

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
THIRD DEPARTMENT

Ferry v. Ferry

34 A.D.3d 908, 823 N.Y.S.2d 569 (N.Y. App. Div. 2006) · Decided November 2, 2006

SUMMARY

The New York Appellate Division, Third Department, affirmed orders refusing to vacate an earlier order compelling the conveyance of real property and voiding a later mineral rights deed. The court held that the plaintiff’s medical proof was insufficient to establish that an alleged period of disability justified reconsideration or vacatur of the prior order.

CASE DETAILS

|                       |                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Third Department                                                                                                                |
| WRITING FOR THE COURT | Carpinello, J.; Mercure, J.P.; Crew III, J.; Rose, J.; Kane, J.                                                                                                                             |
| JURISDICTION          | New York                                                                                                                                                                                    |
| DECIDED               | November 2, 2006                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Plaintiff appealed from orders of the Franklin County Supreme Court that voided a mineral rights deed and denied her motion to vacate an earlier order directing the sale of real property. |
| STANDARD OF REVIEW    | Abuse of discretion for the denial of relief from the prior order under CPLR 5015.                                                                                                          |
| PRECEDENTIAL VALUE    | Published appellate opinion                                                                                                                                                                 |
| PARTIES               | Helen Ferry v. Willis Coleman, Judith Coleman                                                                                                                                               |

TOPICS

- motion for reconsideration
- real estate
- minerals
- appellate procedure
- civil procedure

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Real property
- Mineral rights

QUESTIONS PRESENTED

1. Whether Supreme Court abused its discretion by refusing to vacate or reconsider the prior order compelling conveyance of the real property.
2. Whether plaintiff's medical evidence established a sufficient basis for relief under CPLR 5015.
3. Whether the mineral rights deed executed after the prior order and its affirmance was properly voided.

#### **HOLDINGS**

1. Supreme Court did not abuse its discretion in refusing to vacate or reconsider the prior order.
2. Plaintiff failed to establish a sufficient factual or medical basis for relief based on her alleged disability.
3. The order voiding the mineral rights deed was affirmed.

#### **KEY QUOTATIONS**

*“Simply stated, plaintiffs medical proof pertaining to her alleged “veil of disability” and the lifting of same was patently insufficient to support the relief requested.” (34 A.D.3d at 909)*

*“Glaringly absent from this affidavit is any opinion relating to plaintiffs ability to make informed decisions about her own financial and legal affairs either at the beginning of or during the course of this period of treatment.” (34 A.D.3d at 909)*

#### **FACTUAL BACKGROUND**

The Appellate Division had previously affirmed an order compelling plaintiff to convey a parcel of real property to Willis and Judith Coleman. Six days after that affirmance, plaintiff, then 97 years old, executed a mineral rights deed for the same premises in favor of two of her children. Plaintiff later sought reconsideration and vacatur, asserting that she had previously been overmedicated with psychotropic drugs at an adult home and was incapable of representing her interests. The only admissible medical evidence was a conclusory one-page physician affidavit that did not address her ability to make informed financial or legal decisions during the relevant period.

#### **PROCEDURAL HISTORY**

Supreme Court had previously ordered plaintiff to convey real property to Willis and Judith Coleman, and the Appellate Division affirmed that order. Shortly thereafter, plaintiff executed a mineral rights deed concerning the same premises to two of her children. Supreme Court declined to reconsider or vacate the earlier order, voided the mineral rights deed, and denied a subsequent motion to vacate. The Appellate Division affirmed both orders.

#### **DISPOSITION**

affirmed

#### **CASES CITED**

- *Ferry v. Ferry*, 13 A.D.3d 765 (N.Y. App. Div. 2004)
- *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 68 (2003)

- Matter of Twin Towers Assoc., Ltd. Partnership of Albany v. Board of Assessors of City of Albany, 261 A.D.2d 705, 706 (N.Y. App. Div. 1999)

## OPINION

CARPINELLO, J.

Carpinello, J. Appeals (1) from an order of the Supreme Court (Demarest, J.), entered July 27, 2005 in Franklin County, which, inter alia, voided a mineral rights deed granted by plaintiff, and (2) from an order of said court, entered October 19, 2005 in Franklin County, which, inter alia, denied plaintiffs motion to vacate an earlier order directing the sale of certain real property.

In December 2004, this Court affirmed an order of Supreme Court which compelled the conveyance of a parcel of real property from plaintiff to defendants Willis Coleman and Judith Coleman (13 AD3d 765 [2004]).<sup>1</sup> Six days later, plaintiff, now 97 years old, executed a mineral rights deed to the same premises in favor of two of her children, Hamilton A. Ferry and Margo Clark.

Not surprisingly, the Colemans objected to this conveyance as an inappropriate attempt to circumvent Supreme Court's order and this Court's affirmance of same. In January 2005, at about the same time that the Colemans applied to Supreme Court for an order vacating the mineral rights deed, plaintiff petitioned the court "to reopen its deliberations" which had resulted in the 2003 order compelling the sale.

The gist of plaintiffs application for reconsideration was her claim that, at the time of the earlier proceedings, she was a resident of an adult home where she was overmedicated with psychotropic drugs and thus incapable of properly representing her own interests. This "veil of disability" was lifted, her argument continued, after she left this facility and was weaned off \*909the drugs.

Supreme Court found that plaintiff had failed to establish a sufficient basis for reconsideration of its prior decision and voided the mineral rights deed. It also denied a subsequent application to vacate the 2003 order.

On this appeal from both orders, we now affirm. Even if we were to adopt plaintiffs arguments that she was in default<sup>2</sup> and that her applications to "reconsider" and vacate should be governed by CPLR 5015, we find that Supreme Court did not abuse its discretion in declining to vacate the earlier order (see *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003]).

Simply stated, plaintiffs medical proof pertaining to her alleged "veil of disability" and the lifting of same was patently insufficient to support the relief requested. In a record of nearly 3,000 pages, the only evidence in admissible form from a physician is a one-page affidavit which states in conclusory form that plaintiffs "veil of disability," a condition therein characterized as the medical equivalent of alcoholism, was lifted in May 2005.<sup>3</sup> Glaringly absent from this affidavit is any

opinion relating to plaintiffs ability to make informed decisions about her own financial and legal affairs either at the beginning of or during the course of this period of treatment.

Accordingly, we cannot say that Supreme Court's refusal to revisit its prior decision lacked record support (see *Matter of Twin Towers Assoc., Ltd. Partnership of Albany v Board of Assessors of City of Albany*, 261 AD2d 705, 706 [1999]). Plaintiff's remaining contentions have been reviewed and rejected as without merit. *Mercure, J.P, Crew III, Rose and Kane, JJ., concur.*

Ordered that the orders are affirmed, with one bill of costs.. By order entered October 19, 2005, Supreme Court determined that certain counterclaims interposed by then defendant Helen Ferry should be continued and treated as a complaint.

Accordingly, the court changed the caption of the action as now indicated.. Supreme Court had appointed a guardian ad litem for plaintiff in 2002.. Notably, plaintiff continues to argue on appeal that her alleged "veil of disability" continued through May 2005 while at the same time implicitly defending the execution of the mineral rights deed during the very period of her purported disability.