

SUPREME COURT OF GEORGIA

Whittemore v. Whittemore

275 Ga. 536 (2002) · Decided September 30, 2002

SUMMARY

The Georgia Supreme Court affirmed partial summary judgment granting Glenda Whittemore superior title and possession of disputed property and the remaining insurance proceeds. The court held that although Georgia equity may enforce a parol gift of land when possession and valuable improvements satisfy statutory requirements, the record showed only maintenance and upkeep contributions by Steven, not substantial and permanent improvements made in reliance on the gift.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	September 30, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Steven appealed the superior court's grant of Glenda's motion for partial summary judgment on her ejectment claim and entitlement to the insurance proceeds.
STANDARD OF REVIEW	Whether the record established Glenda's superior title as a matter of law for purposes of partial summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Steven Whittemore v. Glenda Whittemore

TOPICS

- ejectment
- specific performance remedy
- summary judgment
- real estate
- equitable relief

PRACTICE AREAS

- real estate
- equitable remedies
- civil procedure

QUESTIONS PRESENTED

1. Whether Steven acquired an enforceable ownership interest in the property through Mann's alleged parol gift.
2. Whether Steven's contributions to maintenance and upkeep constituted valuable improvements sufficient to enforce the alleged parol gift under Georgia's equitable exception to the Statute of Frauds.
3. Whether the superior court properly granted Glenda partial summary judgment on ejectment and the insurance proceeds.

HOLDINGS

1. A parol gift of land is not enforceable absent valuable improvements made in reliance on the gift; the statutory equitable exception requires an oral promise, meritorious consideration, possession, and valuable improvements.
2. Steven's contributions to maintenance and upkeep did not establish the substantial and permanent improvements required to enforce the alleged parol gift.
3. The superior court properly determined that Glenda had superior title as a matter of law and properly granted partial summary judgment on ejectment and the insurance proceeds.

KEY QUOTATIONS

“An equitable exception to the Statute of Frauds, OCGA § 13-5-30 (4), is contained in OCGA § 23-2-132 which provides that equity will decree the specific performance of a parol agreement for land if possession of lands has been given under such an agreement, upon a meritorious consideration, and valuable improvements have been made based on the promise to convey.” (275 Ga. at 537)

“Under this codified equitable principle, the party seeking specific performance may obtain relief by showing an oral promise; meritorious consideration, possession, and valuable improvements.” (275 Ga. at 537)

“Although the record demonstrates that Steven contributed to the maintenance and upkeep of the property, it does not show that Steven made substantial and permanent improvements upon the faith of Mann’s gift.” (275 Ga. at 538)

FACTUAL BACKGROUND

Bobbie Jean Mann purchased and built the home and told her son Ralph, daughter-in-law Glenda, and grandson Steven that she was gifting the property to them, with Steven receiving a one-third interest. Steven was continuously told he owned that interest and contributed approximately \$50 per week toward maintenance, utilities, and insurance after age sixteen. Mann later conveyed the property by quitclaim deed to Ralph and Glenda; in 1999, all three signed a deed to secure debt. After Ralph conveyed his interest to Glenda following his divorce from Glenda, Glenda sued Steven for possession, and the house later burned, resulting in insurance proceeds being deposited into the court registry.

PROCEDURAL HISTORY

Glenda brought a dispossessory action against Steven. Because Steven asserted an ownership interest, the matter was transferred to superior court, where Glenda added an ejectment claim. After the property was destroyed by

fire and the remaining insurance proceeds were placed in the court registry, the superior court granted Glenda partial summary judgment on ejectment and the insurance proceeds, reserving damages and mesne profits. Steven appealed.

DISPOSITION

affirmed

CASES CITED

- Sharp v. Sumner, 272 Ga. 338, 339 (528 S.E.2d 791) (2000)
- Whitmire v. Watkins, 245 Ga. 713 (267 S.E.2d 6) (1980)
- Coleman v. Coleman, 265 Ga. 568, 569 (1) (459 S.E.2d 166) (1995)
- Smith v. Lanier, 199 Ga. 255, 264 (34 S.E.2d 91) (1945)
- Sharpton v. Givens, 209 Ga. 868 (1) (76 S.E.2d 806) (1953)
- Davis v. Newton, 215 Ga. 58, 60 (4) (108 S.E.2d 809) (1959)