

SUPREME COURT OF ALABAMA

Hart v. Pugh

878 So. 2d 1150 (Ala. 2003) · Decided September 26, 2003

SUMMARY

Kay Allen Hart appealed a summary judgment favoring Verlon J. Pugh in her action alleging that the transfer of property was fraudulent under the Alabama Uniform Fraudulent Transfer Act. The Alabama Supreme Court held that Hart had not presented evidence that her former husband, Donald Hart, directed or orchestrated the transfer made by his mother under a power of attorney. Relying on *Folmar & Associates, LLP v. Holberg*, the court affirmed the judgment because the Act applied only to transfers made by the debtor and Hart’s arguments did not establish that this was such a transfer.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Harwood; Houston; See; Brown; Stuart
JURISDICTION	Alabama
DECIDED	September 26, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment entered for Verlon J. Pugh in an action alleging fraudulent transfer of property and conspiracy to defraud.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court applies the same standard as the trial court, viewing the evidence in the light most favorable to the nonmovant and resolving reasonable doubts against the movant.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Kay Allen Hart v. Verlon J. Pugh

TOPICS

- summary judgment
- fraudulent transfer
- divorce
- real estate
- civil procedure

PRACTICE AREAS

- family law
- real estate
- remedies
- civil procedure

QUESTIONS PRESENTED

1. Whether the Alabama Uniform Fraudulent Transfers Act applies to a transfer made by a debtor's attorney in fact or other third-party transferor.
2. Whether the evidence created a genuine issue of material fact that Donald Hart directed or orchestrated the transfer of the Bear Point property to Pugh.
3. Whether summary judgment for Pugh was proper despite Hart's contention that the facts required further discovery and showed fraudulent intent.

HOLDINGS

1. The Act's fraudulent-transfer provisions apply to a transfer made by the debtor and, under *Folmar & Associates, LLP v. Holberg*, do not provide a claim based solely on a transfer by a third-party transferor. Because Hart failed to show that Donald Hart directed or orchestrated the conveyance made by Brown under the power of attorney, the transfer could not be treated on this record as Donald's transfer.
2. Summary judgment for Pugh was proper because Hart presented no evidence creating a genuine issue of material fact that Donald directed or orchestrated the transfer.

KEY QUOTATIONS

“Because Ala.Code 1975, § 8-9A-4, upon which Kay relies, applies only to the intent of the debtor, and because we have determined that there is no evidence in the record indicating that Donald, the debtor, directed or orchestrated the transfer of the Bear Point property to Pugh, which is Kay’s central contention, we need not address the remaining arguments Kay presents regarding the evidence presented by Pugh in his motion for a summary judgment.” (878 So. 2d at 1157)

FACTUAL BACKGROUND

After their 1997 divorce, Donald Hart was required to make child-support and mortgage payments and to convey specified real-property interests to Kay Hart. Donald later sold the Fish River property without Kay's consent and failed to make the required payments, prompting Kay to seek a contempt judgment. Two days after Donald executed a power of attorney in favor of his mother, Johnnie Ruth Brown, Brown conveyed the Bear Point property, which she and Donald owned jointly, to Verlon Pugh while reserving a life estate for herself; the record did not establish that Donald directed or orchestrated that conveyance.

PROCEDURAL HISTORY

Kay Allen Hart sued Donald A. Hart, Johnnie Ruth Brown, and Verlon J. Pugh under the Alabama Uniform Fraudulent Transfer Act and for conspiracy to defraud. Brown and Pugh moved separately for summary judgment, and the trial court granted both motions. Hart did not challenge the judgment for Brown and appealed only the judgment for Pugh; Donald died during the pendency of the action.

DISPOSITION

affirmed

CASES CITED

- Folmar & Associates, LLP v. Holberg, 776 So. 2d 112, 118 (Ala. 2000)
- Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)
- Wright v. Wright, 654 So. 2d 542, 543 (Ala. 1995)
- Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-798 (Ala. 1989)
- West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)
- Wilma Corp. v. Fleming Foods of Alabama, Inc., 613 So. 2d 359 (Ala. 1993)
- Hanners v. Balfour Guthrie, Inc., 564 So. 2d 412, 413 (Ala. 1990)
- Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997)
- Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997)

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