

Circuit Court for Baltimore County
Case No. 03-C-15-008652

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1303

September Term, 2016

ANN PEDERSON, *et al.*

v.

ERIC FLESHER

Wright,
Graeff,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: January 5, 2018

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns a Deed executed by Ann Pederson, who served as attorney-in-fact for her mother, Joyce Flesher. The Deed severed a joint tenancy in a residential property between Mrs. Flesher and her son, Eric Flesher, created a new tenancy in common, and removed Mr. Flesher's right of survivorship.

After his mother's death, Mr. Flesher filed a Complaint and Notice of *Lis Pendens* against Ms. Pederson, both individually and in her capacity as Personal Representative of the Estate of Joyce Flesher (the "Estate"). His complaint asked the Circuit Court for Baltimore County to declare the Deed null and void and impose a constructive trust on the property in his favor. Ms. Pederson counterclaimed, filed a Petition for Sale in Lieu of Partition, and filed a motion for summary judgment, which the court denied. After a trial, the court found the Deed null and void, declared Mr. Flesher as the sole fee simple owner of the property, and imposed a constructive trust. The Estate dismissed its appeal after replacing Ms. Pederson with a different Personal Representative. But no final judgment was entered as to Ms. Pederson in her individual capacity, and the record leaves us uncertain about what happened to her claims. We dismiss the appeal and remand for further proceedings.

I. BACKGROUND

Joyce Flesher ("Mother") and her late husband had four children, among them Ms. Pederson and Mr. Flesher. Mr. Flesher lived with his parents and took care of them. On April 14, 2004, while her husband was still alive, Mother executed a Power of Attorney appointing Ms. Pederson her attorney-in-fact.

After her husband died, Mother developed health issues. Her health issues limited her mobility, so her son cared for and assisted her. In March 2005, Mother and Mr. Flesher purchased the property at issue here, a house on Gaywood Road in Baltimore (“Gaywood”) as an investment property. They paid \$200,000 in cash—Mr. Flesher contributed his inheritance from his father’s estate, approximately \$130,000, and Mother the rest—and they owned Gaywood as joint tenants with a right of survivorship. Mr. Flesher testified that he and Mother chose to hold the property that way because he did not want her to have the ability to sell her share to any of his siblings. Ms. Pederson learned of the purchase shortly after the sale, but did not see the deed conveying Gaywood to Mother and Mr. Flesher as joint tenants until June 2014.

On April 28, 2005, Mother executed a will (the “Will”) that, among other things, devised specific property interests to her children, including Mr. Flesher and Ms. Pederson. The Will also provided that unless otherwise specified, her residual property should be distributed in equal portions to her children. Ms. Pederson did not become aware of the Will until July 2014. Mother managed her own financial affairs until fall 2012, when Ms. Pederson learned that Mother owed approximately \$70,000 in back taxes. Ms. Pederson began marshaling Mother’s assets and filed a guardianship petition. Mother’s health continued to decline, and she was deemed incompetent in May 2014 and died on September 3, 2014. Ms. Pederson executed the Deed on June 12, 2014, before Mother’s death but after she was deemed incompetent, and recorded it on September 24, 2014, after she died. Ms.

Pederson testified that she severed the joint tenancy so that she could liquidate Mother's assets to satisfy her debts and expenses.

On August 12, 2015, Mr. Flesher filed a Complaint and Notice of *Lis Pendens* against Ms. Pederson, individually and as Personal Representative of the Estate. Ms. Pederson filed a counterclaim and a Petition for Sale of Gaywood in Lieu of Partition and the Estate filed a motion for summary judgment, which the court denied. After a trial, the court entered an oral ruling finding the Deed null and void, declaring Mr. Flesher as the fee simple owner of Gaywood, and imposing a constructive trust on the property. The court entered an amended version of a Judgment Order submitted by Mr. Flesher on August 4, 2016. For reasons that will reveal themselves shortly, we reproduce the contents of the judgment in full:

The findings of fact, legal conclusions and rulings as stated in open Court at the conclusion of the trial are hereby adopted and, consistent therewith, the following relief is entered:

1. With regard to Counts I and II of the Complaint, Judgment is and shall be entered in favor of Eric Flesher against Ann Pederson as the Personal Representative of The Estate of Joyce Flesher; and
2. That Eric M. Flesher is hereby declared the sole fee simple owner of 203 Gaywood Road, Baltimore County, Maryland 21212; and
3. That the Deed dated June 12, 2014 and recorded amongst the land records of Baltimore County in Liber 35396 Folio 426 is declared Null and Void; and
4. That The Estate of Joyce R. Flesher, Baltimore County Estate 18061, has no interest in 203 Gaywood Road, Baltimore County, Maryland 21212; and

5. That a Constructive Trust is and shall be created over any interest that Ann Pederson as Personal Representative of The Estate of Joyce Flesher has in the real property known as 203 Gaywood Road, Baltimore County, Maryland; and

6. That Ann Pederson as the Personal Representative of The Estate of Joyce Flesher deed any interest of the estate in 203 Gaywood Road, Baltimore County, Maryland to Eric M. Flesher; and

~~7. All relief sought by Eric Flesher against Ann Pederson individually in the Complaint is DENIED; and¹~~

8. All relief sought by The Estate of Joyce Flesher in the Counterclaim and Amended Counterclaim is **DENIED**.

9. The Clerk shall record this Order among the land records.

Ms. Pederson filed a timely notice of appeal. But on January 3, 2017, the Orphan’s Court for Baltimore County removed Ms. Pederson as the Personal Representative, and appointed a new Personal Representative, J. Calvin Jenkins, on February 16, 2017. And on March 7, 2017, the Estate, through Mr. Jenkins and new counsel, filed a Notice of Dismissal of Appeal in this Court, leaving Ms. Pederson on her own, in her individual capacity, before us.

II. DISCUSSION

On appeal, Ms. Pederson challenges the circuit court’s application of *King v. Bankerd* to nullify the Deed on two grounds. 303 Md. 98 (1985). *First*, she claims that the severance of the joint tenancy did not constitute a gift or deprive Mother of her property.

¹ In the margin alongside paragraph 7, the court initialed the strikeout.

Second, she argues that the Deed’s conveyance of Gaywood served Mother’s best interest.² Before we can address the merits of these contentions, though, we confront what ultimately is an insurmountable procedural barrier.

Mr. Flesher brought his Complaint against two defendants embodied in one person: Ms. Pederson in her role as Personal Representative of Mother’s Estate and as an individual. The Complaint—which, incidentally, appears neither in the Record Extract nor the Appellee’s Appendix³—seeks to state two claims. In Count I, Mr. Flesher seeks a declaratory judgment decreeing him fee simple owner of Gaywood, declaring the Deed null and void, and declaring that the Estate has no right, title, or interest in the property. Count II asks the court to “[c]harge upon Defendant Pederson a constructive trust of the estate’s interest” in Gaywood, and to “[o]rder Defendant Pederson as constructive trustee to convey all of her and the Estate’s right, title and interest” in Gaywood to Mr. Flesher. Neither count distinguished with any precision whether it sought relief from Ms. Pederson

² In her brief, Ms. Pederson phrases the Question Presented as: “Did the trial court misapply the law when it found the burden was upon an agent to demonstrate the principal’s intent regarding an instrument other than the power of attorney?”

³ Mr. Flesher asks us in his brief to dismiss the appeal on the ground that Ms. Pederson failed to include documents he requested in the Record Extract. We agree with him that the Extract is sparse and leaves out important materials, some of which he included in his Appendix, some of which he didn’t. In light of our disposition of the appeal, and the fact that Mr. Flesher wasn’t prejudiced by the omissions, we will deny the motion. *See Kemp-Pontiac Cadillac, Inc. v. S & M Constr. Co.*, 33 Md. App. 516, 524 (1976); *Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 547 (1999) (noting the absence of prejudice in declining to dismiss an appeal because of noncompliance with Rule 8-501). That said, this Extract didn’t serve its intended purposes, and parties who decline to consult and cooperate with opposing counsel on the contents of the Extract run a real risk of dismissal or other sanctions.

individually or as Personal Representative. The real party in interest seems to be the Estate, since the validity of the Deed *vel non* determines whether Gaywood is part of Mother's Estate. It's difficult to see what relief would lie against Ms. Pederson as an individual, at least once Mother died and the power of attorney lapsed. Yes, she executed the Deed and started this whole sequence of events. But other than, perhaps, being vindicated in her prior role as attorney-in-fact, she has only an indirect personal interest in the outcome of this dispute.

Even so, Ms. Pederson was named in both capacities, and the question of her liability, if any, as an individual was never resolved. The Judgment Order entered all of the relief Mr. Flesher sought in both Counts—a win for him across the board. But it did so specifically, and only, against Ms. Pederson *as personal representative*. Starting with paragraph 1, the Order states that “Judgment is and shall be entered in favor of Eric Flesher and against Ann Pederson as the Personal Representative of The Estate of Joyce Flesher.” Any mention of Ms. Pederson was qualified carefully to refer to her as Personal Representative. That is, until paragraph 7. As drafted (counsel for Mr. Flesher represented at argument that he prepared it), paragraph 7 would have *denied* all relief against Ms. Pederson individually. But the court crossed that paragraph out and initialed the change, effectively denying the denial, and without saying anything further.

As best we can tell, then, the circuit court entered judgment in favor of Mr. Flesher against one defendant, but not the other. In the absence of a final judgment, we may dismiss the appeal. *See* Md. Rule 8-602(e)(1)(A); *Shofer v. Stuart Hack Co.*, 324 Md. 92, 98

(1991) (noting that where no judgment had been entered as to third party complaint, the court of appeals had the discretion to dismiss appeal as premature). And although we have the authority to enter a final judgment on our own, *see* Md. Rule 8-602(e)(1)(C), we can't determine with certainty what the circuit court meant to do here, and we don't want to guess incorrectly. In the context of these claims, it makes sense that any relief Mr. Flesher might win would lie against the Estate, and thus the Personal Representative, rather than Ms. Pederson individually, and most of the Judgment Order reads that way. But the circuit court affirmatively crossed out the portion of the proposed Judgment Order denying Mr. Flesher's claims against her, which tells us that it may have had something else in mind.

Without something more in the record to reveal the court's intent, the best course is to dismiss the appeal and remand the case for further proceedings pursuant to Rule 8-602(e)(1)(B), so that the court can determine in the first instance whether to enter a final judgment against Ms. Pederson individually. If, on remand, the court determines that Mr. Flesher was not entitled to any relief against Ms. Pederson individually, it can enter judgment in her favor (which would leave her with nothing to appeal in her individual capacity, since she will have won in that role). If, on the other hand, the court decides that Mr. Flesher was entitled to some form of relief against Ms. Pederson distinct from the relief already awarded against the Estate, it should enter final judgment to that effect, and Ms. Pederson can decide at that point whether to appeal.

**APPEAL DISMISSED AND CASE
REMANDED TO THE CIRCUIT COURT
FOR BALTIMORE COUNTY FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. APPELLANT TO
PAY COSTS.**