

00PR115 (10/21/03)

PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 00PR115

IN THE MATTER OF THE ESTATE OF

BILLIE G. COCHRAN

Deceased.

ORDER

THIS MATTER comes before the Court on the Successor Personal Representative's Verified Petition to Determine Estate's Interests in Real Property, dated August 29, 2001. A hearing was held on the matter on September 24, 2003. After reviewing the evidence presented, the Court FINDS as follows:

Decedent conducted several business transactions with his daughter, Cristin Cochran, and Cristin's ex-husband, Mirza Mirza, prior to his death on September 11, 1998. As the basis of their business venture, the decedent, Ms. Cochran, and Mr. Mirza would buy, rehabilitate, and then either sell or rent various residential properties. Typically, these properties were titled as a joint tenancy between the three owners, the decedent holding a fifty percent share and Ms. Cochran and Mr. Mirza hold the remaining fifty percent share.

Five properties, in particular, gave rise to this petition: 1683 S. Pearl Street in Denver; 281 Lansing Street in Aurora; 848 S. Washington Street in Denver; 860 Emerson Street in Denver; and 439 Emerson Street in Denver. On December 3, 2002, this Court issued an order approving a settlement between the parties regarding Mr. Mirza's interest in the five properties. In exchange for a sum of money and title to 439 Emerson Street, Mr. Mirza agreed to relinquish his interests in the remaining four properties. As such, the determination of ownership interests as to the remaining four properties between Ms. Cochran and the decedent's estate remains the key issue under this petition.

The decedent, Ms. Cochran, and Mr. Mirza began to acquire the properties in question in March 1985. With regard to 1683 S. Pearl Street, 281 Lansing Street, and 848 S. Washington Street, the evidence clearly indicates that the properties were acquired in a joint tenancy between the three owners. However, as to 860 Emerson Street, which the owners acquired on or about May 31, 1988, there remains a question as to its initial form of ownership.

All parties agree that the vesting deed for 860 Emerson Street did not specify the nature of the ownership between the buyers and that all owners were present at the time the deed was signed. The standing rule in Colorado holds that "[n]o estate in joint tenancy in real

property... shall be created or established unless, in the instrument conveying the property..., it is declared that the property is conveyed... in joint tenancy or as joint tenants." C.R.S. § 38-31-101(1) (2003). Ms. Cochran claims that the failure to designate the joint tenancy arrangement resulted from a scrivener's error and that the deed should be reformed to reflect the joint tenancy ownership.

"[I]n order to entitle one to a reformation of a deed on the grounds of mutual mistake, the evidence must be clear, unequivocal and indubitable... [M]utual mistake... must be one which is reciprocal and common both to the grantor and grantees alike, and both these parties must labor under the same erroneous conception in respect to the terms and conditions of the instrument." *Smith v. Anderson*, 214 P.2d 366, 369-70 (Colo. 1950). In this particular instance, the record is clear that the parties intended to have 860 Emerson Street held as a joint tenancy. The sale contract for the property indicated that the owners wished to hold the property as joint tenants. Except for the omission of ownership type on the deed, the execution of the purchase mirrored previous and subsequent purchases by the decedent, Ms. Cochran and Mr. Mirza. To further support this theory, in 1993, the decedent and Mr. Mirza executed deeds to transfer all the properties to tenancy in common. This action would not have been necessary for the 860 Emerson Street property if the parties understood that the property was actually deeded as a tenancy in common in the first place. As such, reformation of the deed to reflect joint tenancy is an appropriate, equitable remedy in this instance.

Once it is determined that the remaining properties in question began as joint tenancies, the next task is to determine whether any event or events occurred that would have negated or destroyed the joint tenancy ownerships. As noted above, the settlement approved by the Court on December 3, 2002, eliminates Mr. Mirza from any further consideration. As such, we look to the actions of Ms. Cochran and the decedent in order to determine whether or not the joint tenancy arrangement continued, enabling Ms. Cochran to acquire title to the properties through a right of survivorship and leaving the estate with zero interest.

On January 7, 1993 (following the dissolution of marriage between Ms. Cochran and Mr. Mirza), Mr. Mirza executed quit-claim deeds on the four above properties. Mr. Mirza testified that he drew up the documents in accordance with the 1992 separation agreement between himself and Ms. Cochran, whereby they agreed to hold title to their interest in the properties as tenants in common. On March 8, 1994, Mr. Mirza and the decedent signed the quitclaim deeds in front of a notary. At this point, the documents were forwarded to Ms. Cochran for her execution. Mr. Mirza testified that the decedent expressed to him that Ms. Cochran would record the deeds after she executed them. It is clear from the evidence that the recording never took place and some years later Ms. Cochran destroyed the originals of the quitclaim deeds. At some point, Ms. Cochran added handwritten changes to the deeds reflecting the decedent having a half interest and Ms. Cochran and Mr. Mirza each having a quarter interest. Ms. Cochran, Mr. Mirza, and the decedent initialed these handwritten changes in the margin.

On March 31, 1994, the decedent executed his last will and testament. Under Article 3, paragraph C, the decedent devised what he assumed to be his fifty-percent tenancy in common interest in the four properties as follows: thirty-four percent to his son, Kirk Cochran; eight percent to Ms. Cochran; and eight percent to Mr. Mirza. This indicates that the decedent presumed that the transfer of the properties into tenancy in common had been effectuated.

Currently, there is a rift in Colorado case law as to whether the actions of a single joint tenant can unilaterally destroy a joint tenancy in its entirety. In 1981, the Colorado Court of Appeals determined that "[a] joint tenancy relationship is terminated when one or more joint tenants manifests an intent to terminate the right of survivorship" and that such an intent "may be inferred from actions which are inconsistent with the continuation of the relationship." *Walk v. Miller*, 650 P.2d 1286 (Colo. App. 1981). Conversely, in March 2003, the Court reached an opposite conclusion holding that if it "were to uphold the unilateral effort... by one joint tenant to terminate the joint tenancy, [it] would approve a form of dominion over [one's] rights as a surviving joint tenant." *Canterbury v. Kovacich*, 74 P.3d 457, 459 (Colo. App. 2003). The Colorado Supreme Court granted certiorari for the *Canterbury* case on August 18, 2003. This suggests to the Court that this issue should more properly be ruled on after this case is decided.

The Court ORDERS the reformation of the 860 Emerson Street deed to reflect a joint tenancy ownership between the decedent, Ms. Cochran, and Mr. Mirza at the time of its initial execution. As to the estate's interest in the 1683 S. Pearl Street, 281 Lansing Street 848 S. Washington Street and 860 Emerson Street properties, the Court defers its ruling until its receives the Colorado Supreme Court's ruling on *Canterbury*.

October 21, 2003

C. Jean Stewart
Judge, Probate Court