

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. CROIX**

RUEBEN DOWLING,	)	
Plaintiff.	)	
vs.	)	
NADINE EDNEY, BEVERLY A. EDNEY	)	Probate No. 83/1997
VICTOR EDNEY, ROOSEVELT DOWLING	)	
RHEA DOWLING,	)	
Third Party Plaintiffs.	)	
vs.	)	
RENEE DOWLING, ROOSEVELT DOWLING,	)	
ROBERT DOWLING, RHEA DOWLING,	)	
VICTOR EDNEY, NADINE EDNEY,	)	
BEVERLY A. EDNEY,	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION

April ²⁸, 2000

This matter came before the court on a motion for summary judgment by Reuben Dowling (hereinafter "plaintiff"). This motion was granted on November 11, 1999. After the court's order for summary judgment was entered, defendant Renee Dowling (hereinafter "defendant") filed a motion for relief from judgment which the court subsequently granted. Defendant has now submitted a response to the plaintiff's original motion for summary judgment. Also before the court is plaintiff's reply to defendant's response, plaintiff's motion for partition and severance, and defendant Beverly Edney's reply to defendant's motion to dismiss. The court, having considered all of the arguments put forth in these motions, finds for the defendant on the motion for summary judgment and the related motion for partition and severance. The court's findings are presented below.

I. Factual Background

In 1997 plaintiff filed a petition for administration in this court seeking to administer the estate of his deceased mother, Ena Edney (hereinafter "decedent"). Before her death, the decedent gave a parcel of real property, specifically identified as No. 21-D La Grande Princesse, to three of her children, namely Victor H. Edney, Jr., Nadine A. Edney, and Renee Dowling (the defendant). As evidence of her intention with regard to this property, the

decedent signed a "deed of gift" at the time of transfer. This deed was executed by the decedent, witnessed by two individuals, and acknowledged before the defendant, who is a licensed notary public. In his motion for summary judgment, the plaintiff claims that this conveyance of real property was invalid, and requests that the court order that No. 21-D La Grande Princesse be returned to the decedent's estate.

II. Discussion

The standard for summary judgment is set forth in Fed. R. Civ. P. 56, and is applicable to the Virgin Islands pursuant to Terr. Ct. R. 7. Summary judgment is proper under Rule 56 if it is shown that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. V. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986); *Green V. Hess Oil V.I. Corp.*, 29 V.I. 27, 30 (Terr. Ct. 1994).

In her response to plaintiff's motion for summary judgment, defendant has not disputed any of plaintiff's factual allegations. Instead, she has put forth four legal arguments. These arguments are as follows:

1. This action is not a family matter as prescribed in the Territorial Court Act, hence, this court lacks subject matter jurisdiction herein.
2. The pleading instituting this action does not meet the statutory requirements for a probate action.
3. There has been no formal notice given to all parties involved at any time during the pendency of this action.
4. The deed in question meets all of the statutory requirements for conveyance of property in the U.S. Virgin Islands.

A. This action is not a family matter as prescribed in the Territorial Court Act, hence, this court lacks subject matter jurisdiction herein.

In her memorandum of law, the defendant asserts that the court does not have subject matter jurisdiction over the issue presented in this action. According to the defendant, the issue of whether a deed is valid is one that should be decided by a judge in the civil division of the Territorial Court, and not by the probate court.

This court rejects defendant's argument and finds that the Virgin Islands Code provides ample support for the court's jurisdiction in this case.

15 V.I.C. §161 provides in part that

. . . the district court has jurisdiction and the power to administer justice in all matters relating to the affairs of decedents, and, upon the return of any process, to try and determine all questions, legal or equitable, arising between any or all of the parties to any proceeding . . .

This grant of jurisdiction to the district court has since been extended to the Territorial Court:

By Section 76 of Act No. 3876, enacted September 9, 1976, effective January 1, 1977, the territorial court was granted original jurisdiction concurrent with the district court "to supervise and administer estates and fiduciary relations and to appoint and supervise guardians and trustees."

Machover v. Machover 28 V.I. 7 at 23. (Terr. Ct. 1992).

As noted above, a petition for administration of the decedent's estate was filed with the probate court in 1997. The current dispute grew out of the action for administration. The issue with regard to the deed directly relates to a determination of which property belongs to the estate. Both the plaintiff and the defendant are heirs to the decedent's estate. An heir to an estate is certainly a party to a probate action. Therefore, the question that has arisen between the plaintiff and the defendant as to whether certain real property belongs to the decedent's estate is appropriate for resolution by the probate court.

B. The pleading in this action does not meet the statutory requirements for a probate action.

Next, the defendant argues that the pleadings plaintiff filed to institute the probate action were insufficient. In support of her argument she cites Title 15 of the Virgin Islands Code as well as Terr. Ct. R. 191, et seq., which set forth the probate procedures for the courts of the Territory. In response to defendant's argument, plaintiff states that he is a pro se litigant and therefore ignorant of the finer points of probate procedure. For this reason, plaintiff believes that he ought to be entitled to some leniency from the court.

When an individual makes a pro se appearance before a court, the court has an obligation to read his pleadings liberally. Haines v. Kerner, 404 U.S. 519 (1972); Holley v. Department of Veterans Affairs 165 F. 3d 244 (3d. Cir 1999). Plaintiff initially filed a petition for administration in this matter. Although the petition contained a few minor errors, it was sufficient to initiate the action and for the most part it conformed to both the Virgin Islands Code and the Territorial Court Rules. In his petition, the plaintiff provided the court with most of the information needed to institute an action for administration including his residence, the residence of the decedent, her date of death, and the names, addresses, and ages of all of the decedent's next of kin. In addition, the plaintiff provided the court with a list of decedent's property and known debts. The probate procedures set forth in the Virgin Islands Code are designed to ensure that the court receives all information necessary to identify and distribute a decedent's estate. In this case the court received most of the information it needed in the initial petition. Therefore, there is no need to penalize the plaintiff for his lack of legal finesse.

C. There has been no formal notice given to all parties involved at any time during the pendency of this action.

Defendant argues that the court should deny the plaintiff's motion for summary judgment because there is evidence that some of the parties to this matter were never served with notice. The court concludes that defendant received adequate notice of the proceedings. The court makes no finding as to the other parties to this action.

As a matter of constitutional principle, service is proper if that service gives defendant notice of the proceedings. Carson v. Skandia 19 V.I. 138 (D.VI 1982). Here, it is clear that defendant had actual notice of the proceedings. The record shows that she filed a motion for summary judgment in this matter on October 3, 1997. The fact that she filed the motion shows that she knew about this probate action. Defendant also knew that the court was considering the present motion. In fact, in the order granting her relief from the court's

previous judgment on this matter, the defendant was directed to submit a response to the plaintiff's initial motion for summary judgment. For these reasons, the court finds that the defendant's argument lacks merit.

In her memorandum of law, defendant argues that the current matter should be dismissed because other parties to the action besides herself did not receive formal notice. Although the defendant is a licensed attorney, she has not made an appearance on behalf any of the other defendants in this matter. None of these defendants have raised this issue themselves, therefore, the court will not consider it at this time.

D. The deed in question meets all of the statutory requirements for conveyance of property in the U.S. Virgin Islands.

The central issue in plaintiff's motion for summary judgment concerns the deed to 21-D La Grande Princesse. Plaintiff argues that the deed is void. In support of his argument he points to the acknowledgment of the deed. Because the acknowledgment was done before the defendant who was also a grantee under the same deed, the plaintiff argues that the deed itself was invalid. In turn, the defendant argues that a defective acknowledgment of a deed does not affect its validity.

The plaintiff's argument is actually two-fold. His first argument is that the acknowledgment of the deed was faulty, and his second argument is that the faulty acknowledgment affected the validity of the deed itself, rendering it void.

Plaintiff's first argument is correct. The acknowledgment of the gift deed was defective. 3 V.I.C. § 777 states that "no notary public shall certify, attest, or take an oath or acknowledgment for or to an instrument to which he is an interested party." The recipient of a parcel of land is an interested party to the deed which grants that land. As a grantee listed in the deed in question, the defendant was not acting within the confines of the law governing notaries public when she notarized the same deed. For this reason, the deed of gift was not properly acknowledged.

The defendant's entire argument fails because of its second component. A defective

acknowledgment by itself does not render a deed void. Courts in the Virgin Islands have held that faulty acknowledgment of a deed does not affect its validity in actions between the parties to that deed. *see Khodra v. Milligan* 39 V.I. 168 at 174-175 (Terr. Ct. 1998).

Callwood v. Callwood 3 V.I. 287 at 291 (D.VI 1958). There is no law in the Virgin Islands that addresses a situation in which an action has arisen between a party to a deed and another individual. However, acknowledgment of a deed or a lack thereof is generally treated as an evidentiary matter, rather than as a formal requirement of land conveyance. According to American Jurisprudence,

[a]lthough some statutes require acknowledgment as a condition to the validity of an acknowledged instrument, others prescribe acknowledgments merely for the purposes of proof; to provide assurance that the document is authentic, and to provide a record for future reliance.

1 Am Jur 2d Acknowledgments §5. The Virgin Islands appears to fall into the second category. 28 V.I.C. §41 states that “[a] conveyance of land . . . **may** be made by deed and acknowledged or proved . . . without any other ceremony.” (Emphasis added.) This statute clearly shows that neither an acknowledgment nor the deed itself is necessary to convey land. Furthermore, although a deed must be *executed* in order to be effective, a review of Title 28 reveals that a correct acknowledgment is not necessary for a valid execution. (See 28 V.I.C. §42 : “deeds . . . **shall** be executed in the presence of two witnesses . . . and the persons executing the deeds **may** acknowledge the execution thereof . . .” (Emphasis Added)). In this case, the defective acknowledgment might have been helpful in attacking the execution of the deed. Perhaps it could have been used to illustrate duress or undue influence. However, the plaintiff did not raise these issues in his motion and in any case they are factual matters and not proper for disposition by summary judgment.

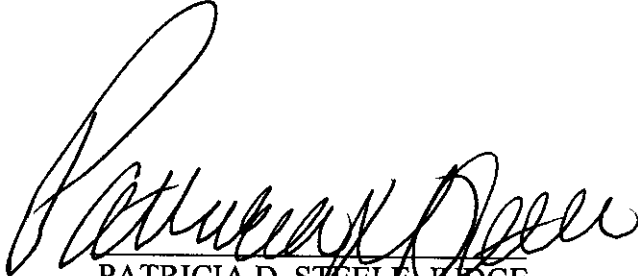
III. Conclusion

The court concludes that the deed to 21-D La Grande Princesse is valid. Therefore, the property will not be returned to the decedent’s estate, but shall remain under current ownership. Because the property is to remain with the current owners, the plaintiff’s motion

Probate No. 83/1997
Opinion
Page 7

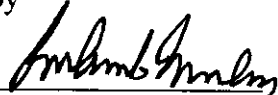
for partition and severance is denied.

Dated this 28 day of April, 2000


PATRICIA D. STEELE, JUDGE

ATTEST:

DENISE D. ABRAMSEN
Clerk of the Court
by


Deputy Clerk

Dated: 4/28/00