2016 IL App (4th) 151026-U

NO. 4-15-1026

FILED
November 3, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

KAREN R. DANNER, Plaintiff-Appellee and Cross-Appellant, v. MARY KAREN REXROAT, Individually and as Personal Representative of the Estate of Carroll David Rexroat; ANN R. DUNCAN, f/k/a Ann R. Rexroat; LAURA ANN REXROAT; DAVID DONALD REXROAT; ANDREW RAMUS REXROAT; and LAURA BARNETT, Defendants-Appellants and Cross-Appellees.	))))))))))	Appeal from Circuit Court of Morgan County No. 12CH39 Honorable Christopher E. Reif, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court concluded that the trial court erred by finding a special warranty deed partially severed a joint tenancy between plaintiff and her decedent brother.

¶ 2 In May 2013, plaintiff, Karen R. Danner, filed a first amended complaint to quiet title, seeking, in part, to enjoin defendants Mary Karen Rexroat, Ann R. Duncan, Laura Ann Rexroat, David Donald Rexroat, and Andrew Ramus Rexroat from claiming any ownership in Karen's claimed 50% interest in farmland the parties refer to as "tracts I and II." (Hereinafter, we will refer to the collective defendants as "Mary.")

¶ 3 In July 2014, the trial court entered an order, finding, in pertinent part, that a February 2000 special warranty deed executed by decedent, Carroll David Rexroat (David), partially

severed the joint tenancy interest David and Karen had to tracts I and II. As a result of that determination, the court found that Mary was entitled to a portion of tracts I and II. The court then apportioned the parties' respective property interests in tracts I and II in accordance with its partial-severance finding. (David's widow, Laura Barnett, is not a party to this appeal.)

¶ 4 Mary appeals, arguing that the trial court erred by not finding that the execution of the special warranty deed severed completely the joint tenancy at issue. Karen cross-appeals, arguing that the court erred by finding that a partial severance of the joint tenancy occurred. For the reasons that follow, we reverse the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 The Illinois farmland at issue, referred to as tracts I and II, has been owned by different generations of the same family. In February 1962, Carroll Dean Rexroat and his sister, Nellie Mae Crum, owned tracts I and II as tenants in common. In August 1973, Nellie conveyed her 50% interest in tracts I and II to Carroll's children, Karen and David, as joint tenants. In December 1987, Carroll conveyed his 50% interest in tracts I and II to David as a tenancy in common. (In executing the conveyance, Carroll reserved a life estate for himself, but this conveyance is not at issue in this appeal. Carroll died in February 2007.) After Carroll's 1987 conveyance, David possessed a 50% (1) undivided interest in tracts I and II and (2) contemporaneous undivided interest in tracts I and II that David and Karen held in joint tenancy, which Nellie had conveyed to them in 1973. Altogether, David had, at a minimum, a 75% interest in tracts I and II.

¶ 7 In December 1999, David divorced Ann. During their marriage, the couple had the following four children (now adults): (1) Laura; (2) Mary, who is the executrix of David's estate; (3) Donald; and (4) Andrew. In their written divorce decree, a Texas trial court awarded

Ann, in part, the following property:

> "An undivided fifty percent (50%) interest in real property specifically described in the attached Exhibit 'A' and incorporated by reference herein and referred to as the 'Farm.' "

(The parties agree that no one could ever locate Exhibit A, to which the divorce decree referred.)

¶ 8 In accord with the Texas trial court's order, in February 2000, David executed a special warranty deed in which he conveyed to Ann "[a]n undivided 50% interest in and to the following described property." The listing that followed included a metes and bounds description of six tracts of farmland, which included tracts I and II. Following the aforementioned descriptions, the following passage appeared:

> "Being the same Tracts 1-6 particularly described in that one certain Quitclaim deed from Carroll D. Rexroat, Grantor, to C. David Rexroat, Grantee, dated December 31, 1987, and recorded January 12, 1988 ***."

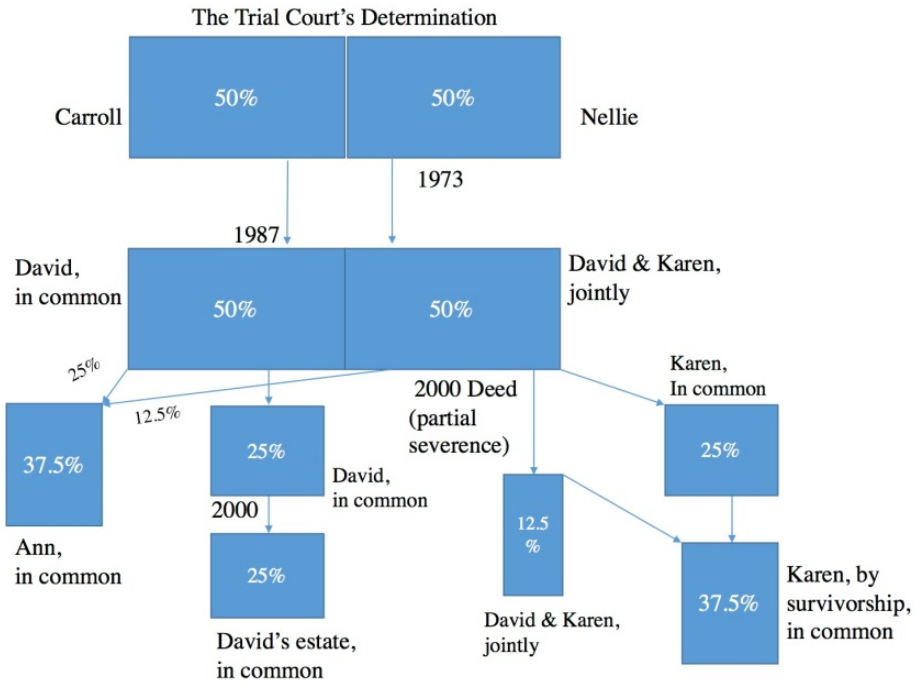
In August 2011, David died.

¶ 9 In May 2013, Karen filed a first amended complaint to quiet title, seeking, in part, to enjoin Mary from claiming any ownership in Karen's self-described 50% interest in tracts I and II. In her filing, Karen explained that in March 2013, the parties sold tracts I and II and resolution of the parties' respective interest would facilitate distribution of the sale proceeds, which were placed in escrow pending resolution of this appeal.

¶ 10 In March 2014, the parties filed cross-motions for summary judgment on Karen's first amended complaint to quiet title. In July 2014, the trial court entered an order, finding, in pertinent part, that David's February 2000 special warranty deed *partially severed* the joint ten-

ancy between David and Karen. Specifically, the court found that although David intended to convey half of his total 75% interest in tracts I and II to comply with the divorce decree, the special warranty deed created a partial severance of David and Karen's joint tenancy. In this regard, the court surmised that David's attempt to give Ann half of his property interests in tracts I and II resulted in David conveying half of his undivided 50% interest (25% total) and half of his interest in the undivided 50% interest that he held jointly with his sister Karen (12.5% total). The court determined that (1) Ann received a 37.5% interest in the property, (2) David retained a 25% interest from what he received from his father, (3) Karen and David held an undivided 12.5% interest in tracts I and II as joint tenants with a right to survivorship, and (4) Karen held a 25% interest from what was the joint tenancy with David.

¶ 11 The effective result of the trial court's determination was that David intended to convey to Ann a portion of tracts I and II that he held jointly with Karen, which created the "partial severance," but David continued to hold the remaining 12.5% interest in tracts I and II in joint tenancy with Karen. The court reasoned that David would not have "intended to give away his own right to receive the benefits of being a joint tenant with right of survivorship in the event Karen Danner had died first." The following illustration presents a visual depiction of the court's resolution:



¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. The Standard of Review

¶ 15 This court reviews orders granting summary judgment *de novo*. *Messerly v. Boehmke*, 2014 IL App (4th) 130397, ¶ 32, 8 N.E.3d 57. The effect of a deed by a joint tenant on the joint tenancy is a matter of law and is reviewed *de novo*. *Jackson v. O'Connell*, 23 Ill. 2d 52, 55, 177 N.E.2d 194, 195 (1961). When, as here, the "parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28, 978 N.E.2d 1000.

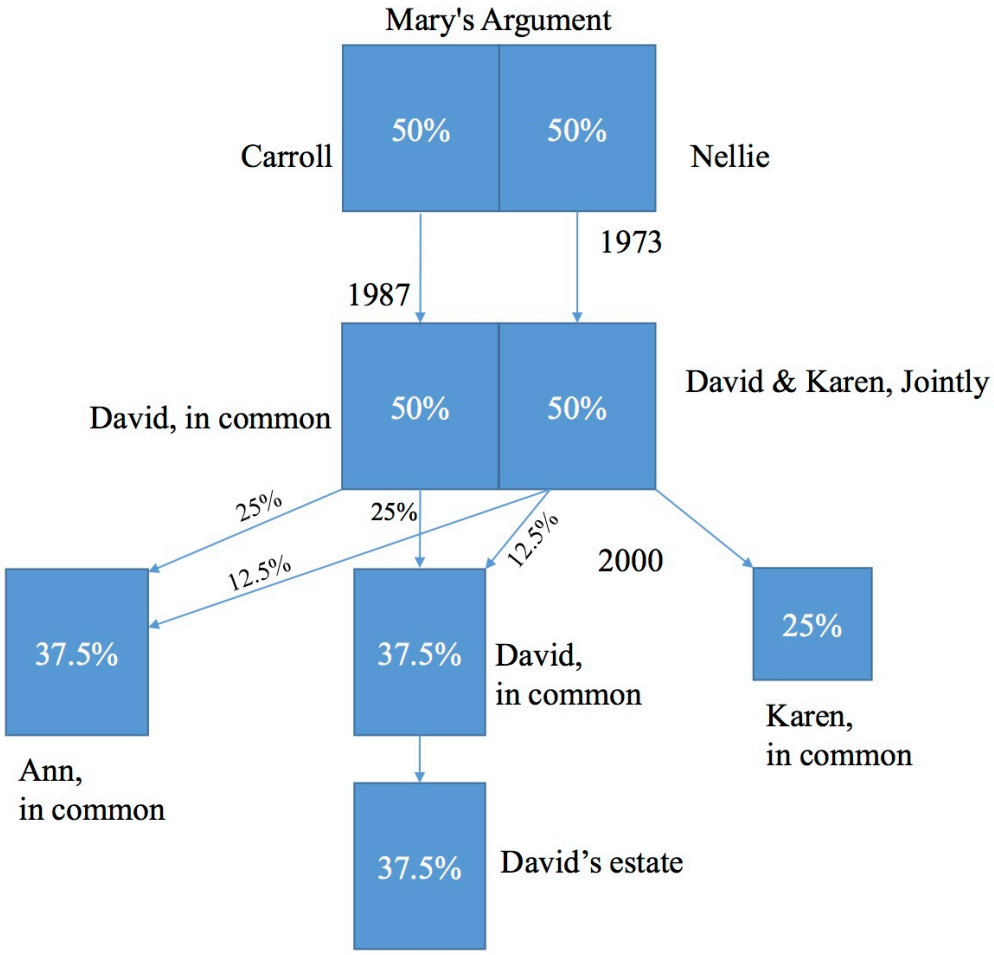
¶ 16 B. The Parties' Arguments

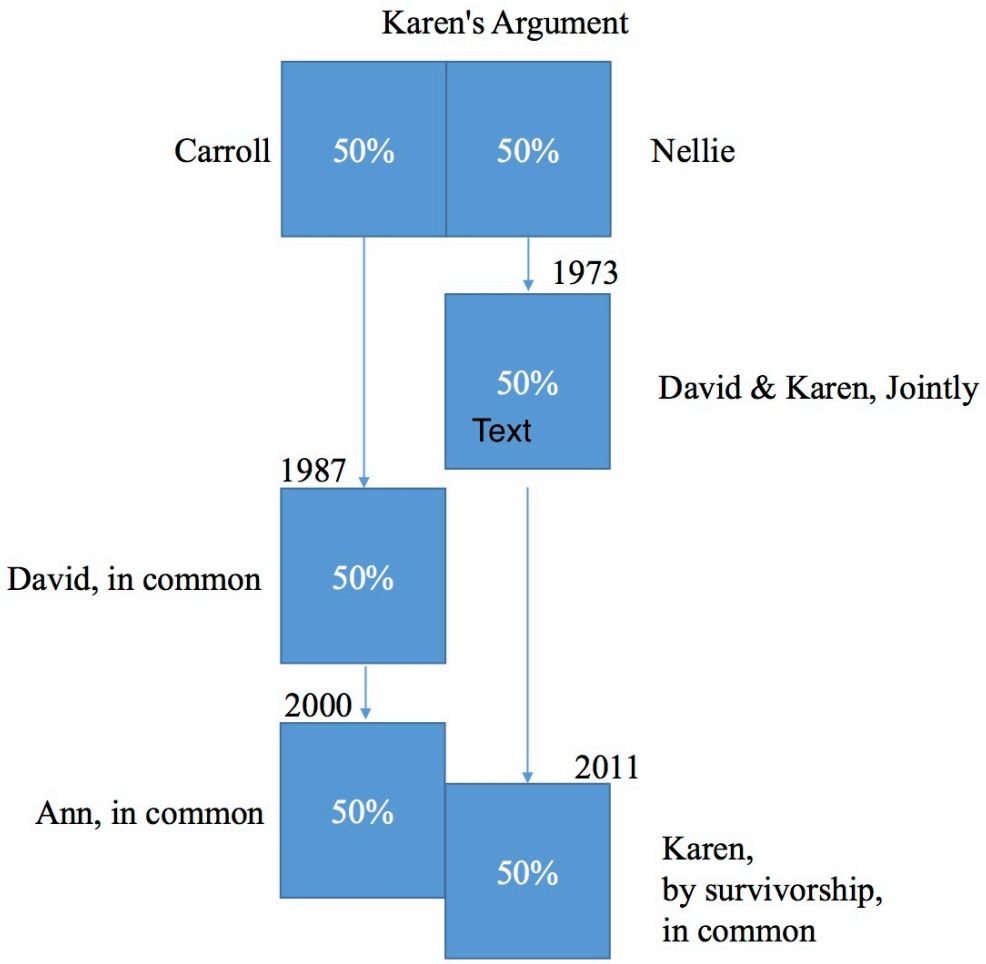
¶ 17 Mary argues that the special warranty deed did not convey merely the 50% undivided interest in tracts I and II that David received from Carroll in 1987. Instead, Mary claims that pursuant to the divorce decree, David conveyed 50% of *all* of his interest in tracts I and II,

thus severing completely his joint tenancy with Karen. If Mary's claims are correct, Karen would have been left with a 25% interest in tracts I and II, while Ann and David's estate would each hold a 37.5% interest—half of David's interest that he received from Carroll, and half of the now-severed 25% interest that he shared with his sister.

¶ 18 Karen argues that David's 2000 special warranty deed conveyed to Ann only the 50% undivided interest in tracts I and II that David received from Carroll in 1987 because the special warranty deed specifically references Carroll's 1987 deed when describing the property to be conveyed. As a result, Karen claims that upon David's death, she became the sole owner of the 50% undivided interest in tracts I and II that she had owned as a joint tenant with David.

¶ 19 The following charts present a visual depiction of the parties' respective positions.





¶ 20 C. The Trial Court's Partial-Severance Ruling

¶ 21 Prior to reaching the merit of the parties aforementioned claims, we first address their respective arguments that the trial court erred by finding that the February 2000 special warranty deed partially severed the joint tenancy interest David and Karen had in tracts I and II.

¶ 22 Joint tenancies require that tenants have equivalent interests accruing by the same conveyance, commencing at the same time, held by one and the same undivided possession. *Minonk State Bank v. Grassman*, 103 Ill. App. 3d 1106, 1108, 432 N.E.2d 386, 388 (1982). "The voluntary or involuntary destruction of any of the unities by one of the joint tenants will sever the joint tenancy." *Harms v. Sprague*, 105 Ill. 2d 215, 220, 473 N.E.2d 930, 932 (1984). "By conveying his or her interest in the joint property to a third party, a joint tenant destroys the uni-

ties of title and interest, which are fundamental to the perpetuation of the joint tenancy." *Sathoff v. Sutterer*, 373 Ill. App. 3d 795, 797, 869 N.E.2d 354, 356 (2007). A severance of a joint tenancy is "a separation of the interests of the joint tenants, a vesting of the interest of one, separated from the interest of the other, in some third person." *Tindall v. Yeats*, 392 Ill. 502, 510, 64 N.E.2d 903, 906 (1946).

¶ 23 Partial severances of joint tenancies are possible but occur in situations where one of three or more joint tenants conveys away his or her interest, leaving the remaining joint tenants and their share of interests in the joint tenancy intact. *Jackson*, 23 Ill. 2d at 56, 177 N.E.2d at 195. In this case, because the undivided, 50% interest was shared jointly between only David and Karen, a partial severance of the joint tenancy was not possible. Depending on what interest the February 2000 special warranty deed conveyed, David and Karen's joint tenancy was either completely severed or not affected at all.

¶ 24 As previously mentioned, in granting the partial severance at issue, the trial court reasoned that David would not have "intended to give away his own right to receive the benefits of being a joint tenant with right of survivorship in the event Karen *** had died first." Nonetheless, the court determined that in complying with the December 1999 divorce decree, David intended to include "the portion owned as joint tenants with rights of survivorship with Karen." From this premise, however, the court reasoned that a portion of the joint tenancy that David and Karen enjoyed survived David's conveyance to Ann. We do not agree with the court's rationale because it is in direct conflict with the long-standing principle that any act of a joint tenant which destroys any of the four unities operates as a severance of the joint tenancy and extinguishes the right of survivorship. *Harms*, 105 Ill. 2d at 220, 473 N.E.2d at 932. However, this conclusion does not end our analysis.

¶ 25 D. The Construction of the Special Warranty Deed

¶ 26 Karen argues that this court should look to the plain language of the February 2000 special warranty deed, which states that David was conveying "an undivided 50% interest in and to [tracts I and II]." Karen relies on case law stating that courts look to the language of the deed or instrument only. *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 467, 575 N.E.2d 548, 552 (1991); *Marlow v. Malone*, 315 Ill. App. 3d 807, 813, 734 N.E.2d 195, 200 (2000); see also *Kozlowski v. Mussay*, 395 Ill. 81, 85-86, 69 N.E.2d 338, 341 (1946) ("[T]he nature and extent of the estate granted is to be determined, as a matter of law, from the instrument itself, and the intention of the grantor must be ascertained from the language used within the four corners of the instrument."). Karen argues further that basic canons of construction support her stance because under her interpretation of the special warranty deed, Ann would receive more—a full 50% interest—than under Mary's construction, which would result in a conveyance of only a 37.5% interest. See *Allendorf v. Daily*, 6 Ill. 2d 577, 590, 129 N.E.2d 673, 680 (1955) (stating that deeds are to be construed in a manner most favorable to the grantee).

¶ 27 Although Karen correctly relies on case law emphasizing the importance of the language of the deed itself, Illinois case law also provides that courts are to effectuate the intent of the parties. See *Pure Oil Co. v. Bayler*, 388 Ill. 331, 338, 58 N.E.2d 26, 29 (1944) ("To have a valid deed, certain formal requirements must be met, but when we are once presented with a written instrument purporting to convey real estate, the primary rule to be followed is to ascertain the real intention of the parties ***."); see also *Texas Co. v. O'Meara*, 377 Ill. 144, 150-51, 36 N.E.2d 256, 259 (1941) ("It is a rule of decision in this court that the intention of the parties is the test by which to determine the effect of deeds, and this applies to the description of the property conveyed as well as to other parts of the instrument."). Indeed, Illinois courts "must consid-

er the circumstances and so far as possible place ourselves in the situation of the parties to the deeds which we are considering and construing." *Texas Co.*, 377 Ill. at 151, 36 N.E.2d at 259.

¶ 28 In this case, the language of the special warranty deed was drafted in the context of David and Ann's divorce. The trial court properly looked to the divorce decree and gleaned what it could about the parties' intent regarding tracts I and II. In this regard, the court stated that "[i]n looking to the 2000 deed, there is no question that the intent was to provide [Ann] a 1/2 interest in all of [David's] interest in tracts I & II." Based on the trial court's ruling, no question exists that David had conveyed a 37.5% interest to Ann in tracts I and II and retained a 37.5% interest for himself.

¶ 29 Without additional language providing explicit clarity, strong reasons exist to presume that David executed the special warranty deed in an effort to split equally all interests in the six tracts of land identified, which included tracts I and II. David executed the special warranty deed in the course of the couple's division of their property pursuant to a divorce. Additionally, the special warranty deed split the outstanding mortgage obligations against all six tracts of land evenly between David and Ann. The divorce decree—as is typical regarding the dissolution of a long marriage—provided that the couple would divide assets, such as retirement investments, bank accounts, homes, family photos, and other marital property. The divorce decree presents a pattern of equally dividing the couple's assets. An even split of all interest in the six tracts of contested farmland, including tracts I and II, fits into that pattern.

¶ 30 We concede that Karen's interpretation of the special warranty deed and the divorce decree that dissolved David's marriage to Ann is plausible. As mentioned, the language of the special warranty deed provided that David was conveying "an undivided 50% interest in and to" tracts I-VI, which includes tracts I and II. The deed identifies the same six tracts that were

conveyed to David by his father in 1987 and refers to that deed. It is an admittedly unhelpful fact that the divorce decree's "Exhibit A," which described the property interests at stake in the marital settlement agreement, could never be found. However, the special warranty deed's language is not so clear as to preclude the natural assumption that, given the totality of the circumstances, David and Ann were simply splitting their assets evenly. We deem the special warranty deed's reference to the 1987 conveyance from Carroll to David merely was a means of identifying the properties at issue.

¶ 31 If David intended to preserve the joint tenancy in the 50% interest he shared with Karen, he could have easily done so by providing a clear and explicit statement to that effect in the special warranty deed. Certainly, David and Ann understood their interests in the farmland during their divorce. Yet, David did not draft the special warranty deed to indicate that the interest conveyed did not include his total interest in the tracts I and II.

¶ 32 Without such further proof, this court cannot accept, as Karen urges, a convoluted assessment after the fact. Karen's argument is not ridiculous but must be supported by facts and evidence that do not exist here. Given the context of the divorce, we conclude that the February 2000 special warranty deed was just what it appeared to be—a conveyance to Ann of a 50% interest of all of David's farmland interest.

¶ 33 III. CONCLUSION

¶ 34 For the foregoing reasons, we reverse the trial court's judgment and conclude that the special warranty deed severed the joint tenancy between David and Karen. As a result, Karen was left with a 25% interest in tracts I and II, and David's estate and Ann both have a 37.5% interest in tracts I and II.

¶ 35 Reversed.