Caselaw Affecting Ownership of Real Estate in Virginia â?? Part One

Description

We are all generally knowledgeable about various concepts and rules relating to both title insurance and real estate in Virginia, but do you know the origin of the real estate related law that we are required to follow? The laws stem from either the Virginia Code or court decisions (caselaw) which is used as precedent for us to follow.

Case # 1: *Camp v. Camp*, 220 Va. 595 (Va. 1979).

Principle: A deed that conveys property to non-married individuals â??as tenants in common with the right of survivorshipâ?• is constructed to create a tenancy in common, despite including language of â??the right of survivorship.â?•

Summary of Facts: A mother and son, Tincy Camp and Robert Camp, purchased a property together. The deed conveyed title to the mother and son pair as, â??tenants in common with the right of survivorship as at common law.â?• Subsequently, Robert, the son, got married and had six children. He passed away in 1966 and was survived by his wife, his six children, and his mother.

A dispute arose as to who owned the property after Robertâ??s death. Robertâ??s wife and children filed a lawsuit claiming that they were entitled to Robertâ??s interest in the property because the language of â??tenants in common with the right of survivorship as at common lawâ?• failed to create a right of survivorship between Robert and his mother.

Holding: The trial court found that the intent of the parties was clear to create a right of survivorship, and therefore, Tincy Camp and Robert Camp held the property as tenants in common with the right of survivorship. The Virginia Supreme Court reversed this ruling and found that Robert Camp and Tincy Camp took property as tenants in common under the 1955 deed.

Discussion: When construing a deed, the intention of the partyâ??s must be considered and should be determined from the language of the deed. If the language is explicit and the intention is clear of any doubt, the intention of the language in the deed will be followed, if it is not contrary to law or public policy.

If the language is unclear or if the provisions are in contradiction to one another, oral evidence may be used to show the circumstances surrounding the situation at the time the deed was created.

If two clauses in a deed are irreconcilable, the first clause prevails. This means that in this situation, the clause â??as tenants in commonâ?• prevailed over â??the right of survivorship.â?• The tenancy of tenants in common does not include a right of survivorship.

Case #2: *Gant v. Gant,* 379 SE 2d 331, 237 Va. 588, (Va. 1989).

Principle: The tenancy of tenants by the entirety does not extend to non-married individuals, but non-contradictory language in a deed indicating a right of survivorship prevails.

Summary of Facts: Junius W. Gant married Helen T. Gant in 1943 and had a daughter, Claudine C. Robinson. Junius and Helen Gant divorced in 1948.

In 1950, Junius and Helen contemplated reconciliation and remarriage. They decided to purchase a house located on a lot in Richmond, Virginia.

The deed, dated and recorded in August of 1950, purports to convey the property to â??Junius W. Gant and Helen T. Gant, his wife â?¦ to be held and owned by them â?¦ as tenants by the entireties with the right of survivorship as at common lawâ?¦.â?•

Junius and Helen lived at the property together for a few years but never remarried. Instead, Junius moved out and he later remarried, marrying Sue Ellen H. Gant.

Sue Ellen and Junius had a daughter together as well. Sue Ellen and Junius never divorced, but Junius had a third daughter outside of his marriage.

Junius died intestate in 1980, survived by his ex-wife, Helen, his widow, Sue Ellen, and his three daughters.

Helen had been in exclusive possession of the property in Richmond that she had purchased with Junius. After Juniusâ?? death, she conveyed the property to herself and her daughter as â??joint tenants with right of survivorship.â?•

Sue Ellen, Juniusâ?? widow, along with her daughter (who was also Juniusâ?? daughter) sought partition of the property, asking that the property be sold and the proceeds be divided among the five survivors â?? 1) Juniusâ?? ex-wife, Helen, as to 50% and 2) his widow, Sue Ellen, and his three daughters as to the other 50%.

Holding: The Circuit Court in the City of Richmond held that the property passed to decedentâ??s former wife (Helen) by survivorship. Juniusâ?? wife (Sue Ellen) and daughter appealed.

The Virginia Supreme Court held that: (1) the divorce did not preclude decedent and his former wife from thereafter acquiring property as joint tenants, and (2) the deed, which attempted to create an impossible tenancy by the entirety between parties who were not married to each other, was not a nullity, but rather, created a joint tenancy. The court omitted the language â??tenants by the entiretyâ?• and read the balance of the information in its entirety, giving rise to a clear right of survivorship.

Discussion: Many of us in the title insurance industry learned that if you â??messed upâ?• language regarding tenancy, the default was tenants in common. The Court in *Gant* adjusted our understanding. *Gant* affirms that parties who are not married cannot hold property as tenants by the entirety, as this is reserved exclusively for married couples, but parties who are not married can hold property jointly. Further, if they hold property jointly and, â??the instrument creating the estate manifests the requisite intention, the joint tenancy will be clothed with the common-law right of survivorship.â?•

Here, the court found that the intent of the parties was clear â?? they intended to hold the property together with the right of survivorship. Therefore, although the language in the deed was incorrect by identifying the parties as tenants by the entirety (to â??Junius W. Gant and Helen T. Gant, his wife â?¦ to be held and owned by them â?¦ as tenants by the entireties with the right of survivorship as at common lawâ?¦.â?•), the intent of survivorship was clear. The court deleted the erroneous language

â??tenants by the entirety.â?• The remaining language was not inconsistent with that concept.

At the time this deed was signed the language required to create tenants by the entirety required the full phrase â??as tenants by the entireties with the right of survivorship as at common law.â?• In 2001 the Code[1] changed and simply saying â??tenants by the entiretyâ?• is sufficient. If the same

[1] Va. Code Â§ 55.1-136. Tenants by the entirety in real and personal property; certain trusts.

Case #3: *Funches v. Funches,* 413 S.E.2d 44, 243 Va. 26, (1992).

Principle: Language in a deed indicating a right of survivorship prevails.

Summary of Facts: In March of 1990, Robert Funches passed away. In September of 1990, Gisele Funches, Robertâ??s alleged widow, filed a complaint against Pranee Funches. Pranee Funches claimed to be Robert Funchesâ?? second wife. However, Gisele claimed that *she* was Robertâ??s wife and that they were not divorced at the time of his death.

During Robert and Praneeâ??s alleged marriage, they acquired property in Alexandria, Virginia and held the property as tenants by the entirety with the right of survivorship. Gisele argued that they could not hold as tenants by the entirety with the right of survivorship because the parties were never legally married.

Holding: The court held that a deed which purports to create a tenancy by the entirety between unmarried parties, a joint tenancy is created and the right of survivorship extends to the other joint tenant.

Discussion: The holding of the court in this case is controlled by the principles outline in *Gant v. Gant*.

Case # 5: *Kummer v. Donak,* 282 Va. 301, (2011).

Principle: Adoption by another person severs legal ties to the adopted childâ??s biological parent. For inheritance purposes, an adopted child cannot inherit from their biological parent and instead inherits from the adoptive parents.

Summary of Facts: Justine Critzer died without a valid will and without a living spouse, parent, or child. The administrator of Critzerâ??s estate, Nancy Donak, determined that Critzer had a biological sister, Mary Frances Kummer (Mrs. Kummer), who was deceased. Mrs. Kummerâ??s three children, Richard Kummer, Charles Kummer III, and Jane Kummer Stolte (Kummer children) were Critzerâ??s closest living, blood relatives. After a Virginia circuit court granted Donakâ??s motion to establish the Kummer children as the sole beneficiaries of Critzerâ??s estate, Donak discovered that Mrs. Kummer had been adopted at age 53 by her husbandâ??s aunt. Donak moved the circuit court to determine the effect of Mrs. Kummerâ??s adoption upon the distribution of Critzerâ??s estate. After a hearing, the court held that the Kummer children were not legal heirs to Critzerâ??s estate. The Kummer children appealed.

Holding: The Supreme Court of Virginia affirmed the circuit courtâ??s ruling and held that the Kummer children were not the legal heirs to Critzerâ??s estate.

Discussion: At the time this case was tried (2011), Virginia Code Â§ 64.2-102 was in effect. Under this code section, if, for purposes of determining rights in and to property pursuant to any deed, will, trust or other instrument, a relationship of parent and child must be established to determine succession. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent.

Virginia Code Â§ 64.2-200 outlines the court of descent and distribution in situations where a decedent died intestate (without a will). To inherit as descendants of Critzerâ??s sister, the children must first establish that Mrs. Kummer was Critzerâ??s sister for purposes of the statutory scheme outlined in the Virginia code. That cannot be done unless a relationship of parent and child is established to show a common parent of Mrs. Kummer and Critzer.

Mrs. Kummer became the â??childâ?• of her adopting parent and no longer was the â??childâ?• of her biological parents. Consequently, Critzer and Mrs. Kummer, while biologically sisters, were not legally sisters for purposes of intestate succession under the Virginia code.

Case # 6: *Davis v. Davis*, 835 S.E.2d 888 (Va. 2019).

Principle: Whenever you are dealing with a Power of Attorney (POA), make sure that the act to be performed by the POA is authorized under the document. Send POAâ??s to Old Republic for review prior to relying on them just to have another person look at the powers and requirements.

Summary of Facts: Dickey Davis executed a durable power of attorney granting his mother, Agnes, the power to â??sell and conveyâ?• his real property and to otherwise â??execute and perform all and every act or actsâ?• that Dickey could do if acting personally.

In 2005, Dickey executed a will that named Garnett Davis (Dickeyâ??s brother), as executor. In 2013, Dickey became ill and was hospitalized. He was then moved to a nursing facility where he suffered periods of confusion because of his illness. While in the facility, Dickey married a woman named â??Rae.â?• Shortly after the marriage, Dickeyâ??s health declined quickly. With death being imminent. Agnes, using her power of attorney, transferred the vast majority of Dickeyâ??s personal property to herself and executed three deeds of gift transferring all of Dickeyâ??s real property â?? valued in excess of $2 million â?? to his siblings. Agnes did not inform Dickey of these transfers. Dickey passed away shortly thereafter.

In 2016, Garnett, in his capacity as executor of Dickeyâ??s will, filed a Complaint in the Circuit Court of Wythe County on behalf of Dickeyâ??s Estate seeking aid and direction regarding the validity of Agnesâ?? transfers of Dickeyâ??s property just prior to his death. The trial court held that the property transfers made by Agnes in her role as power of attorney were valid.

Holding: The Virginia Supreme Court held that the transfers were not valid because the power of attorney document did not expressly authorize the attorney-in-factâ??s transfers by gift and the attorney-in-fact did not have the statutory authority to make such transfers.

Discussion: The Court determined that a power of attorney authorizing the agent to â??sell and conveyâ?• did not authorize gifting because the phrase requires both a selling and a conveyance such that the attorney-in-fact is authorized to cause transfers only for â??adequate consideration.â?• As there was no consideration, the reliance on the â??sell and conveyâ?• power was ineffective. Thus, a

power of attorney document must expressly grant the authority to make gifts.

Agnes argued that Va. Code Â§ 64.2-1622(H), which authorizes an agent to make gifts in accordance with the principalâ??s personal history of making gifts, provided Agnes with the authority to make

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