UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0627

September Term, 2014

GARY TEETER

v.

DONALD KEITH

Graeff,
Kehoe,
Nazarian,

JJ.

Opinion by Kehoe, J.

Filed: June 25, 2015

This is an appeal from a judgment of the Circuit Court for Allegany County that attempted to resolve a long-standing dispute between the children of Benjamin Franklin Teeter[1] and their successors regarding a parcel of land in Flintstone, Maryland (the "Disputed Property"). The appellant is one of the defendants, Gary Teeter, the personal representative of the Estate of Joseph Teeter, one of Benjamin F.'s sons.[2] The appellee is Donald Keith, the successor-in-interest to Olie K. Teeter, another son. Gary Teeter raises two issues on appeal, which we have rephrased:

1. Did the trial court err in concluding that there was an enforceable contract between various members of the Teeter family and Mr. Keith's predecessor-in-title regarding the division of real property owned by Benjamin F. Teeter?

2. Did the trial court err in awarding Mr. Keith the entire interest in the Disputed Property in derogation of the interest of the Joseph Teeter estate?

We agree with the trial court's conclusion that there was an enforceable, albeit unwritten, contract among the members of the Teeter family regarding the Disputed Property. However, as we will explain, the basis for the court's conclusion that Keith is the sole equitable owner of the Disputed Property is somewhat unclear and we will vacate the judgment and remand this case for further proceedings.

[1]For brevity's sake, we will refer to the various Teeters in this opinion by their first name and, where appropriate, middle initial or middle name.

[2]The other defendants were Chester Franklin Teeter and the personal representatives of the Estates of Benjamin T. Teeter and Paul E. Teeter. None of these parties have joined in the appeal.

Background

Benjamin F. Teeter was a resident of Allegany County, Maryland, who passed away in 1970. Benjamin F was survived by his spouse, Elsie, and eight children: Mary L. Wise, Chester Franklin Teeter, Benjamin T. Teeter, Paul E. Teeter, Dorothy O. Sack, Mildred V. Cowan, Olie K. Teeter,[3] and Joseph J. Teeter.

At the time of his death, Benjamin F. owned a tract of approximately 70 acres (the "Estate Property") near the village of Flintstone in Allegany County. In his will, Benjamin F. devised the Estate Property to his children in equal shares as tenants in common, subject to a life estate to Elsie Teeter. Mrs. Teeter passed away in 1992.

After their mother's death, the Teeter siblings agreed to divide the Estate Property among themselves. Chester, one of the siblings and thus with first-hand knowledge, testified at trial as to the agreement. Additionally, as the trial court noted in its written opinion, the defendants, including Gary, did not dispute Keith's request for an admission of fact that such an agreement existed.

Dorothy and Mildred sold their undivided interests to, respectively, Olie and Chester. There was also evidence, in the form of Chester's uncontradicted testimony, that the other siblings, including Olie and Joseph, conveyed their interests in portions of the Estate Property to Chester, Mary and Paul. What was left after these transfers were made was a tract of approximately 20 acres—the Disputed Property. Chester testified that the siblings intended

[3]Olie is sometimes spelt "Ollie" in the record.

to convey a portion of the Disputed Property to Joseph and a portion to Olie. Chester prepared a survey dividing the Disputed Property into two lots of approximately equal size, "Parcel A" and "Parcel B" for that purpose. These conveyances never took place because Olie disagreed with his siblings as to the "Home Place," which is a portion of the Disputed Property. (It is unclear from the record whether the Home Place is located on Parcel A or Parcel B.)

Chester testified that, at one time, the siblings, including Olie, agreed that the Home Place would be "kept in the Teeter family." After Elsie died, the Teeter children agreed that Olie would live at the Home Place, but that after Olie died, the siblings would finalize the ownership of the house.[4] The Teeter children agreed that while Olie was alive, he could live at the home place rent-free, in exchange for maintaining the house and paying taxes on it. However, in time Olie came to the conclusion that such an arrangement was not acceptable.

According to Chester, Olie:

> informed me that he was not going to put anybody's name on the deed. He needed a clear deed so he could borrow money. I asked my brothers, Joe, [and] Paul, if they agreed to this for we had not agreed to sign over to Olie our interests in the home place without a name on the deed that we chose to have ownership after Olie died.

[4]Chester testified that at first, Paul was supposed to move into the home place, but plans changed when Paul's in-laws had to move in with him, and when Olie divorced his wife. As a result of these two events, the Teeter children agreed that Olie could live at the house.

Olie's position caused a rupture in what had previously been more or less cordial relations between Joseph and Olie. According to Chester,

> This action caused a split between Olie and Joe. Up to that time they were buddy/buddy and owning the A and B portions [of the Disputed Property] and their part that they were entitled to in the house. Ownership in common, they had.
>
> * * * *
>
> Olie tried to get us to sign a quit-claim deed giving him our interests in the estate, which we could not do. So he had a quit-claim deed made [with himself as grantor] to himself [as grantee]. . . and sold [the Disputed Property] to Donald Ray Keith[.]

For his part, Keith testified that he paid Olie $135,000 for Olie's interest in the Disputed Property even though he knew that there was a dispute between Olie and other family members regarding ownership of the property. Neither Olie's quitclaim deed to himself nor his quitclaim deed to Keith are in the record. However, a colloquy between Keith's counsel and the trial court indicates that the quitclaim deed to Keith conveyed Olie's interest in the whole of the Disputed Property. In his brief, Gary asserts that Olie's quitclaim deed to himself was recorded in 2002 and his quitclaim deed to Keith was recorded in 2008. Keith does not dispute this on appeal.

I.

Gary's first appellate contention pertains to the sufficiency of the evidence. We think this argument is unpersuasive. Chester's testimony provides an adequate evidentiary basis for the trial court's conclusion that there was an oral contract for the division of the Estate Property. Likewise, we find no error in the trial court's legal conclusion that partial

performance, as well as the defendants' admission that such an agreement existed, satisfied the requirements of the Statute of Frauds. The Court of Appeals explained the relevant legal standard in *Beall v. Beall*, 291 Md. 224, 230 (1981) (citations omitted):

> This Court has stated that part performance is adequate to remove the bar of the statute of frauds when there is "full and satisfactory evidence" of the terms of the agreement and the acts constituting part performance. Furthermore, we have held that the part performance itself "must furnish evidence of the identity of the contract; and it is not enough that it is evidence of some agreement, but it must relate to and be unequivocal evidence of the particular agreement . . . ."

We conclude that Chester's testimony, coupled with Gary's admission of the contract's existence, is "full . . . satisfactory [and] unequivocal evidence of the particular agreement" between the siblings.

We also agree with the trial court's conclusion that Keith, as Olie's successor-in-interest, has the right to seek equitable enforcement of the agreement. We now turn to the more difficult issue of what the evidence discloses about Olie's—now Keith's—rights under the agreement.

II.

Gary's second contention is that the trial court erred when it ordered that the defendants convey their interests in the Disputed Property to Keith in his capacity as Olie's successor-in-interest. Gary contends that the court's order fails to take into account Joseph's interest in the Disputed Property. In support of his position, Gary points to Chester's testimony, which we have previously summarized. Gary asserts, and we agree, that Chester

testified that Joseph owned an undivided interest in the Disputed Property with Olie and that there was no evidence that Joseph conveyed his interest in the Disputed Property to Olie or to anyone else.

Additionally, Gary directs us to an apparent discrepancy between the language in the court's memorandum and the wording in the actual order. In its memorandum opinion, the court referred to "the agreement to convey 'Lot B' to Ollie Teeter" and concluded that:

> "[t]he agreement entitling Ollie Teeter to acquire '*Lot B*' should be legally and equitably enforced. Of the current heirs, only the Defendants have balked at conveying their interest in '*Lot B*.'" (Emphasis added.)

Gary asserts that this language is inconsistent with the text of the order, which directs the defendants to convey their interests in *Parcel A* and *Parcel B* to Keith.

In response, Keith makes two arguments. First, he asserts that Gary's appellate contention is not preserved for review. In support of his contention, Keith points out that Gary never filed a pleading or other paper requesting that the court award a portion of the Disputed Property to Joseph's estate. While such a step certainly would have been preferable, a formal request is not required for preservation purposes. Maryland Rule 8-131(a) authorizes us to review issues that were "raised in or decided by the trial court[.]" In his opening statement, Gary stated in pertinent part:

> Olie made a quit-claim deed to himself in 2002 [for] the entire twenty acres. And at that point in time Joe Teeter received ten acres of that separately in the original . . . [Benjamin Franklin Teeter] will. And he never had that ten acres put into his name. . . . Other brothers and sisters had the land put in their names. My father [i.e., Joseph Teeter] chose not to do that. . . . [Keith is] trying

> to claim one hundred percent of what Olie sold to [him] and Olie . . . never owned one hundred percent . . . .

While a lawyer would express the concepts differently, we think it is clear that Gary was asserting that Joseph had an undivided equitable interest in the Disputed Property and that Keith's claim to sole ownership of the Disputed Property was not consistent with Joseph's interest. We are satisfied that Gary raised the issue to the trial court.[5]

Keith's second argument is that there was substantial evidence to support the trial court's conclusion. He points to the legal description prepared by a surveyor at Chester's behest which begins with the following notation:

> Chester Franklin Teeter, Personal Representative of the Estate of Elsie Teeter
> to:
> Olie K. Teeter.

Keith points out, correctly, that the legal description was for the entire Disputed Property and referenced by "Parcel A" and "Parcel B." Keith asserts that this is substantial evidence to support the trial court's order. We are not convinced.

First, we think that Keith may be placing undue significance on the phrase "to Olie Teeter." This is because Chester was emphatic in his testimony that the description was intended to be a basis for a deed to be prepared at some point in the future and was equally

[5] We cannot fault the trial court for failing to focus on the effect of its ruling on Joseph's interest because Gary did not otherwise address the issue at trial. But Gary did raise the contention and we see nothing in the record that suggests that he subsequently waived it.

clear that Joseph also had an interest in the Disputed Property.[6] Second, and what is of significantly more importance in our analysis, is the above-described apparent inconsistency between language in the trial court's memorandum opinion and the terms of its order.

Under the circumstances, we believe the interests of justice would be better served by vacating the trial court's judgment and remanding this case to give that court an opportunity to clarify its opinion and order. The factual record before the trial court is extremely sparse. The trial court may, in the exercise of its discretion, permit the introduction of additional evidence if the court concludes that doing so will assist it in resolving the issues before it.[7]

THE JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY IS VACATED AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS ARE TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.

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[6]Of course, the trial court was free to conclude that portions of Chester's testimony were credible and other parts were not. *See, e.g.,Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (A trial court may "accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence. (Emphasis in original.)). However, because Chester's testimony formed virtually the entire basis for the court's decision, it would be helpful if the court identified what portions of Chester's testimony, if any, it found to be non-credible.

[7]Gary's primary argument at trial was that the "Home Place" should be treated differently from the rest of Parcels A and B so a member of the Teeter family could own the Home Place after Olie's death. Gary termed this arrangement a "constructive trust"—which it is not. A "constructive trust" "applies where a property has been acquired by fraud, misrepresentation, or other improper method, or where the circumstances render it inequitable for the party holding the title to retain it." *Porter v. Zuromski*, 195 Md. App. 361, 368–69 (2010). The trial court did not err in rejecting this contention and, in any event, Gary has abandoned this contention on appeal.