



03/27/95 MATTER ESTATE JAMES H. GRUND v. SUE ANN

648 N.E.2d 1182 (1995) | Cited 1 times | Indiana Court of Appeals | March 27, 1995

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SULLIVAN, J.

The estate of James H. Grund (Estate) appeals from a judgment entered upon its complaint to impose a constructive trust with respect to certain entireties real estate.

The case requires us to determine what portion of tenancy by the entirety property, if any, a wife is entitled to after she is charged with, and thereafter convicted of, murdering her husband.[Footnote 1] James H. Grund (James) and Sue Ann Grund (Susan) were married at the time of James's death on August 3, 1992. They owned real estate in Miami County, Indiana (the Temple Hills property) as tenants by the entirety. On November 4, 1992, Susan was arrested and charged with murdering James.[Footnote 2] Approximately one month later, the Estate filed a Complaint For Imposition of Constructive Trusts, alleging that Susan murdered James, and that whatever interest she held by the entirety with him should be placed in constructive trust pursuant to I.C. 29-1-2-12.1 (Burns Code Ed. Repl. 1989).

On January 5, 1993, Susan transferred the Temple Hills property via quitclaim deed to Charles H. Scruggs (Scruggs), her attorney.[Footnote 3] Three days later, Estate notified Scruggs of its intent to have Susan declared a constructive trustee of the Temple Hills property. The parties then requested that the trial court determine the shares to which Susan and Estate were entitled should Susan be found guilty of murdering James. The court found that Susan could take one-half of the property as an owner, and that James owned the other half to be administered by his estate. The trial court further determined that Susan could not inherit from James. Thereafter, the Estate filed a document entitled Objections to Release of Funds, along with its Motion to Correct Errors. On July 29, 1993, the trial court entered an amended judgment, concluding that Susan, or her successor in interest, owned one-half of the tenancy by the entirety real estate, and that the remaining one-half was to be held by the Peru Trust Company (the personal representative of the Estate) in a constructive trust pending further court order.[Footnote 4] The probate court ordered the Temple Hills property sold. The net proceeds are now in the possession of the Peru Trust Company for distribution pending the outcome of this appeal.

The Estate contends that both common law and I.C. 29-1-2-12.1[Footnote 5] preclude Susan from "obtaining or acquiring" any interest in realty she owned as tenants by the entirety with James. Brief of Appellant at 6.[Footnote 6] The Estate contends that Susan holds all such property as a



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constructive trustee pending a finding of guilt. Susan counters that vesting the entire estate in a constructive trust pending further order requires her to forfeit property to which she is entitled, arguing that *National City Bank of Evansville v. Bledsoe* (1957) 237 Ind. 130, 144 N.E.2d 710, requires us to affirm the trial court's determinations.

In *Bledsoe*, a married couple held property as tenants by the entirety. The husband killed his wife and then committed suicide. The wife's estate then sued the husband's estate to determine ownership of the property. Our Supreme Court first recognized that the statute then in effect clearly would have prevented the husband from taking the one-half to be held in constructive trust had he been convicted of murdering his wife.[Footnote 7] However, the husband's suicide made it impossible to apply the statute. The court turned to the common law, noting that other jurisdictions had taken five different approaches in resolving such situations.[Footnote 8] The court ultimately concluded that the better-reasoned approach was one holding that the murderer becomes a constructive trustee for the victim's estate in one-half of the property.[Footnote 9] Thus, the entire estate did not vest in the husband. Instead, the court determined that he held his decedent wife's one-half interest in constructive trust for the benefit of her estate.

Estate contends here that *Bledsoe* merely stands for the proposition that the common law requires imposition of a constructive trust upon the decedent's one-half interest in the real estate immediately upon a co-tenant's death. Separate and apart from that remedy, Estate argues that because I.C. 29-1-2-12.1 focuses upon a criminal conviction, there is a "gap of time between the death and the conviction" where entitlement to the proceeds or a portion thereof hangs "in limbo". Brief of Appellant at 9. Estate maintains that the whole estate vests in Susan, superficially, at the time of death, and she holds bare legal title for the benefit of James's heirs until further court order. Once found guilty, the Estate argues that Susan is a constructive trustee of the whole estate retroactive to the time of James's death. Accordingly, the Estate claims that the trial court should have frozen "all funds or proceeds of any Disposition of the realty" until Susan was finally adjudicated guilty and the constructive trust issue resolved. Brief of Appellant at 9. Thus, the Estate concludes that the trial court erred when it failed to restrain Susan and her criminal defense attorney from further clouding title to the Temple Hills property.

The Estate further asserts that such a result does not require Susan to forfeit any property because she never acquired any property to forfeit. Crucial to this argument is the contention that neither James nor Susan acquired a vested interest in the Temple Hills property when they took title as tenants by the entirety. Instead, the Estate asserts that the survivor of the two owned the property. Because I.C. 29-1-2-12.1 excludes a murdering spouse from being recognized as the survivor, the Estate insists the property vested exclusively in the Estate, retroactive to the moment of death, if Susan is convicted.

The critical question is this: what did Susan "acquire" or become "otherwise entitled to receive" as a result of James's death? This question is further confounded by the legal fictions inherent in tenancy



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by the entirety property. In Indiana, the single legal entity created by the fiction of unity of the spouses holds or "owns" tenancy by the entirety property. *Rodenbeck v. Marathon Petroleum Co.* (1990) N.D. Ind., 742 F. Supp. 1448; *Bayes v. Isenberg* (1981) 1st Dist. Ind.App., 429 N.E.2d 654; *State, Dep't of State Revenue, Inheritance Tax Division v. Union Bank & Trust Co.*, (1978) 1st Dist., 177 Ind. App. 632, 380 N.E.2d 1279. Older cases held that both spouses were seized of the whole. E.g., *Baker v. Cailor* (1933) 206 Ind. 440, 186 N.E. 769. Thus, neither spouse alone may do anything to destroy the tenancy, including transferring an interest without the other spouse's consent or ousting the other from possession. See, e.g., *Beneficial Mortgage Co. of Indiana v. Powers* (1990) 1st Dist. Ind.App., 550 N.E.2d 793, trans. denied (mortgage was invalid absent any proof of wife's authorization in a case in which a husband forged wife's name when he mortgaged entirety property as security for a loan); *Thornburg v. Wiggins* (1893) 135 Ind. 178, 34 N.E. 999 (contract of sale invalid when only husband's signature appeared on contract with third party to sell entirety property). Absent consent of one of the spouses, only a severance of the marital relationship may destroy the tenancy by the entirety.

The court in *Bledsoe* recognized that divorce severs a tenancy by the entirety. Analogizing divorce, the court then determined that all tenancy by the entirety property is severed when one tenant murders the other tenant, writing that "there is no reason why the same division should not be made where a tenancy by entireties is dissolved by murder." 144 N.E.2d at 715.[Footnote 10] *Bledsoe* then determined that a murderer should not be permitted to take and keep the entire interest in the property because of his crime. Our Supreme Court chose to establish a constructive trust only over the victim's one-half of the property, allowing the murderer to take the other half.[Footnote 11] Thus, the husband never "profited" from his crime because his estate did not acquire any additional property. His heirs received only one-half of the estate, that portion to which the Court recognized he was inherently entitled. The only property he would have "acquired" had he later been found guilty of intentionally killing his wife would have been the one-half the court initially ordered held in constructive trust.

The same is true here. While recognizing that I.C. 29-1-2-12.1 is not limited to inheritance situations,[Footnote 12] we make clear that it applies only to property a murdering spouse "acquires" as a result of the death. Should we accept the Estate's argument that I.C. 29-1-2-12.1 requires all proceeds to be held in constructive trust pending proof that one spouse is responsible for the other's murder, we would be effectively challenging our Supreme Court's determination in *Bledsoe* that the murderer is an undivided one-half owner at the time of the estate's severance. We cannot do so; nor do we see any reason to do so.

Bledsoe is controlling.[Footnote 13] In so holding, we do not attempt to quantify that portion of the property Susan owned before James died, nor do we cast doubt upon our Supreme Court's recognition that the surviving spouse had something akin to a one-half interest before death.[Footnote 14] That being the case, Susan did not gain any additional interest as a result of her actions; she merely cannot acquire any of James's interest once she is "found guilty, or guilty but mentally ill, of murder, causing suicide, or voluntary manslaughter, because of the decedent's death."



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See I.C. 29-1-2-12.1. Accordingly, to hold that the entire estate be held in constructive trust pending a later determination of guilt would require Susan to forfeit the one-half of the property to which Bledsoe has established she was legally entitled upon James's death. Such a holding would clearly violate Article 1, Section 30 of the Indiana Constitution.[Footnote 15]

The trial court properly concluded that Susan, or her successor in interest, owned one-half of the tenancy by the entirety real estate, and that she does not forfeit her share should her guilt be established. The trial court also properly concluded that the remaining one-half interest in the real property was to be held by the Estate in a constructive trust pending further court order.

We affirm the trial court's amended judgment in all respects, and remand for further proceedings consistent with this opinion pending the final Disposition of the criminal proceedings. We deny Susan's request for appellate attorney fees.

KIRSCH, J. and BARTEAU, J. CONCUR

