



IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

CYNTHIA HYLTON-MURER,

Plaintiff,

VS.

CHARLOTTE FAYE HYLTON, et al.,

Defendant.

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CASE NUMBER: CV-2014-901105

ORDER

THIS CAUSE came on to be heard before the undersigned upon the Plaintiff's Motion for Partial Summary Judgment. Also pending in this case are two Motions to Strike filed by the Defendant, Dennis Blackerby, both of which deal with the issue of the value of the property made the basis of this suit. Upon consideration of the evidence submitted and the arguments of counsel, the Court finds that Plaintiff's motion is well taken and is due to be GRANTED. The Defendant's Motion to Strike filed on August 24, 2015 is also hereby GRANTED. The Court has not based its decision of the value of the property in this case upon any determination of value made by the Shelby County Tax Assessor's Office. The Defendant's Motion to Strike filed on August 25, 2015 seeking to strike the Affidavit of Plaintiff, Cynthia Hylton-Murer, is hereby DENIED. This Court has the discretion to consider affidavits otherwise filed untimely under Rule 6(d) A.R.Civ.P. See *Middeagh v. City of Montgomery*, 621 So.2d 275, 279 (Ala. 1993).

Code of Alabama §26-1-2.1 was in effect at the time the power of attorney was executed and, therefore, governs this transaction. That code section provides that an agent, acting under a power of attorney, may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the

agent determines is consistent with the principal's best interest based on all relevant factors, including: (i) the value and nature of the principal's property; (ii) the principal's foreseeable obligations and need for maintenance; (iii) minimization of taxes, including income, estate, inheritance, generation skipping transfer, and gift taxes; (iv) eligibility for a benefit, a program or assistance under a statute or regulation; and (v) the principal's personal history of making or joining in making gifts. Moreover, the above cited statute prohibits the agent from making gifts which exceed the amount of the annual dollar limits of the Federal Gift Tax Exclusion, \$14,000 at the time of the deed which is the subject of this action was executed.

It is undisputed that Defendant, Dennis Blackerby, did not pay anything or perform any service in consideration for the deed he received from Defendant, Charlotte Faye Hylton, acting under Power of Attorney for the decedent, Albert Hylton. Since Defendant, Blackerby, gave no consideration for the deed, it was clearly a gift transfer triggering the implication of the aforementioned statute. The copy of the deed recorded by Defendant, Blackerby, contained a reference that it was assessed at \$179,200 by the Shelby County Tax Assessor. Although the assessment by the Tax Assessor is not legally sufficient to establish the value of the property in question, this court judicially knows that the value of a parcel of property consisting of approximately 58 acres in Shelby County exceeds the Federal Gift Tax Exclusion of \$14,000. The Defendants have presented no evidence to the contrary. The affidavit of Plaintiff clearly establishes that the value of the property in question is by far in excess of \$14,000.00.

Moreover, testimony of the Defendant, Charlotte Faye Hylton, as the wife and agent of the decedent, established that the decedent suffered a stroke in June of 2012 and, thereafter, was no longer able to handle his business affairs. This evidence is unrefuted. Nor have the

Defendants submitted any evidence to demonstrate that the deed made the basis of this suit was made in the decedent's best interest. It is clear that the deed is entirely inconsistent with the decedent's testamentary intent as expressed in his Last Will and Testament in which he left said property to his daughter, Cynthia Hylton-Murer, the Plaintiff herein.

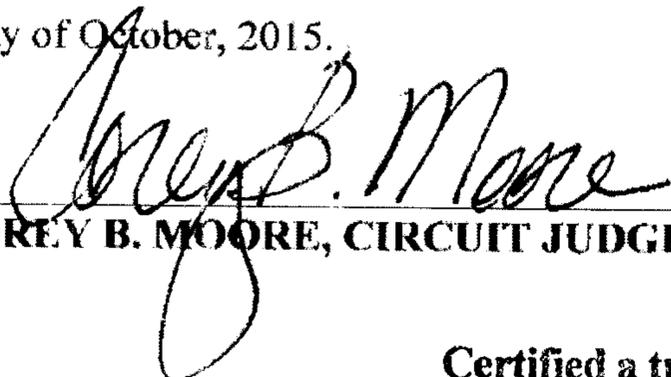
Because of the foregoing findings, the Court finds it unnecessary to decide whether the deed was validly delivered to the Defendant, Blackerby.

ACCORDINGLY, the Court hereby finds that the deed dated June 10, 2014, a copy of which was recorded in Shelby County Probate Office on November 21, 2014, as Instrument Number: 2014121000367600, purporting to convey property from Albert E. Hylton to Albert E. Hylton and Dennis M. Blackerby, as joint tenants with right of survivorship, is hereby declared to be void and held for naught.

The Plaintiff having previously released the Defendant, Charlotte Faye Hylton, as a Defendant from all counts contained in her Complaint as amended, with the exception of Count Three, this Order hereby disposes of all remaining issues pending in this case and is, therefore, a **FINAL JUDGMENT**.

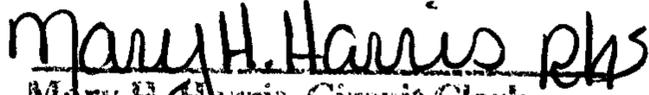
Costs of this action are hereby taxed against the Defendant, Dennis Blackerby.

DONE and ORDERED this the 13th day of October, 2015.


COREY B. MOORE, CIRCUIT JUDGE


20151130000408310 3/3 \$20.00
Shelby Cnty Judge of Probate, AL
11/30/2015 11:47:17 AM FILED/CERT

Certified a true and correct copy
Date: 11.23.15


Mary H. Harris, Circuit Clerk
Shelby County, Alabama