

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)

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