

DISTRICT OF COLUMBIA COURT OF APPEALS

Willa V. Ford v. Frederick L. Ford, et al.; Todd & Sheppard Partners
LLC, Intervenor

98 A.3d 1008 (D.C. 2014) · No. 13-CV-1182 · Decided September 4, 2014

SUMMARY

The District of Columbia Court of Appeals affirmed an order granting partition of a jointly owned property but reversed the distribution of sale proceeds. The court held that the evidence was insufficient to establish that all five siblings owned the property because a tax form and will did not establish title in the manner a deed would. The case was remanded for a redetermination of ownership and distribution, and the court upheld the trial court's extension of time for service.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Nebeker, Senior Judge; Beckwith, Associate Judge; Easterly, Associate Judge
JURISDICTION	District of Columbia
DECIDED	September 4, 2014
DOCKET	13-CV-1182
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Willa V. Ford appealed a Superior Court order granting a partition sale of real property and directing equal distribution of the proceeds among five siblings. She challenged both the partition order and the determination that all five siblings owned the property, and also argued that the action should have been dismissed for inadequate service of process.
STANDARD OF REVIEW	The court reviewed whether the record contained sufficient evidence to support the trial court's determination of ownership and reviewed the service-of-process ruling under the applicable Superior Court rules.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Willa V. Ford v. Frederick L. Ford, Robert A. Ford, Ernest B. Ford

TOPICS

partition

title disputes

default judgment

service of process

appellate procedure

PRACTICE AREAS

real estate

property law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly ordered partition when Willa Ford was not the sole owner of the property.
2. Whether the record sufficiently established that all five siblings owned the property and were entitled to equal shares of the partition-sale proceeds.
3. Whether the action should have been dismissed under Superior Court Rule 4(m) because service was not proved within 60 days of filing the complaint.

HOLDINGS

1. The trial court did not err in ordering partition because Willa Ford conceded that Frederick Ford was also named on the deed, establishing that she was not the sole owner of the property.
2. The evidence was insufficient to establish that all five siblings owned the property; the order distributing the sale proceeds equally among them was reversed and remanded for a redetermination of ownership.
3. Dismissal was not required because the trial court properly extended the Rule 4(m) period for service through its April 19 and May 25 orders.

KEY QUOTATIONS

“The trial court’s finding that all five siblings owned the property, however, was not supported by sufficient evidence in the record.”

“But the tax form is merely a tax return and, unlike a deed, it does not operate to grant or transfer title to land.”

“Although failure to prove service within 60 days typically results in automatic dismissal of the case under Rule 4 (m), the trial court “shall” extend the 60-day time period if warranted by the circumstances”

FACTUAL BACKGROUND

The dispute concerned property located at 1801 Massachusetts Avenue, Southeast. A 2002 deed showed that the mother added Frederick Ford to the deed to establish joint ownership before her death, and a 2007 deed showed that Frederick later added Willa Ford, but no other sibling, as a joint owner. The trial court nevertheless relied on a 2007 property-tax form and the mother's 1998 will to conclude that all five siblings owned the property and were entitled to equal shares of the sale proceeds.

PROCEDURAL HISTORY

The plaintiffs filed a partition complaint in the Superior Court of the District of Columbia. After service issues were addressed and the court extended the time for service, the court entered default against Willa Ford when she failed to respond timely, held an ex parte proof hearing, ordered a partition sale, and directed that the proceeds be distributed equally among the five siblings. The Court of Appeals affirmed the partition order but reversed the distribution order and remanded for a redetermination of ownership.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a redetermination of who owns the property and, consequently, how the partition-sale proceeds should be distributed. The partition-sale order itself remains affirmed.

CASES CITED

- Arthur v. District of Columbia, 857 A.2d 473, 487 (D.C. 2004)
- Carter v. Carter, 516 A.2d 917, 921 (D.C. 1986)
- Gallimore v. Washington, 666 A.2d 1200, 1203-04 (D.C. 1995)

OPINION

NEBEKER, J.

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press. DISTRICT OF COLUMBIA COURT OF APPEALS No. 13-CV-1182 WILLA V. FORD, APPELLANT, v. FREDERICK L. FORD, et al., APPELLEES, & TODD & SHEPPARD PARTNERS LLC, INTERVENOR.

Appeal from the Superior Court of the District of Columbia (CAR-1374-12) (Hon. Craig Iscoe, Trial Judge) (Submitted June 12, 2014 Decided September 4, 2014) James M. Loots was on the brief for appellant. Darryl F. White was on the brief for appellees. Carrie Frank was on the brief for intervenor.

Before BECKWITH and EASTERLY, Associate Judges, and NEBEKER, Senior Judge. NEBEKER, Senior Judge: Appellant Willa V. Ford challenges the trial court’s order of a partition sale for the property located at 1801 Massachusetts Avenue, 2 Southeast, with the proceeds to be distributed evenly among Willa Ford and her four siblings, who include the three appellees.¹ On appeal, Willa Ford argues that the trial court erred in granting partition and in awarding appellees proceeds from the sale because the evidence was insufficient to demonstrate that all of the appellees were owners of the property.

We affirm the order of a partition sale, but reverse the order of distribution and remand for a redetermination of who owns the property. The trial court issued a default judgment against Willa Ford that was docketed on September 21, 2012, because she failed to respond to the complaint in the time specified. She argued for the first time at an ex parte proof hearing held on October 19, 2012, that partition should not be granted.

At the hearing, however, Willa Ford also conceded that her brother's name, Frederick Ford, was on the deed to the property in addition to her name. Accordingly, because Willa Ford was not the sole owner of the property, the court did not err in ordering partition.² See 1 The appellees here are Frederick L. Ford, Robert A. Ford, and Ernest B. Ford.

The trial court also awarded sale proceeds to their brother, Harold Ford, after determining that all five siblings owned the property, even though Harold was not named as a plaintiff. ² As we have previously noted, “the right to partition, while normally an integral part of the cotenancy form of ownership, is like most property rights subject to possible limitation by voluntary act of the parties or in its initial (continued...) ³ Arthur v. District of Columbia, 857 A.2d 473, 487 (D.C.

2004) (“[A] cotenant enjoys a unilateral right of partition.”). The trial court's finding that all five siblings owned the property, however, was not supported by sufficient evidence in the record. In determining ownership, the trial judge relied upon two documents: (1) a 2007 “Real Property Recordation and Transfer Tax Form FP 7/C,” which listed all siblings except for Robert Ford as “grantees” of the property, and (2) their mother's 1998 will, in which she indicated that she wished to leave a life estate in the property to Willa Ford, Ernest Ford, and Harold Ford, with the remainder to all five children.

But the tax form is merely a tax return and, unlike a deed, it does not operate to grant or transfer title to land. Moreover, the 2002 deed to the property, which plaintiffs had attached to their complaint, indicates that the mother added Frederick Ford to the deed to establish a joint ownership before she died.

Thus, Willa Ford argues on appeal that upon the mother's death in 2004, Frederick Ford became the surviving joint tenant and sole owner of the property. Therefore, the property was no longer subject to the mother's will and could not be inherited by the other siblings. See Gallimore v. Washington, 666 A.2d 1200, 1203-04 (D.C. 1995) (“[U]pon the death of one of (...continued) creation.”) Arthur, 857 A.2d at 487 (quoting Carter v. Carter, 516 A.2d 917, 921 (D.C.

1986)). But we see no such limitation in this case. ⁴ two joint tenants, there is no transfer of the decedent's future interest to the survivor; rather, the future interest of the deceased ceases to exist, the threat of severance by the other joint tenant is eliminated, and the present interest of the surviving joint tenant in the whole property becomes exclusive.” (citation omitted)).

Willa Ford also includes in the record on appeal the probate docket for her mother's will, to support the argument that her siblings did not inherit the property because it was not part of the probate proceedings. The record shows that Frederick Ford then added Willa Ford – but no one else – to the deed as a joint owner in 2007.

Although Willa Ford did not present this line of argument to the trial court, the 2002 and 2007 deeds were part of the record, and because the mother added Frederick Ford's name to the deed, the tax form and will which the trial judge relied upon are insufficient to establish ownership.

Accordingly, we reverse the order of distribution and remand for redetermination of the ownership of the property.^{3 3} On appeal, Willa Ford also asserts that the trial court erred in failing to dismiss the case under Superior Court Rule 4 (m) for failure to prove service within 60 days of filing the complaint. Plaintiffs filed their complaint on February 14, 2012, and on March 6, 2012, filed an affidavit stating that the summons had been mailed to Willa Ford.

The signature on the return receipt, however, had been crossed out and the word "REFUSED" had been written on the receipt. On April (continued...) ⁵ The trial court's order is therefore Affirmed in part and reversed in part. (...continued) 19, 2012, the trial court denied default against Willa Ford pursuant to Rule 55 (a), and directed the plaintiffs to "[f]ile a motion for approval of service" by May 24, 2012.

Plaintiffs' then-counsel later filed a motion to withdraw as counsel on May 2, 2012, following which the trial judge ordered a hearing on the motion to be held on May 25, 2012. At the hearing, the trial judge noted that the summons had not been properly served and granted the plaintiffs 30 additional days to effect service. Plaintiffs then filed an affidavit of service on June 5, 2012, which stated that Willa Ford had been served on June 3, 2012.

Although failure to prove service within 60 days typically results in automatic dismissal of the case under Rule 4 (m), the trial court "shall" extend the 60-day time period if warranted by the circumstances, and may also vacate dismissal within 14 days upon a showing of good cause under Rule 41 (b).

Accordingly, the trial judge through its April 19 and May 25 orders properly extended the time period for plaintiffs to effect and prove service.