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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-192

OCTOBER TERM, 2005

Heinz Rabe and Claudia Rabe	}	APPEALED FROM:
	}	
v.	}	Lamoille Superior Court
	}	
Joyce Lang	}	
	}	DOCKET NO. 274-12-02 Lecv
		Trial Judge: John P. Meaker

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

Defendant Joyce Lang appeals the superior court=s order reforming the deed by which she transferred her residential property to her daughter and son-in-law, plaintiffs Heinz and Claudia Rabe. We affirm.

The Rabes are a married couple. Claudia is Joyce=s eldest daughter. In the summer of 1992, while the Rabes were visiting Vermont from Taiwan, where they were working, they asked Joyce if she would be willing to sell them her home in Stowe. Joyce and her husband, who died in 1984, had bought the property in 1953 and raised eight children there. Joyce agreed to sell the residence and adjoining nine acres to the Rabes for $100,000, with the understanding that she would continue to reside in the house.

The parties did not draft or execute a purchase and sale contract or other writing evidencing their agreement. The key provisions of the 1993 deed transferring the property to the Rabes read as follows:

> The Grantor reserves a life estate in all of the property conveyed herein which she shall exercise without any obligation to pay taxes, insurance and maintenance of the property, which the Grantees herein assume and agree to pay.
>
> The Grantees may construct a small apartment in the house at a location approved by the Grantor, which approval shall not be unreasonably withheld. This construction and use shall be accomplished in a manner that will inconvenience the Grantor as little as possible.

In the summer of 1993, prior to the closing, the Rabes planned renovations to the property and arranged to take Joyce with them to Taiwan during the construction on the home. The Rabes began to reside in the house permanently in 1997 after their employment in Taiwan ended. A 1998 deed transferring the property to the Rabes as tenants in the entirety acknowledged that the property being conveyed was subject to a life estate reserved to Joyce. The parties lived amicably together until 2002, when a squabble among family members erupted, leading to this lawsuit, in which the Rabes sought a declaration of their rights and reformation of the deed to reflect those rights.

Following a bench trial, the superior court concluded that the parties intended to give Joyce a life estate in the property, but limited that life estate by the provision in the deed referring to an apartment to be constructed within the home. The court found that the parties= conduct from 1993 to 2002 confirmed their intent to have Joyce reside in the

apartment. The court rejected as not credible Joyce=s suggestion that the apartment referred to in the deed was to be for the Rabes rather than her. In reforming the contract to conform to the parties= intentions, the court inserted the phrase Afor occupancy by the grantor@ following the sentence AThe Grantees may construct a small apartment in the house at a location approved by the Grantor.@ The court also imposed several obligations on the parties with respect to their living arrangement.

Neither party challenges any of those obligations. Rather, Joyce argues in her appeal that the superior court erred by reforming the deed because (1) the Rabes failed to prove beyond a reasonable doubt that there was a pre-existing agreement providing a standard by which the parties= deed could be reformed; and (2) the court=s decision violated both the rules of contract interpretation and public policy.

Joyce=s principal claim on appeal is that the Rabes failed to satisfy their heavy burden of demonstrating that the parties had a prior agreement that provided a standard by which the deed could be reformed. Reformation is appropriate when an intended agreement is reduced to a written instrument that mistakenly fails to express the agreement as intended by the parties. LaRock v. Hill, 131 Vt. 528, 530-31 (1973). AA party seeking reformation has the burden of establishing beyond reasonable doubt >that there existed, previous to the deed, a valid agreement representing a standard to which the erroneous writing can be reformed, so as to express the true transaction between the parties.= @ Bourne v. Lajoie, 149 Vt. 45, 49 (1987) (quoting LaRock, 131 Vt. at 530).

At trial, Joyce testified as to her understanding of the parties= agreement, which was that she would have her living area, the Rabes would have their living area, and the parties would share the rest of the house. On the other side, according to Claudia=s testimony, there was an understanding that Joyce would stay in her area, and the rest of the house would belong to the Rabes. Claudia also testified that there had never been any discussion of a Alife estate@ other than her promise that Joyce would always have a roof over her head. There was also evidence that the Rabes had consistently asserted their control and dominion over all of the areas of the house apart from Joyce=s living area by unilaterally making decisions regarding renovations and by expending more than $500,000 on those renovations.

In reforming the deed to reflect that the apartment referred to in the deed was for Joyce=s occupancy, the court relied on this and other evidence evincing the parties= understanding that the Rabes would have control and dominion over all of the house except for Joyce=s living quarters. Because neither party requested findings, we assume that the court had all of the evidence in mind, and we view the evidence in the light most favorable to the prevailing party. Lanphere v. Beede, 141 Vt. 126, 128-29 (1982).

Although the question is close as to whether the Rabes met their burden of demonstrating beyond a reasonable doubt the existence of a prior agreement that could provide a standard for reforming the parties= deed, we conclude that, under the circumstances of this case, the court did not err in inserting terms in the deed to satisfy the parties= expectations. Reformation does not require a prior agreement that is Acomplete and certain enough to be a contract.@ Restatement (Second) of Contracts ' 155 cmt. a (1981); see 7 J. Perillo, Corbin on Contracts ' 28.45, at 283, 302-303 (2002) (antecedent expressions of parties may have been no more than preliminary negotiations, in which case agreement must be found partly in antecedent expressions and partly in writing). This is particularly true when the parties to the agreement are close family members, as they are in the present case. See 7 J. Perillo, supra, ' 28.47, at 330 (beyond-reasonable-doubt Astandard of proof is relaxed when there is a confidential relationship between the parties@).

Moreover, notwithstanding the heavy burden to demonstrate a basis for reformation, each case turns on its particular facts, Aand the evidentiary weight to be attached to a writing will depend, in part, on its inherent credibility in the light of those facts.@ See Restatement, supra, ' 155 cmt. c. AOnce the court is convinced that the writing fails to express the agreement of the parties, the writing loses its usual evidentiary effect with respect to other matters, such as the ascertainment of the parties= actual agreement.@ Id. In this case, the deed indicates that Joyce has a life estate in all of the property conveyed, which is inconsistent not only with the provision in the deed concerning the construction of an apartment, but also with the parties= expectations, as demonstrated by the evidence at trial, including Joyce=s testimony acknowledging the Rabes= control and dominion over certain areas of the residence. See United States v. Baran, 996 F.2d 25, 28 (2d Cir. 1993) (Awell-established meaning@ of phrase Alife estate@ is Aan estate in land giving the life tenant full and exclusive possession of the property for the duration of the life tenant=s life@).

Under the circumstances, even given the vague prior agreement among the parties, the court did not err in inserting terms in the deed so that it would conform to the parties= expectations. Even when the usual remedies of reformation or rescission are inappropriate or impractical, A[m]odern courts and commentators have taken a broader view of other remedies in cases where a purported agreement does not reflect a meeting of the minds,@ thereby allowing courts to Aresolve such disputes in the way most likely to enforce the parties= expectations.@ Paradise Restaurant v. Somerset Enterprises, 164 Vt. 405, 411 (1995). As we noted in Paradise Restaurant, the Restatement (Second) of Contracts affirms the power of a court to supply a new term to a writing, as justice requires, to meet the parties= expectations and protect their reliance interests. 164 Vt. at 411 (quoting Restatement, supra, ' 158(2) cmt. c). That is essentially what the superior court did here, and thus we find no error.

Nor do we find any merit to Joyce=s argument that the superior court=s decision violated the rules of contract interpretation and public policy. The language of the deed did not unambiguously entitle Joyce to a life estate in the entire property and create a Adaughter-and-son-in-law apartment@ for the Rabes, as she claims. Nor does our affirmance of the decision set a precedent that will make elderly homeowners across the state wary of selling their property. This case presents an unusual set of circumstances, and the superior court=s decision reflects its attempt to satisfy the parties= expectations and intentions within the confines of those circumstances.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice