

35522

IN THE CIRCUIT COURT OF TUCKER COUNTY, WEST VIRGINIA

LEEORR M. ROSIER, and
LEEORR M. ROSIER, Executrix
of the Estate of Stearl Rosier,
Plaintiff,

v.

Case No.: 06-C-12

ROBERT LEE ROSIER,
Defendant.

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CIVIL CASE NO. 06-C-12
TUCKER COUNTY, WEST VIRGINIA
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ORDER AND OPINION

This matter came before Judge Phil Jordan on July 30, 2009, for a Trial Before The Court on Count IV of the Amended Complaint. The Plaintiff, Leeorr M. Rosier, was present in person and by her attorney, Virginia Hopkins. The Defendant, Robert Lee Rosier, was present in person and by his attorney, David Wilmoth.

FACTUAL BACKGROUND

Stearl and Leeorr Rosier had been married for 63 years when Stearl Rosier died of cancer on October 6, 2005. There are three living children from the marriage: Rodney Rosier, Shirley Carr and Robert Lee Rosier, the Defendant. His Will named his wife, Leeorr, as executor of his estate and his sole beneficiary if she survived him. In December of 2004, Stearl Rosier named his son Robert as his Power of Attorney.

Attorney William "Mont" Miller testified in his deposition, admitted for summary judgment purpose, that Stearl Rosier came to his office out of a concern that his wife be prevented from disinheriting their children after his death. Mr. Miller testified "I remember him basically telling me that his wife had gone--what he--I think he said crazy, and said that when he died, she was going to give the property to her sister...I don't want her sister getting my half of the property...my kids are going to get my half."

The 139 acre farm was only in Stearl's name and a deed was prepared and signed by Stearl, giving the farm to his son, Robert. That deed left a life estate for Stearl, but not for Leeorr.

There were several other parcels in both Stearl and Leeorr's names. Stearl instructed Mr. Miller to prepare deeds giving his ½ undivided interest to these parcels to either Robert or Shirley Carr (the daughter).

Stearl was then hospitalized and could not come to Mr. Miller's office to sign the deeds, so the deeds were changed so that the grantor was Robert as Power of Attorney.

LEGAL BACKGROUND

Count I of the Amended Complaint alleged breach of fiduciary duty as Power of Attorney. This Court found previously that Robert Rosier was fulfilling his father's wishes by transferring the real estate and there being no issue is material fact, granted summary judgment to the Defendant.

The Court had also granted to the Defendant summary judgment on Count II - Negligent Transfer, Count III - Failure to Give Notice, and Count V - Transfer to Defraud Creditor.

That left only Count IV to be resolved in the Trial Before The Court. Prior to the trial, the Court granted Defendant's Motion in Limine, pointing out that the issue in Count IV before the Court is limited to a request to return certain items of personal property to the estate.

The key issues to be determined at trial were whether the following items are the property of the estate of Stearl Rosier or the personal property of his son, Robert Rosier.

Those items are:

1. Bank accounts and Certificates of Deposit.
2. Farm machinery and equipment.
3. Cattle

WITNESSES

The Plaintiff, Leeorr Rosier, testified regarding these issues and presented the testimony of Jane Helmick of the Buckhannan Stockyards, Kim Bean of Mountain Valley Bank and Tucker County Assessor Paul Burns. Each was cross-examined by Defendant's counsel.

At the close of the Plaintiff's presentation of evidence, the Defendant made a motion for a directed verdict on the issue of the bank deposits. The Court took the motion under advisement.

The Defendant presented the testimony of Juanita Nestor, Mark Bright, Charles Mullenex, Michael Eye, Charles Lipscomb, and the Defendant, Robert Rosier. Each was cross-examined by opposing counsel. The Court did not allow two witnesses to testify because they were not disclosed in the pre-trial memorandum.

DISCUSSION & FINDINGS OF FACT

A. BANK ACCOUNTS

The principal liquid asset is \$40,000. According to the testimony and exhibits provided by the bank, the following is the money trail for these funds:

1. On June 30, 1999, a \$40,000 CD was purchased in the names of Stearl OR Leeorr, meaning that either could withdraw all of the funds.

2. On December 29, 2003, Stearl cashed in the CD and deposited the money into savings account #4586. Stearl placed this account in the ownership of Stearl or Robert and Shirley. This eliminated Leeorr's claim to these funds.
All of the money now in the bank flow from these funds.
3. On March 26, 2004 \$5000 was withdrawn and placed in savings account #27863.
4. The current balance of that account, which was owned by Stearl or Robert, is \$6,545.22. These funds are clearly Robert's property and not that of the estate.
5. On June 22, 2005, \$37,270.24 from the CD was deposited into checking account #27863. The current balance is \$40,962.51. These funds are clearly Robert's property and not that of the estate.

B. FARM MACHINERY & EQUIPMENT

During her testimony, the Plaintiff listed a number of items of farm equipment she believed were on the farm when Stearl died and asserts that all should be property of the estate.

Her list included 2 John Deere tractors, a square bailor, a round bailor, a hay combine, conditioner, post-hole driver, manure spreader, lye sprayer, corn sheller, 2 corn planters, plows, an elevator, 2 hay wagons, 1 corn wagon, and an oats combine.

The Plaintiff points to her Exhibit 9, an assessment form that the Defendant admitted that he signed on July 19, 2005. It listed farm machinery, etc. as property of Stearl and Leeorr. It listed the owner's value at \$2200.

The Defendant maintains that he and his father had run the farm as partners for a number of years, that he bought much of the equipment, and that his father gave him the rest of the equipment in April of 2005. He testified that he filled out the assessor's form as he did because he didn't want to split the year since the form deals with property owned on July 1.

Charles Mullenex, who used to work on the Rosier farm, testified that just before hay season in the Spring of 2005, Stearl Rosier told him he had given all of the farm equipment and cattle to his son because he was afraid Leeorr had lost her mind and "would get rid of it".

Robert Rosier testified that he retired from the US Forest Service in 2005 after 40 years of service. He had worked on the farm with his father for many years and had put much time and money into the farm in recent years.

He went over the Plaintiff's list of farm equipment in great detail and added other items to the list. He had receipts showing he had purchased or bought parts for a number of items. Many other pieces of equipment have worn out.

The items he agreed were originally bought by his father and still useable are: a square bailor, post-hole digger, manure spreader, 1 fertilizer spreader, and a hay elevator, but the motor in the elevator was bought by Robert.

The Court found Robert's testimony to be very knowledgeable and credible. It is clear that he did, in fact, put much time and money into the farm in recent years.

The question is, did Stearl give the farm equipment to his son?

On the Plaintiff's side is the assessment form and the fact that there is nothing in writing showing such a gift.

On the Defendant's side is the testimony of Mr. Mullenex and the Defendant which is consistent with Mont Miller's deposition testimony.

The determining factor for the Court is the fact that Stearl Rosier had already given his son the farm. He chose not to reserve a life estate for Leeorr. Why would he give his son the farm and not the equipment to operate and keep it in the Rosier family?

The answer is clear. Stearl Rosier gave all of the equipment to Robert and none of it is the property of the estate.

C. CATTLE

For the same reason as above, the Court finds that it is clear that the cattle are the property of Robert Rosier, and not the estate.

The Court **FINDS** as follows:

1. Stearl Rosier caused the transfer of the bank accounts, the farm machinery, and the cattle out of his estate prior to his death because of his strong desire to protect his children's inheritance from a wife he could no longer trust.
2. The Plaintiff is not entitled to any return of property requested.
3. The Court **finds judgment entirely for the Defendant, Robert Rosier.**
4. Plaintiff shall be assessed court costs.

Entered this 12th day of August, 2009.

A TRUE COPY:
DONNA JEAN BAVA, CIRCUIT CLERK
TUCKER COUNTY, WEST VIRGINIA

ATTEST

Donna Jean Bava

Phil Jordan

JUDGE PHIL JORDAN