

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: AT KINGSHILL

DORIS AGATHA BELL)
)
Plaintiff:)
)
V.)
)
CORLIS EUDINE BELL)
a/k/a CURLISS E. BELL)
)
Defendant:)
)

CIVIL NO. 1322/84

ACTION FOR:
IMPOSE TRUST AND SET ASIDE
A DEED AND FOR DEBT.

CORLISS BELL)
)
Plaintiff:)
)
V.)
)
DORIS AGATHA BELL)
)
)
Defendant:)
)

CIVIL NO. 276/1985

ACTION FOR:
FORCIBLE ENTRY DETAINER AND
RESTITUTION

TODD H. NEWMAN, ESQUIRE
7 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-3200
(Attorney for Plaintiff & Cross-Defendant)

EDGAR D. ROSS, ESQUIRE
47-A Mars Hill
Frederiksted, St. Croix
U.S. Virgin Islands 00840
(809) 772-4444
(Attorney for the Defendant & Cross-Complainant)

PETERSEN, Judge

MEMORANDUM OPINION
AUGUST 28, 1985

This matter having come before this Court on a bench
trial and the Court having considered the evidence presented,

enters the following findings of fact and conclusions of law and decision.

FINDINGS OF FACT

1. Curliss Bell is the only child of Evans Alphonso Bell.

2. Evans Alphonso Bell and Doris Agatha Lawrence were married on July 19, 1956.

3. At the time of the marriage, Evans Alphonso Bell a/k/a Bobby Bell, owned Plot No. 107 Estate Grove Place, St. Croix. Located thereon, was a "Shed" or shack which constituted the marital abode of Doris Bell and Evans Bell.

4. Doris Bell and Evans Bell worked to transform the "Shed" into a habitable abode. They adhered to the policy of "little by little, birds will build their nest." Towards that end, the couple pooled their energies and resources. Evans Bell worked and farmed the land, while Doris Bell gathered and sold the farm produce throughout the community.

5. Doris Bell also contributed towards the final payment for the purchase of the land.

6. Relying on Evans Bell's statement that the house would be hers, Doris Bell made substantial improvements to the home.

7. Alphonso Bell told Doris Bell, their neighbors, relatives and friends, that "from the hog pen up the hill

belonged to Curliss Bell and that the house belonged to Doris Bell."

8. On numerous occasions, Alphonso Bell told Doris Bell that the house belonged to her, and told their mutual friends that Doris can make any improvements she desires after his death. On many occasions, Alphonso Bell also told his friends and relatives that all that he owned belonged to his daughter.

9. Even though Evans Bell was ill during the last year of his life, he worked the farm until a few weeks before his departure.

10. During the last year of his life, he also experienced bouts of forgetfulness and was infirmed.

11. As an adult, Curliss Bell resided in the United States except for the year 1977 when she resided on St. Croix for approximately nine (9) months.

12. On her yearly trips to St. Croix, Curliss kept in constant touch with her father.

13. In February, 1984, Evans Bell executed a Deed of Gift of the property located at 107 Estate Grove Place, St. Croix, to his daughter, Curliss Bell.

14. Evans Bell, never notified his wife Doris Bell of the conveyance of the property to his daughter, Curliss.

15. Doris Bell learned of the conveyance on the day following the burial of Evans Bell, when Curliss Bell presented the deed and gave Doris Bell oral notice to vacate the premises.

16. Doris Bell refused to vacate the premises and was then given a written notice to vacate; this action was filed for a forcible entry and detainer by Curliss.

17. Curliss Bell requested her brother to occupy a portion of the premises at 107 Estate Grove Place.

18. After requesting Doris Bell to vacate the premises; Curliss Bell, her brother, as well as other relatives of Curliss Bell, at various times threatened, intimidated, and harassed Doris Bell by:

- (a) On one occasion, spitting in Doris Bell's face.
- (b) Throwing stones on several occasions at the home wherein Doris resided.
- (c) On one occasion, stating that "if you do not come out by will, you will come out by burn-out".
- (d) On one occasion, by shouting to Doris Bell to get out and by stating "if you had opened the door, you would see what would happen to you".

19. After she received notice to vacate the premises, Doris Bell's telephone lines were cut by unknown persons.

20. On several occasions, Doris Bell received

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 5

harassing telephone calls during various hours at night by unknown person after having received notice to vacate by Curliss.

21. On one occasion, Curliss Bell, her husband and relatives, knocked at the door wherein Doris Bell resided, and threatened to let two vicious looking dogs attack Doris Bell.

22. Curliss Bell and her brother went onto the premises wherein Doris Bell resided and disconnected the water pump, depriving Doris Bell of access to water; a new lock was also placed on the pump by Curliss Bell.

23. On several occasions, Doris Bell was required to seek police assistance as well as file complaints at the office of the Attorney General for acts of disturbance of the peace and threats by Curliss Bell's relatives.

DISCUSSION

I

This Court must decide whether the evidence supports the reasonable conclusion that Curliss Bell obtained title to 107 Estate Grove Place, St. Croix by an abuse of a confidential relationship under such circumstances that she should be held to be a constructive trustee of title for the benefit of Doris Bell, or whether the deed should be set aside.

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 6

It is an established principle of equity that "where the owner of property transfers it, being induced by fraud, duress, or undue influence of the transferee, the transferee holds the property upon a constructive trust for the transferor". Restatement of Restitution §166. A common context in which undue influence may be exerted so as to warrant the imposition of a constructive trust, is when a party to a confidential relationship abuses that relation to secure personal advantages. See Francois v. Francois, 16 V.I. 130 (3d Cir.1979). A key question is whether Corliss Bell, as daughter of Ivan Bell, enjoyed a confidential relationship with her father Ivan Bell. This Court adheres to the theory that the bare existence of a confidential relationship between a grantor and a grantee, does not standing alone, raise a presumption of undue influence. Therefore, a deed will not be set aside merely because a grantor and grantee sustained a confidential relationship where the evidence shows no abuse of the confidence.

Thus, accepting all that has been shown by the testimony of Doris Bell and her witnesses, there is no basis for a finding of an abuse of a confidence. There is nothing in the record to suggest that Curliss had any undue influence over her father in the conduct of his affairs, or dominated him; there was no convincing evidence that Mr. Bell

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 7

surrendered his independence in making any judgments; no evidence was presented to show any automatic or habitual manipulation of his actions and there was no evidence of Curliss Bell's superiority or domination over her father. Moreover, a deed from a parent to a child raises no presumption of undue influence, since, in the absence of evidence to the contrary, the parent is presumably the dominant party. This is true even though the parent is aged or infirm. Thomas v. Jolly 170 So.2d 16,19 (1964). Undue influence must amount to over-persuasion, duress, force, coercion, artful, or fraudulent conveyance to such a degree, that there is a destruction of the free agency and will power of the one making the deed. Williamson v. Kirby, 379 So. 2d 683 (1980). Mere affection, kindness, or attachment of one person for another may not of itself constitute undue influence. Heasley v. Evans, 104 So.2d 854 (1958). While our Courts must be vigilant to protect the aging against any form of over reaching, simply because an elderly person chooses to give his property to his daughter rather than to his wife, does not warrant a cancellation or a setting aside of the deed where there is no clear and convincing proof of undue influence. Heasley v. Evans, supra. Thus, this Court concludes that the decedent, Mr. Bell, had sufficient mental capacity to make the

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 8

deed and it was neither induced by, nor resulted from the exertion of undue influence by Curliss Bell.

II

Knowing the premises were owned by Evans Bell, nevertheless, Doris Bell made and paid for improvements under the inducement of Evan's promise that the house in which they both resided and shared their lives together would be hers. Doris Bell now seeks to recover her costs in making the improvements.

On this claim of unjust enrichment, this Court finds that Doris Bell has proven her case by a preponderance of the evidence. This Court finds in reliance upon Evans Bell's promise to give her the home, Doris Bell expended her own time, labor and money in improving the property. Doris Bell spent approximately Two Thousand Two Hundred Twelve (\$2,212.05) Dollars and Five Cents of her own funds. Thus, this Court finds that the property conveyed to Curliss Bell by the decedent, was enriched to the tune of Two Thousand Two Hundred Twelve (\$2,212.05) Dollars and Five Cents.

It would be unjust to permit Curliss Bell to have the benefit of such improvements without paying for them. Accordingly, this Court imposes an equitable lien on

107 Estate Grove Place, St. Croix, in the sum of Two Thousand Two Hundred Twelve (\$2,212.05) Dollars and Five Cents.

III

It was stated by Justice Cardozo, that "a constructive trust is the formula through which the conscience of equity finds expression." Beatty v. Gerggenhum Exploration Co., 122 N.E. 378, 380 (1918) They are strictly in invitum and are forced upon the conscience of the trustee for the purpose of working out right and justice. Carkonen v. Forysthe, 480 P.2d 511 (1971). This description of the doctrine of constructive trust describes the circumstances of this case. While the property was purchased in the name of Evans Bell and primarily with his funds, it was the intent of the parties that the home built from a "shed" by both parties would be their marital abode and both would live there until their death. To that end, the parties pooled their energies and resources in improving the home. The evidence reveals that Mr. Bell accompanied Curliss Bell to her lawyer for the purpose of paying for her divorce. This lawyer also represented Curliss Bell's husband in the same pending divorce. During that visit, Mr. Bell utilized the services of Curliss Bell and her husband's lawyer to prepare the deed which conveyed all his real property, including his marital

abode, to Curliss Bell in fee simple. This Court finds it significant that when in February 1984, Mr. Evans deeded his home and land in fee simple to his daughter Curliss Bell, he failed to reserve a life estate in the property. While this evidence may have been dispositive on the issue of undue influence, the Court considers it relevant on the issue of mistake. Did Evans Bell have the benefit of that independent and impartial advice which would have impressed upon him a realization and a complete appreciation of the practical effects and consequences of his actions in conveying a fee simple estate without a reservation of life estate? This Court also finds it incongruous that Mr. Bell, an independent person, would place himself in a position of reliance upon the charity and kindness of his daughter. This Court adopts the theory that Mr. Bell may well have supposed that he was assuring himself and Doris Bell of their home during their respective lives and that the property would belong to his daughter upon their death. As the Court so aptly stated in Alpaugh v. Alpaugh, 37 A.2d 825, 826 (1944).

"Independent advice. . . imports that the donor or grantor had the preliminary benefit of conferring fully and privately upon the subject of the intended gift or conveyance with a person who was not only competent to inform him or her accurately concerning

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 11

the legal effect of the transfer, but who was furthermore so disassociated from the interests of donee or grantee as to be free and able to disclose the possible disadvantageous consequences to the donee or grantee of a disposition so exhaustive. To sustain the transaction, it must affirmatively appear that was well understood by the grantor."

With respect to the issue as to whether Evans Bell fully understood the purpose and consequences involved in the transaction, this Court finds that Curliss Bell has failed to carry her burden of proof on this point.

Accordingly, this Court will impose a constructive trust on that portion of the premises wherein the home is located.

IV

It is well established that the relationship of a tenant at sufferance arises where a person comes into possession of land lawfully, but holds over wrongfully as a result of neglect on the part of the landowners to assert his right of possession. Such relationship may be established by actual permission to occupy land, or permission may be implied from circumstances growing out of the longtime use of land with knowledge and the failure of the owner to object to the occupancy. White v. Miss. Power and Light Co., 196 So. 2d 343 (1967). 49 Am. Jur. 2d Landlord and Tenant § 81. Since the evidence indicated that Curliss Bell was the legal owner of

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 12

the property in question since February 1984 and made no attempt to remove Doris Bell from the premises until October 1984, it may be inferred from these circumstances that Doris Bell was a tenant at will or at sufferance.

Immediately after the burial of her father, Curliss Bell, with the aid of her relatives, commenced upon a course of self-help in removing her 68 year old stepmother from the premises. Moreover, Doris Bell was prevented from the beneficial use and enjoyment of the premises which was her home for approximately 29 years. She was forced to vacate the premises and seek shelter with her neighbors and friends. Assisted by her family, this course of conduct of Curliss Bell in harassing, frightening, threatening and intimidating Doris Bell constituted constructive eviction. This Court concludes that Curliss Bell was not entitled to resort to self-help in evicting Doris Bell from the premises.

The Court in Blyden v. Sugar Estates Associates 14 V.I. 227 (Terr. Ct. 1977), determined that the Virgin Islands Forcible Entry and Detainer Statute 28 V.I.C. § 781-794 provides a speedy judicial remedy for recovery of leased premises and further noted that "the use of self-help by a landlord is prohibited in the Virgin Islands.."

Where there has been a wrongful resort to self-help by a landlord against a tenant who is improperly holding over,

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 13

the tenant is entitled to recover at least nominal damages against the wrongdoer for the entry, and compensatory damages for any loss to his person or property. Restatement (Second) of Property §14-2 (1977) comment e. However, to recover compensatory damages, the fact of damage as well as the amount of damage must be proven with reasonable certainty. An award of nominal damages, however, is not predicated on such strict standards of proof. Nominal damages are presumed to follow from the violation of any valuable legal right even though no actual damages are involved or proven. Restatement (Second) of Torts §907(1977).

In recognition of the fact that Doris Bell has established a cause of action in tort, this court will award nominal damages in the amount of One (\$1.00) Dollar. See Creque v. Cintron, 17 V.I. 69 (Terr. Ct. St. T. 1980).

Once it has been established that a tort has been committed, there is precedent in this jurisdiction for an award of punitive damages for wrongful eviction. St. Thomas House Inc. v. Barrows, 15 V.I. 435 (Terr. Ct. St.T 1979) Curliss Bell failed to utilize the speedy judicial remedy available to her. Her actions portrayed a reckless indifference and utter disregard for the rights and interest of Doris Bell. Accordingly, this Court will award punitive damages in the amount of One Thousand (\$1,000.00) Dollars for

CURLISS BELL v. DORIS A. BELL
CIVIL NO. 1322/84 & 276/85
ACTION FOR FORCIBLE ENTRY & DETAINER
Page 14

Curliss Bell's wrongful resort to self-help under the
circumstances herein.



EILEEN R. PETERSEN, JUDGE