

COURT OF CIVIL APPEALS OF TEXAS, WACO

Moody v. Ireland

456 S.W.2d 494 (Tex. Civ. App.—Waco 1970) · No. No. 4895 · Decided June 25, 1970

SUMMARY

The Texas Court of Civil Appeals affirmed the denial of a partition action involving property conveyed to two sisters. The court held that the plaintiff had made an enforceable parol gift of her interest to her sister because the donee possessed the property, made valuable improvements with the plaintiff's knowledge, and assumed the property's expenses in reliance on the gift. The court concluded that title was vested in the defendant and that the plaintiff had no remaining interest.

CASE DETAILS

COURT	Court of Civil Appeals of Texas, Waco
WRITING FOR THE COURT	Wilson
JURISDICTION	Texas
DECIDED	June 25, 1970
DOCKET	No. 4895
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a nonjury judgment denying partition of real property and finding that her interest had been transferred to her sister by an enforceable parol gift.
STANDARD OF REVIEW	The court reviewed the challenged findings for evidentiary support, including the appellant's no-evidence complaints, and concluded that the evidence sustained the material findings.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Margarett Johnson Moody et vir v. Ruby J. Daily Ireland et vir

TOPICS

- partition
- real estate
- equitable relief
- trusts

PRACTICE AREAS

- Real property
- Equity and remedies

QUESTIONS PRESENTED

1. Whether the evidence supported the trial court's findings that plaintiff made a parol gift of her interest in the real property to defendant and that defendant made valuable improvements with plaintiff's knowledge or consent.
2. Whether plaintiff was entitled to partition after the trial court determined that the parol gift was enforceable in equity and that title was vested in defendant.

HOLDINGS

1. A parol gift of realty is enforceable in equity when there is a present gift, possession under the gift with the donor's consent, and permanent and valuable improvements made by the donee with the donor's knowledge or consent, or when equivalent circumstances make nonenforcement fraudulent. Those requirements were satisfied because plaintiff relinquished her interest, defendant took exclusive possession, and defendant made substantial improvements and expenditures with plaintiff's knowledge.
2. Plaintiff was not entitled to partition because the enforceable parol gift divested her of any interest in the property and title was vested in defendant.

KEY QUOTATIONS

"A parol gift of realty is enforceable in equity if there is established (1) a gift in praesenti, (2) possession under the gift by the donee with donor's consent, and (3) permanent and valuable improvements made on the property by donee with donor's knowledge or consent; or, without such improvements, the existence of such facts as would make it a fraud upon the donee not to enforce the gift." (456 S.W.2d at 495)

"In our opinion a parol gift enforceable in equity was established." (456 S.W.2d at 496)

FACTUAL BACKGROUND

The parties were sisters who acquired a residence in 1954 after their uncle paid the purchase price in exchange for their agreement to provide him a home and pay the property's expenses. Several months later, plaintiff stated that she wanted no further part in the transaction, that defendant could have her share, and she permanently left the property. Defendant thereafter exclusively possessed the property, paid more than \$20,000 in expenses and maintained a home for the uncle until his death, and made substantial improvements with plaintiff's knowledge through plaintiff's repeated visits.

PROCEDURAL HISTORY

The trial court denied partition after a nonjury trial, entered findings of fact and conclusions of law, and determined that title was vested in the defendant because plaintiff had made a parol gift of her interest. The Court of Civil Appeals held that the evidence supported the material findings and affirmed.

DISPOSITION

affirmed

CASES CITED

- Davis v. Douglas, 15 S.W.2d 232, 233 (Tex. Comm'n App. 1929)
- Franzetti v. Franzetti, 124 S.W.2d 195, 196 (Tex. Civ. App.—Austin 1939), writ ref'd
- Jones v. Mawman, 145 Tex. 596, 200 S.W.2d 819, 820 (1947)

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