
: ARGUED: April 4, 2017

OPINION

JUSTICE WECHT

DECIDED: DECEMBER 19, 2017

We granted allowance of appeal to determine rightful title to a parcel of real property claimed by competing grantees, each of whom invokes a real or purported conveyance from the property's owner. We granted review to consider as well the application of *res judicata* and collateral estoppel during estate administration proceedings with regard to an earlier order of the Orphans' Court determining the validity of a will.

Relying upon a presumption that valid delivery of a deed occurs on the date of its execution and acknowledgment, the Superior Court held that title to the real estate vested in the grantee of the earlier, unrecorded instrument. The Superior Court further held that, where the Orphans' Court determined that a will was valid and permitted a photocopy of that will to be probated, a participating party's subsequent claim that the will was revoked is barred by the doctrines of *res judicata* and collateral estoppel.

After review, we reverse the order of the Superior Court, and we remand for further proceedings consistent with this Opinion.

I. Background¹

Alfred E. Plance, Jr. (“Alfred”), owned a 146-acre farm, which straddles the boundary between Beaver and Washington Counties. Following the death of his first wife in 1990, Alfred became the sole owner of the farm as a surviving tenant by the entireties. Alfred and his first wife had three sons, Timothy Plance (“Timothy”), Christopher Plance (“Christopher”), and Steven Plance (“Steven”). Alfred remarried in 1994, and his new wife, Joy Plance (“Joy”), began residing with him on his farm. Joy sold her former residence. She used \$34,000.00 of the proceeds, as well as \$40,000.00 borrowed from her father, to construct a horse boarding stable on the farm. Alfred and Joy operated the stable together until 2011 or 2012, when their declining health made its continued operation impractical.

On August 20, 2004, Alfred executed two land trust agreements, creating two trusts for the purpose of holding title to the farm—one trust for the portion of the farm situated in Beaver County and the other for the portion situated in Washington County. Alfred named himself as trustee of the trusts, and designated himself and Timothy as the beneficiaries. On the same day, Alfred executed and acknowledged² two deeds (“2004 Deeds”), one corresponding to each trust, conveying the associated portions of

¹ While the underlying facts largely are undisputed, the following account derives from those found by the Orphans’ Court, to which we afford great deference in the determinations of fact, credibility, and the resolution of any conflicts in testimony. See *Adoption of S. H.*, 383 A.2d 529, 530 (Pa. 1978).

² As used herein, “acknowledgment” refers to “[a] formal declaration made in the presence of an authorized officer, such as a notary public, by someone who signs a document and confirms that the signature is authentic.” *Acknowledgment*, BLACK’S LAW DICTIONARY 27 (10th ed. 2014).

the farm from himself as the grantor (in his personal capacity) to himself as the grantee (in his capacity as trustee). The trust documents and deeds were prepared and notarized by Lawrence Bolind, Esquire. Although it was Attorney Bolind's ordinary and customary practice to record deeds for his clients after their execution, he did not record the 2004 Deeds. See Notes of Testimony ("N.T."), 5/20/2014, at 15.³ Alfred retained the 2004 Deeds, but never recorded them.

On April 26, 2006, Alfred executed two deeds ("2006 Deeds") conveying the entirety of the farm to himself and Joy as tenants by the entireties. Alfred executed these deeds as the grantor in his individual capacity, not as the trustee of the land trusts that he had established nearly two years earlier. The 2006 Deeds were recorded promptly in both Beaver and Washington Counties.

In early 2012, Alfred and Joy were approached by Range Resources-Appalachia LLC ("Range Resources"), which sought to obtain an oil, gas, and coalbed methane lease with respect to the farm. Alfred and Joy executed the lease and, in exchange, Range Resources issued a check in the amount of \$439,650.00, payable to both Alfred and Joy as tenants by the entireties and owners of the fee simple title.

In the spring of 2012, Alfred was hospitalized for an autoimmune condition. Upon his release, Timothy and Timothy's wife, Shawna, arranged for Alfred to meet their attorney, Michael Werner, Esquire, so that Alfred could review and revise his estate plan. Timothy and Shawna accompanied Alfred to his appointment with Attorney Werner. Alfred provided Attorney Werner with the signed and notarized

³ Attorney Bolind later testified that, although he recognized the documents to be his work product, he had no recollection of his relationship with Alfred and no memory of performing legal services on Alfred's behalf. See N.T., 5/20/2014, at 6-7. Attorney Bolind further explained that he had no notes or records of his meeting with Alfred because his office, computers, and files were damaged by flooding from Hurricane Ivan in September 2004. *Id.* at 8.

originals of the land trust agreements and the unrecorded 2004 Deeds, as well as the recorded 2006 Deeds. Alfred also told Attorney Werner that he was concerned about the disposition of the Range Resources check. The check had been mailed to the farm while Alfred was in the hospital, and, due to problems in his relationship with Joy, Alfred was concerned about his ability to access the funds. Attorney Werner, concluding that the 2004 Deeds had transferred title to the farm into the trusts, advised Alfred to contact Range Resources and to request a “stop payment” order on the check because the payees named on the check—Alfred and Joy as tenants by the entireties—were not the true owners of the farm. Attorney Werner further advised Alfred to record the 2004 Deeds, but cautioned that doing so “would open up a very large can of worms from which it would be very difficult to turn back.” N.T., 5/19/2014, at 42. Despite Attorney Werner’s advice, Alfred never recorded the 2004 Deeds.

Based upon his discussion with Alfred, Attorney Werner prepared a new will and other estate planning documents for Alfred. Attorney Werner met with Alfred, again accompanied by Shawna, to execute these documents on May 24, 2012. Alfred’s new will included \$1,000.00 bequests to each of his sons and gave the residue to Timothy, or to Christopher in the event that Timothy predeceased Christopher. Although the will acknowledged Joy as Alfred’s wife, it made no provision for Joy. Alfred named Timothy as his executor. After Alfred executed the will, he gave the original to Shawna. Shawna placed the will, along with other documents from the earlier meeting with Attorney Werner, into a plastic file box, which she kept in her home until early August 2012.

After the execution of Alfred’s estate planning documents, Attorney Werner received several telephone calls from Alfred and Shawna, giving him conflicting instructions with regard to the Range Resources check and the 2004 Deeds. Shawna

called Attorney Werner in late June 2012 and told him not to record the 2004 Deeds and not to request a stop payment order on the check. Six days later, Shawna called again and instructed Attorney Werner to proceed with the stop payment order. Alfred left Attorney Werner two messages, first asking him to contact Range Resources and then instructing him not to contact Range Resources. Finally, on July 9, 2012, Attorney Werner called Alfred, and Alfred told him not to proceed with either the stop payment order or the recordation of the 2004 Deeds. Alfred requested that Attorney Werner return all of the documents in his possession, both originals and copies. That same day, Attorney Werner complied with Alfred's request, mailed all of the documents in his possession to Alfred, and took no further action with regard to the Range Resources check or the 2004 Deeds.

According to Timothy, Alfred and Shawna had a "falling out" in early August 2012. N.T., 5/19/2014, at 106-07. At that time, Alfred asked Shawna for all of the documents in her possession, and she provided him with the plastic box containing his will and other estate planning documents. Joy later explained that, one day in August or September 2012, Alfred entered their residence carrying a plastic box. He told Joy that he had a conflict with Timothy and Shawna, and that he would not communicate with them in the future. Joy did not know what the plastic box contained, but she observed Alfred taking the box outside to a trash burner and burning its contents. Although Shawna and Attorney Werner retained copies of Alfred's will, none of Alfred's original documents ever were discovered.

Alfred died in March 2013. Unable to locate Alfred's original will, which was last seen in the plastic box, Timothy filed a petition to probate a photocopy of the will. Joy did not file a response, but she retained counsel, who appeared before the Orphans'

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