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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE
PART III

BOOK 6925 PAGE 260

MICHAEL J. BROOKS,

Plaintiff,

VS.

A.L. WINDLE and Wife, ANNE C. WINDLE, MARILYN WINDLE NOFFSINGER, DAVID MICHAEL WINDLE, and CATHERINE ANN WINDLE,

Defendants.

DOCKET NO. 85-1818-III

ORDER FILED & ENTERED 6-25-86
MINUTE BOOK 38 PAGE 146

FINAL DECREE

This cause came to be heard on the 12th day of June, 1986 before the Honorable Chancellor Robert Brandt, in the Chancery Court for Davidson County, Tennessee, upon the testimony of the parties, their witness, the statements of counsel and the entire record, from all of which the Court found that the conveyance of the real property at 3113 Windemere Circle, Donelson, Tennessee, by the Defendants, A.L. Windle and Anne C. Windle, to their children the Defendants, Marilyn Windle Noffsinger, David Michael Windle and Catherine Ann Windle, was fraudulent as to their creditors and should be set aside. The Court further found as follows:

BENCH RULING: THURSDAY, JUNE 12, 1986

> The Court concludes that this is a fraudulent conveyance which rendered the plaintiff insolvent and maybe even was made with an actual intent to defraud creditors.
>
> There are a number of facts that the Court bases this conclusion upon. One is the statement by Mr. Windle that he was advised by his attorney this was the only way to keep the house from being sold. That is simply not correct.
>
> I'm not saying he wasn't advised by his attorney that. But the notion that the house has to be conveyed out of the husband and wife's names to somebody else in a divorce proceeding to prevent the house from being sold is just simply not correct. There's just nothing to that.
>
> The statement that that's what his lawyer told him is not corroborated by the lawyer.

AC

And if the lawyer told him that, he told him something that wasn't true.

Another fact the Court considers is the fact the defendant never did move out of this house. Mr. Windle never did move out of this house. The only evidence is that he went somewhere else to sleep and that's not moving out. He apparently kept his personal effects and clothing at the house. He was apparently in the house during the day when the wife was at work. And the only evidence that he left was that he just went somewhere else to sleep at night. That's not moving out of the house. So the Court concludes that he continues to live there.

Another fact the Court has considered is the fact that the children aren't participating in this case. It's supposed to be their piece of property that they had and they're not even here to express an interest in it.

Another fact the Court considers is the sworn statement made in the divorce answer. The truth of the matter is that what he said under oath then is exactly what the plaintiff contends right now. And that is he was in financial trouble. Now he says he didn't really mean it; that he lied under oath.

And furthermore it says the lawyer committed a fraud and a disbarable defense by making up a story. The lawyer made up a story and told hiS client to falsely swear in court to something that wasn't true. That's a serious charge to make against this attorney, Mr. Edwards, that he concocted a fraudulent defense and dreamed it up and advised his client to make that statement under oath. That's a little hard to accept.

Mr. Edwards has been practicing in this town for a long time. As far as I know he has a perfectly good reputation for integrity. That's just a little bit hard for the Court to accept.

I know there probably are lawyers that do those things. But it's just heard to believe and certainly it's not corroborated. An interesting thing about it is the false fact that was sworn to is exactly the fact that the plaintiff in this case contends existed.

And the clearest indication of a fraudulent nature of the transaction is that the Windle's are now trying to mortgage property that they don't even own anymore. There's no way if they really did give this propety to somebody else they could go and mortgage it. It's not theirs to mortgage.

Now, as to the effect of the Court's ruling that it is a fraudulent conveyance, I think the defendants' counsel is correct. What it does is it voids the transfer. It makes it as if it never The property insofar as this creditor is concerned is still a tenants by the entirety ownership of the husband and the wife. And this creditor has whatever rights a creditor has against one of the owners of property owned as

tenants by the entirety.

This fraudulent conveyance cannot and does not give this creditor any more rights in the property than the creditor had before the fraudulent conveyance took place. But that's the whole point of the fraudulent conveyance law is that it is to allow people to set aside a conveyance and reach whatever they could have reached before the fraudulent conveyance took place. In that respect it's very much like a preference in a bankruptcy type of proceeding.

So the result of this is that the Court grants the plaintiff relief and sets aside the fraudulent conveyance. This plaintiff/creditor has whatever rights he had in this property that he would have had the conveyance not occurred.

It is further ORDERED, ADJUDGED and DECREED that the conveyance of the real property, more particularly described as follows:

LAND in Davidson County, Tennessee, being Lot No. 166 on the Plan of Section VI, Lincoya Hills, of record in Book 2331, Page 71, Register's Office for said County, as follows:

LOT NO. 166 fronts 125.0 feet on the northerly margin of Windemere Circle and extends back 305.5 feet on the easterly side and 358.6 feet on the westerly side to a line in the rear, measuring 136.1 feet.

BEING the same property conveyed to Marilyn Windle Noffsinger, David Michael Windle and Catherine Anne Windle by Quitclaim Deed from E.L. Edwards, Jr., Trustee, as of record in Book 5631, page 784, Register's Office for Davidson County, Tennessee.

on August 1, 1980 from A.L. Windle and wife, Anne C. Windle to Marilyn Windle Noffsinger, David Michael Windle and Catherine Anne Windle is set aside and said real property described above is vested in A.L. Windle and wife, Anne C. Windle, and it is further

ORDERED, ADJUDGED and DECREED that the Plaintiff shall be entitled to, by virtue of his judgment against A.L. Windle in Chancery Court, Docket No. 83-1185-III, be entitled to the survivorship interest in said real property in the event that Anne C. Windle should predecease the Defendant, A.L. Windle; and it is futher

ORDERED, ADJUDGED and DECREED that the Defendants

shall be taxed with the costs of this cause for which execution may issue.

Enter this the _____day of June, 1986.

CHANCELLOR ROBERT BRANDT

I hereby certify that this is a true copy of original [illegible] filed in my office.
This 22 day of July, 1986
By _____ Deputy Clerk

APPROVED FOR ENTRY:

HELEN S. ROGERS
Attorney for Plaintiff
LINK, PORTER, JONES & ROGERS
20th Floor, L & C Tower
Nashville, Tennessee 37219
(615) 256-5144

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Final Decree has been mailed, by U.S. Mail, postage prepaid, to the attorney for the defendants, Ms. Gail Reese, First American Center, Nashville, Tennessee 37238, this the 18th day of June, 1986.

HELEN S. ROGERS

23409

IDENTIFICATION REFERENCE

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FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

FILED