MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. PEN-23-473

Estate of Brian E. Priest

On Appeal from the Penobscot County Probate Court

Brief of Respondent-Appellee Lisa M. Leighton

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Statement of Facts

Lisa Priest asks the Law Court to review the October 10, 2023, Order of the Probate Court (Penobscot County, *Brandmeir*) denying her petition to reform a municipal quitclaim deed dated December 30, 2011, from the Town of Pembroke to Brian and Lisa Priest. (A. 1-2 and 40-42.) The 2011 deed conveyed property located at 529 Leighton Point Rd. in Pembroke, Maine (Property). (A. 48.) The December 30, 2011, deed did not indicate the type of ownership (i.e. joint tenancy or tenancy-in-common) which the Town of Pembroke intended to grant to Brian and Lisa Priest. (*Id.*)

Brian Priest died intestate in October 2021, in Washington County, Maine. (A. 19-20.) Brian Priest was survived by his wife, Lisa Priest, and two children from a prior marriage, Lisa Leighton and Ryan Priest. (A. 20.) On January 24, 2022, Lisa Leighton petitioned the Washington County Probate Court to find that Brian Priest died intestate. (A. 2.) On August 24, 2022, Lisa Priest petitioned the Washington County Probate Court to reform the 2011 deed to indicate the Property was transferred from the Town of Pembroke to the Priests in joint-tenancy and, as such, should not be considered an estate asset. (A. 4.)

The case was transferred to the Penobscot County Probate Court on September 27, 2022. (*Id.*) A hearing on the Petition to Reform the Deed was heard

on August 24, 2023. (A. 6.) Lisa Priest appeared by video, pro se, and Lisa Leighton appeared in person with counsel. (*Id.*)

At hearing, Lisa Priest testified that she believed the 2011 deed granted her and Brian Priest the property in joint-tenancy (A. 16.) Mrs. Priest testified that it was her opinion that Brian Priest believed the 2011 deed had granted the property to the Priests in joint-tenancy. (*Id.*) Mrs. Priest offered no evidence regarding the Town of Pembroke's intentions in conveying the 2011 deed and subpoenaed no one from the Town of Pembroke to testify. (A. 32.)

Lisa Leighton testified that Brian Priest "would pay attention to something like [the wording of the deed]. He would want it to be Ryan and I's. That's why he left it the way it was. He never talked about it any other way." (A. 21.) Lisa Leighton testified that Brian Priest had told her on several occasions that he wanted his children, Lisa Leighton and Ryan Priest, to have a portion of the Property. (21) Ryan Priest testified that Brian Priest had likewise told him on several occasions that he wanted Ryan Priest to have a piece of the property. (A. 27.) Ryan Priest testified to starting to build a cabin for himself on the property with Brian Priest's assistance before Brian Priest's passing. (*Id.*)

On October 10, 2023, the Probate Court issued its Order denying Mrs. Priest's Petition to Reform Deed, stating "[t]here was no evidence on the record

showing the intention of the transferor at the time the deed was drafted." (A. 7.)

Mrs. Priest filed a Notice of Appeal shortly thereafter.

Issues Presented for Review

1. **Whether the Town of Pembroke's municipal quitclaim deeds to Brian and Lisa Priest granted the Priests tenancy-in-common.**

2. **Whether the Penobscot County Probate Court erred in not reforming the 2011 municipal quitclaim deed from the Town of Pembroke to the Priests pursuant to law or equity.**

Standard of Review

"When an order of the Probate Court is appealed, [the Law Court] defer[s] to the Probate Court on factual findings unless they are clearly erroneous, but … review[s] de novo the application of the law to the facts." *Estate of Horne*, 2003 ME 73, ¶ 17.

Argument

The Probate Court correctly ruled that the 2005 and 2011 municipal quitclaim deeds from the Town of Pembroke conveyed ownership to Brian Priest and Lisa Priest as tenants-in-common.

In Maine, "[a] deed of release or quitclaim of the usual form conveys the estate which the grantor has and can convey by a deed of any other form." 33 M.R.S. § 161. A "municipal quitclaim deed" is undefined in Maine law, but a "municipality" is defined as a "city or town." 30-A M.R.S. § 2001(8). Therefore, a municipal quitclaim deed can be defined for practical purposes as a deed of release or quitclaim conveying an estate or rights in an estate from a city or town to a grantee or grantees.

When an owner conveys property by any type of deed, that deed is subject to certain rules of construction.[1] One longstanding[2] rule of construction is that

[1] "[T]o secure the certainty, precision and permanency of muniments of title, certain positive rules of law have evolved which made to control and parties to real estate transactions must heed the same, if they would effectuate their intent, or heed the consequences they did not intend." *Perkins v. Conary*, 295 A.2d 644, 646 (Me. 1972).

[2] English common law may have once favored joint tenancies, but that has not been the case in the United States or Maine for a very long time: "With the substantial abolishment of tenures … joint tenancies became disfavored, and as a result statutes have been enacted in practically all of our states, either abolishing or changing the common law rule. Our state as early as 1821 enacted legislation modifying this rule. The statute relating to conveyances … [in effect on] August 1, 1940, reads as follows: … Conveyances not in mortgage, and devises of land to two or more persons, create estates in common, unless otherwise expressed. ..." *Palmer v. Flint,* 161 A.2d 837, 839 (Me. 1960).

"[c]onveyances not in mortgage and devises of land to 2 or more persons create estates in common, unless otherwise expressed." *See* 33 M.R.S. § 159.

In 2011, the Maine legislature carved out one very specific exception to this rule when it adopted the current final paragraph of 33 M.R.S. § 159:

> A conveyance on or after January 1, 2012 by a taxing or assessing authority of real property acquired from joint tenants by foreclosure of a tax or assessment lien mortgage, if made to such persons, recreates the joint tenancy held by the persons at the time of the foreclosure unless otherwise indicated anywhere in the conveyance by appropriate language.

This is the only current exception under Maine law to the general rule that a deed conveys estate ownership in common unless otherwise stated. [3]

The quitclaim deeds conveyed by the Town of Pembroke to Brian and Lisa Priest were executed on June 30, 2005, and December 30, 2011. (A. 47-48.) Neither conveyance was made after January 1, 2012, and neither conveyance indicated the specific type of estate ownership conveyed. (*Id*.) Therefore, both deeds are subject to the longstanding rule of conveyance reflected in 33 M.R.S. § 161: The Priests received ownership rights in common.

[3] The Appellant argues that *Sargent v. Coolidge,* 399 A.2d 1333 (Me. 1979) should be interpreted to hold that quitclaim deeds do not convey any type of estate ownership, either in common or joint (Blue Br. 15-16.). That argument is at direct odds with the plain language of 33 M.R.S. §161, which allows a grantor to convey by quitclaim the estate the grantor "can convey by a deed of any other form." Even taking Appellant's conclusion at face value, a quitclaim deed is still a *conveyance* and therefore subject to the general rule stated in 33 M.R.S. § 159; in other words, even if a quitclaim does not grant any particular type of estate, 33 M.R.S. § 159 still holds that the practical effect of the conveyance is that the grantees receive the estate in common.

Appellant argues the Probate Court should have relied on 36 M.R.S. § 943 to revive the Priests' joint-tenancy. (Blue Br. 12-15) The relevant final paragraph of 36 M.R.S. § 943 reads in full:

> When a municipality conveys the premises back to the former record titleholder or to a successor of that holder who obtained title before the foreclosure for a consideration of the taxes and costs due, the rights of the *other parties* claiming an interest of record in the premises at the time of foreclosure, including mortgagees, lien creditors, or other secured parties, are revived as if the tax lien mortgage had not been foreclosed. (Emphasis added.)

Appellant's argument overlooks the fact that the revival clause in 36 M.R.S. § 943 plainly refers only to *other* interest holders than the former record titleholders. Had the legislature intended to include the former title holders, the legislature could have drafted the clause to read "the parties" or "all parties." Instead, the legislature conspicuously inserted the word "other," thereby making the revival clause refer unambiguously to interest holders *other than* the former titleholders.

Further, as the Appellant points out, 36 M.R.S. § 943 must be construed to avoid "results that are absurd, inconsistent, unreasonable, or illogical … in the context of the whole statutory scheme." *Harrington v. State,* 2014 ME 88, ¶ 5, 96 A.3d 696, 697. Appellant's interpretation would indeed lead to an illogical result. If the legislature intended in 1993 in the last paragraph of 36 M.R.S. § 943 to revive the rights of *all* "former record titleholder[s] or … successor[s] of that holder who obtained title before the foreclosure for a consideration of the taxes and

costs due," then the legislature would have had no reason in 2011 to enact a law that revived the rights of *only* former joint tenants *only* in situations where their deed was executed after January 1, 2012. Appellant's interpretation of 36 M.R.S. § 943 would completely subsume the class of people and the timeframe referenced in 33 M.R.S. § 159. To assume the legislature in 2011 either overlooked the 1993 law or somehow meant to circumscribe and contradict it *without* referencing it, is illogical. The logical explanation lies in the plain reading of the statutes: The 1993 law was intended to revive the interests of parties other than the former titleholders and the 2011 law was intended to revive the rights of the former titleholders for those relevant deeds granted after January 1, 2012.

The Probate Court soundly exercised its discretion in denying Appellant's Petition to Reform the 2011 municipal quitclaim deed.

The Probate Court may reform a deed pursuant to 18-C M.R.S. § 2-805 if a petitioner proves "by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law." A "governing instrument" under Maine law is, among other things, "a deed, will, trust or insurance or annuity policy." 18-C M.R.S. § 1-201(21)

Appellant argues this burden was met at trial (Blue Br. 23-27.) However, as the Probate Court noted, the Appellant provided *no* evidence of the transferor's intentions at trial (A. 7.) Appellant called no one on behalf of the town to speak to the Town of Pembroke's intentions – or even speak to the Town's possible

intentions, lack of intentions, or general policies regarding drafting quitclaim deeds. (*Id.*) The Probate Court therefore rightfully concluded that Appellant had not met her burden of proving by clear and convincing evidence that the Town of Pembroke had mistakenly conveyed either the 2005 or the 2011 deed to the Priests as tenants in common. (*Id.*)

The Appellant also argues the Probate Court erred by not explicitly considering in its Order Appellant's reformation petition pursuant to a general equity analysis (Blue Br. 21.) The Probate Court has jurisdiction to reform deeds related to estate matters in equity as well as under 18-C M.R.S. § 2-805.[4] Reformation in equity requires clear and convincing evidence that a deed contains a mistake of fact or law that *neither* the grantor nor grantee intended.[5] Had the Court chosen to consider the claim in equity, Appellant would have been required to prove by clear and convincing evidence not only that the Town of Pembroke made a mistake, but that Brian Priest and the Appellant labored under the same

[4] 4 M.R.S.A §252: **"**The courts of probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased persons, to wills and to trusts which are created by will or other written instrument. …"

[5] "Reformation is an equitable remedy by which an instrument may be corrected when a mistake is discovered so as to reflect the real intention of the parties. To secure reformation based upon mistake, a party must prove by clear and convincing evidence that the parties to the deed labored under a *mutual* mistake of fact regarding a term of the written instrument, such as the location or description of the property." *Beverly A. Gravison et al. v. Calvert M. Fisher et al.* 2016 ME 35, ¶30 (quotations and citations omitted, emphasis added).

misunderstanding. While Appellant argues the balance of the evidence would have somehow shifted under an equity analysis, lessening Appellant's burden of proof, that is simply not the case. (Blue Br. 22) The Appellant still would have been required to prove by clear and convincing evidence the town's intent insofar as that intent conflicted with the plain language of the deeds. The Probate Court's finding pursuant to 18-C M.R.S. § 2-805 made irrelevant and academic an equity analysis.

Appellant further argues that the Probate Court erred in not *solely* using an equity analysis. (Blue Br. 19-22.) Prior to the enactment on September 1, 2019[6] of 18-C M.R.S., Maine's probate code offered no specific legal mechanism for deed reformation.[7] In other words, prior to 2019, the only remedy available to petitioners was to request the Court reform governing instruments in equity. Appellant argues that because the deeds in question were executed prior to 2019, the Court was compelled to utilize only 18-A M.R.S. – and therefore only an equitable reformation analysis. (*Id.*) Appellee respectfully disagrees.

18-C MRS § 8-301(2)(B) states:

> [18-C M.R.S.] applies to any proceedings in court pending on the effective date or commenced on or after the effective date [of September 1, 2019] regardless of the time of the death of the decedent *except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code.* (emphasis added)

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[6] 18-C M.R.S. § 8-301(1)

[7] *See generally* 18-A M.R.S. §§ 1-101 – 5-187

The Probate Court utilized 18-C M.R.S. not only because 18-C M.R.S. § 8-301(2)(B) clearly mandates that 18-C M.R.S. applies, but ostensibly because the Probate Court did not see a reason, in the interest of justice or otherwise, to require the Appellant to prove the additional elements inherent in an equitable reformation claim (see preceding paragraph) when there exists a perfectly suitable and less burdensome remedy under law in 18-C M.R.S. § 2-805.[8] Considering the Appellant's lack of specificity in her Petition to Reform Deed, the Probate Court was well within its discretion pursuant to 18-C MRS § 8-301(2)(B) to make a ruling pursuant to the theory less burdensome to the Appellant.[9]

[8] Remedies in equity are traditionally reserved for those situations in which there is not an adequate remedy at law. See, for example, 14 M.R.S. §6051(4) and (13) which grants the Probate Court (in estate cases, pursuant to 4 M.R.S.A §252) the jurisdiction to grant equitable relief in cases of mistake (subsection 4) and "in all other cases where there is not a plain, adequate and complete remedy at law" (subsection 13).

[9] The Appellant's Petition to Reform Deed, in its preamble paragraph, moved the court solely "pursuant to 18-C M.R.S. § 2-805," not in equity. (A. 40 and 49.) The Appellant's Petition to Reform Deed also did not explicitly request the Court make a finding in equity, only that "a hearing be held on her petition, that testimony be taken on the issue presented, and that [the Probate] Court determine that the real property located at 529 Leighton Point Road in Pembroke, Maine is not an asset of the Estate of Brian Priest." (A. 42. And 55.)

Conclusion

Municipal quitclaim deeds transferred prior to September 1, 2012, are subject to the same rules every other Maine deed has been subject to since at least 1940: If there is not a stated ownership right in a deed to more than one person, the result is a conveyance to parties in common. The Town of Pembroke conveyed two municipal quitclaim deeds to Brian and Lisa Priest in 2005 and 2011 and neither deed indicated the type of ownership intended. Therefore, pursuant to law, the Priests received ownership of the property in common.

The Appellant argued at trial the Town's conveyance to the Priests in common was a mistake. To prove a mistake either in law or equity the Appellant was required to prove by clear and convincing evidence that the Town intended something other than was clearly expressed in both deeds. The Appellant offered no evidence at trial of the Town's intentions. The Probate Court therefore rightfully concluded the Appellant failed to meet her burden and properly denied the Appellant's petition to reform.

Lisa Leighton, the Appellee, therefore respectfully requests the Law Court affirm the Order of the Probate Court dated October 10, 2023, dismissing Lisa Priest's Petition to Reform Deed.

Dated September 30, 2024.

Respectfully Submitted,

/s/ *Nathan Hodgkins*

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Certificate of Service

I, Nathan Hodgkins, hereby certify that on September 30, 2024, I caused two copies of the foregoing brief of the Appellee, Lisa Leighton, to be served on the Appellant's counsel of record by mailing two copies via USPS to the following address:

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Dated September 30, 2024.

/s/ *Nathan Hodgkins*