Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-460

MARCH TERM, 2004

Glenn T. Warren	APPEALED FROM:
	Bennington Superior Court
v.	DOCKET NO. 173-5-03 Bncv
Edwin Warren	Trial Judge: Karen R. Carroll

In the above-entitled cause, the Clerk will enter:

This appeal from the Bennington Superior Court concerns the construction of a deed from plaintiff Glenn Warren to his now deceased mother, Thelma Warren. Plaintiff and his brother, defendant Edwin Warren, dispute the interest the deed conveyed to their mother, and, consequently, whether any interest in the property is part of her probate estate. We affirm.

The facts found below establish that plaintiff and Thelma owned a piece of property in Manchester, Vermont as tenants in common. The property has a building on it that is used in plaintiff= s business, Warrens Garage. Above the garage is an apartment in which Thelma lived before she died.

In 1994, Thelma conveyed her undivided one-half interest in the property to plaintiff, giving him a fee simple. In 1996, plaintiff and Thelma executed the deed at issue here. Plaintiff contends that the deed granted his mother a life estate in the subject property only, and that upon her death, he became the property= s sole owner. Finding no ambiguity in the deed language, the Bennington Superior Court, like the probate court before it, construed the deed as conveying a one-half interest in the property to Thelma, as well as a life estate in the apartment above the garage.

On appeal, plaintiff argues that, although poorly drafted, the deed unambiguously conveys a life estate in the apartment only. Defendant agrees that the deed is not ambiguous, but he argues that the superior court= s construction was the correct one. Thus, the parties agree that the deed conveyed a life estate in the apartment over Warrens Garage, but dispute whether it also transferred an undivided one-half interest in the property as a whole. Our task in resolving this question is to enforce the parties= intent as expressed in the deed= s language. Kipp v. Chips Estate, 169 Vt. 102, 105 (1999). We examine the document as a whole and construe its clauses to form a consistent, harmonious meaning. Id. We therefore begin our analysis with the relevant language of the 1996 deed:

> . . . I, Glenn T. Warren, . . . give, grant, sell, convey and confirm unto the said Grantee, Thelma P. Warren, and her heirs and assigns forever, a certain piece of land in the Town of Manchester . . . described in the attached Schedule A. . . .
>
> Hereby granting to the Grantee, Thelma P. Warren, the right, during her lifetime, to occupy the apartment in which she currently resides at the herein described premises known as A Warrens Garage@ , and being more particularly described in the Schedule A hereinbelow.

> At such time as the Grantee voluntarily removes herself from the premises with the intention of permanently residing at another location, or is unable to reside at the premises because of health reasons, there being no reasonable expectation that she would resume occupancy, then this life estate shall terminate. . . .
>
> To have and to hold said granted premises, with all the privileges and appurtenances thereof, to the said Thelma P. Warren, and her heirs and assigns, to her own use and behoof forever; . . . .

(Emphasis added.) Schedule A provides: A Being the undivided one-half interest of Thelma P. Warren in and to the lands and premises conveyed to Glenn T. Warren and Thelma P. Warren by deed . . . dated June 2, 1978.@ The schedule goes on to describe the physical location of the property.

Construing the above language to achieve a consistent and harmonious meaning, we conclude that the 1996 deed conveyed an undivided one-half interest in the subject property in addition to a life estate in the apartment over the garage. The language in the first clause conveying the property to Thelma A and her heirs and assigns forever,@ indicates that the parties intended that Thelma receive an interest in the property that would pass to her heirs and assigns upon her death. See id. at 106 (language A heirs and assigns forever@ in deed shows that grantor intended that grantee= s interest would pass to grantee= s heirs and assigns and does not create a right of survivorship). That intent is further evidenced by the language in Schedule A identifying the interest conveyed as an undivided one-half interest, as well as the final clause of the deed that also refers to Thelma= s A heirs and assigns.@ As the superior court explained, conveying property to a person and their heirs and assigns is inconsistent with the conveyance of a life estate, which ends as a matter of law upon the death of the estate holder. See Ransom v. Bebernitz, 172 Vt. 423, 431 (2001) (remainderman to life estate has no right of entry and possession of property until death of life tenant). In sum, the plain language of the deed conveys both a life estate in the apartment and an undivided one-half interest in the property.

Plaintiff argues that if the deed were read in conjunction with the property transfer tax form prepared at the same time as the deed, the superior court= s misconstruction of the deed is apparent. Although plaintiff attached a copy of the form to a memorandum he submitted to the court, it was never offered or admitted into evidence during the hearing before superior court. We therefore do not need to address this argument.

Finally, plaintiff claims the superior court erred by excluding the testimony of a real estate attorney he wished to call in support of his case. At the hearing before the superior court, plaintiff= s counsel told the court that he A relied heavily on people who have greater expertise than [he] in real estate@ and hired A someone to come as an expert thinking that perhaps the Court might be in a similar situation to the one [he] was in and would like to hear from somebody who did it on a routine basis and who was . . . an expert in the field.@ After additional discussion with counsel for both parties, the trial judge said that she did not A see where an expert would give the Court much.@ Plaintiff= s counsel did not press the matter further during the hearing, and in fact, he asked to take a break so that he could call his expert to tell him not to come to court.

On appeal, plaintiff argues that the court abused its discretion by preventing him from presenting his expert at the hearing. The rules of evidence require an offer of proof as a prerequisite to claiming error in the exclusion of evidence at trial. V.R.E. 103(a)(2). Plaintiff never made an offer at any time during the hearing. Indeed, plaintiff= s counsel remained silent after the court stated that it could not see where an expert on real estate would be helpful to it. Plaintiff= s counsel did not provide any explanation on what issue the expert would testify to or what he would say. Because plaintiff did not make an offer of proof to the court, he has waived the issue for our review.

Affirmed.

BY THE COURT:

_____

John A. Dooley, Associate Justice

_____

Denise R. Johnson, Associate Justice

_____

Paul L. Reiber, Associate Justice