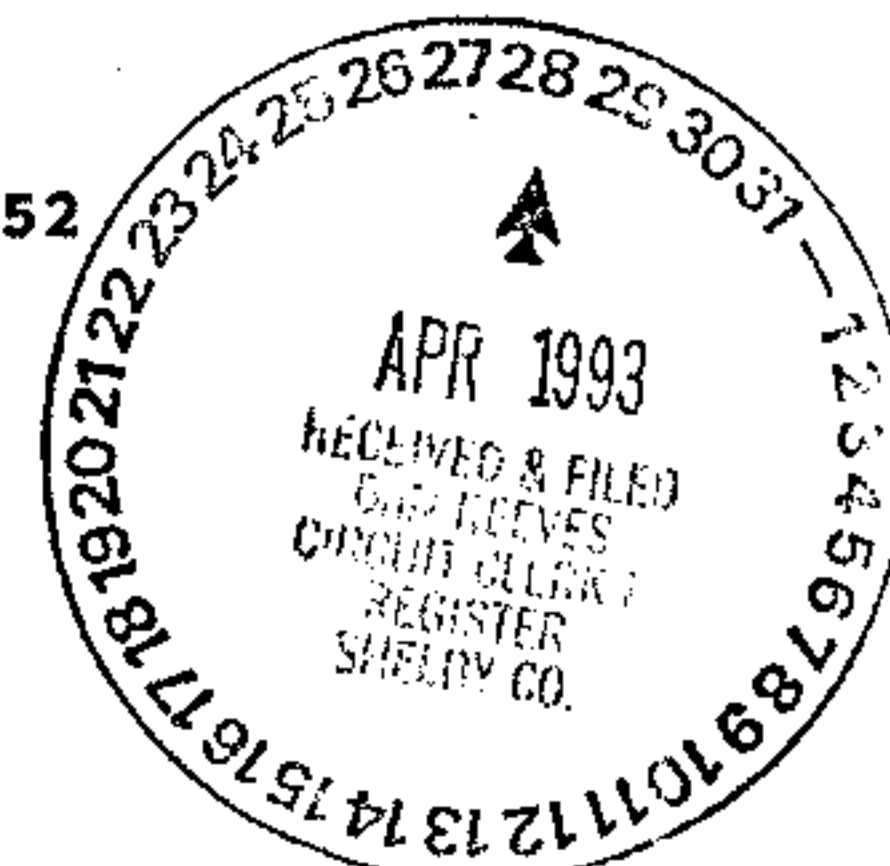


FORREST R. CRIM,
Plaintiff,

VS.

COLLEEN C. PIKE,
Defendant.

) IN THE CIRCUIT COURT OF
) SHELBY COUNTY, ALABAMA
)
) CASE NUMBER: CV-92-752
)
)
)



ORDER

This matter having come before the Court to be heard upon the 8th day of April, 1993, pursuant to Plaintiff's Complaint for Declaratory Judgment, and upon Defendant's general denial of the allegations of such Complaint; the Court heard ore tenus testimony from the respective parties, both having been represented by counsel; and as based upon such proceedings, the Court does hereby **ORDER, ADJUDGE AND DECREE**, as follows:

FINDINGS OF FACT

1. The facts of this cause relate to a situation wherein the Plaintiff, Forrest R. Crim, conveyed certain property located in Shelby County, Alabama, to himself and his wife, Billie M. Crim (now deceased), by Warranty Deed, joint with right of survivorship, on the 11th day of May, 1968. Said Deed was subsequently recorded in the Office of the Probate Judge, Shelby County, Alabama, on or about May 11, 1968, at Real Book 252, Page 942; the consideration for such conveyance being recited as One Dollar upon the face of the Deed, and Plaintiff's testimony at trial indicated that such conveyance was undertaken in order for Plaintiff to add his now-deceased wife as a joint title holder, with right of survivorship, in and to the said premises, which are hereinafter described as follows:

A part of the E 1/2 of NE 1/4 of Section 1, Township 22 South, Range 3 West, and a part of the W 1/2 of NW 1/4 of Section 6, Township 22 South, Range 2 West more particularly described as follows: Begin at the SW corner of the NE 1/4 of NE 1/4 of Section 1, Township 22, Range 3 West and run South 76 deg. 16' East 211.18 feet to the elm tree corner; thence North 56 deg. 41' East

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437.5 feet; thence North 87 deg. 38' East along South line of Ferman Albright land to East line of NW 1/4 of NW 1/4, Section 6, Township 22 Range 2 West; thence run South along East line of W 1/2 of NW 1/4, Section 6, Township 22, Range 2 West to SE corner of SW 1/4 of NW 1/4 of Section 6; run thence West to SW corner of SE 1/4 of NE 1/4 of Section 1, Township 22 South, Range 3 West; thence run North to NW corner of SE 1/4 of NE 1/4 of Section 1, Township 22 South, Range 3 West, the point of beginning. Containing 100 acres, more or less.

2. On or about the 18th day of May, 1992, Billie M. Crim, prior to her decease, attempted to convey her undivided one-half interest in and to the above designated real estate, said Deed having heretofore been recorded at Probate Record Number 14133, in the Office of the Probate Judge, Shelby County, Alabama.

3. Upon evidence presented at the trial of this cause, the Court has determined the case of Bernhard v. Bernhard, 278 Ala. 240, 177 So.2d 565 (1965), to be controlling. The Supreme Court of Alabama determined within said case that a husband and wife, who took property under a deed conveying to them "as joint tenants with right of survivorship" created a situation wherein the parties had intended to create a tenancy in common during their joint lives with right of survivorship. The Court concluded that the husband and wife each owned an undivided one-half interest in the property with a right of survivorship. The Court stated that each tenant did not own half while at the same time owning the whole, as with a common law joint tenancy. Therefore, a division of the property could not be had during the joint lives of the tenants, except with the consent of all co-tenants.

4. Seven (7) years later, the Bernhard case was expressly overruled by Nunn v. Keith, 289 Ala. 518, 268 So.2d 792 (1972). The Nunn case involved property conveyed to a husband, wife and their grandson through a habendum clause virtually identical to the one in Bernhard. The habendum clause conveyed to the three Grantees "as joint tenants, with right of survivorship". After the wife deceased, the husband remarried, and executed a recorded Warranty Deed conveying an undivided one-half interest in the property to himself and his new wife for their joint lives with a remainder to the survivor

in fee simple. When the husband died, his grandson brought an action in statutory ejectment, seeking to have his grandfather's new wife relieved of possession of the premises. The Court was forced to decide whether Bernhard applied to this situation, and in addressing the issue, the Supreme Court concluded that Bernhard interpreted the joint tenancy statute of Alabama incorrectly and, thus, Bernhard was overruled. The Court held and determined that joint tenancies were destructible, as at common law. Consequently, the holdings of these two decisions, seven years apart, created a "gap" in the common law which allowed destructibility under the circumstances heretofore cited by any joint tenant, which is basically the law recognized within the State of Alabama today.

5. In the case of Johnson v. Keener, 425 So.2d 1108 (Ala. 1983), the court held that Bernhard would apply to all joint tenancy deeds executed after Bernhard, but before Nunn, and that such policy would be effective, even in the absence of specific evidence of reliance upon Bernhard by the parties to the conveyance.

6. Jackson v. Fillmore, 367 So.2d 948 (Ala. 1979), further stands for the proposition that, where a purchaser of real property entered into a transaction in reliance upon a Supreme Court decision holding that statutory joint tenancy interest with right of survivorship were indestructible without the consent of all joint owners and where the application of a subsequent Supreme Court decision, which overruled the prior holding and established that such interests were destructible, would have had the effect of destroying the grantee's rights and interest in such property. Therefore, the subsequent decision could not be applied retroactively as to the title holder, but such application would be only prospective.

7. The Court finds that the case of Durant v. Hamrick, 409 So.2d 731 (Ala. 1981), provides the most appropriate historical perspective upon the issues before this Court. In said case, the Supreme Court concisely stated that the rule established by Bernhard is that, where two or more persons own property concurrently, with right of survivorship, regardless of what language is used in the instrument creating the estate, they are by virtue of Code of Alabama, 1975, Sec. 35-4-7, tenants in common, with right of survivorship, and

such ownership cannot be terminated, except upon the deaths of all but the last survivor or upon partition or sale with the consent of every co-tenant. It is important to note that the property acquired by the original joint tenants, with right of survivorship, was taken by the joint title holders during the "gap" period (on or about May 11, 1968).

As based upon this Court's above designated findings of fact, it is specifically **ORDERED, ADJUDGED AND DECREED** as follows:

That the Warranty Deed by which Billie M. Crim attempted to convey her undivided one-half interest in the above described real estate to Colleen C. Pike, on or about the 18th day of May, 1992, which Deed was recorded on July 15, 1992 in the Office of the Probate Judge, Shelby County, Alabama at Record Number 14133, is hereby declared to be null and void, ab initio. It is further **ORDERED** that Forrest R. Crim is the true and lawful title holder of all right, title and interest within said real estate, subject only to any and all rights, reservations and restrictions of record which pertain to such property.

Court costs herein are taxed against Defendant, for which execution may issue.

DONE this 25th day of April, 1993.

D. A. Gerson
Circuit Judge

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