

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTH S. REED, A/K/A RUTH
SWEETLAND, AND MARK
SWEETLAND, INDIVIDUALLY AND
AS CO-TRUSTEES OF THE
TESTAMENTARY TRUST OF JACK
SWEETLAND,

Appellants,

vs.

ERNEST JOHN SWEETLAND, III;
PETER SWEETLAND, A/K/A PETER
DAVIS SWEETLAND; SS TAHOE, LLC;
AND SWEETLAND REALTY
COMPANY, A CALIFORNIA GENERAL
PARTNERSHIP,

Respondents.

No. 43800

FILED

DEC 14 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND VACATING IN PART

This is an appeal from a district court judgment in a real property action. Ninth Judicial District Court, Douglas County; Norman C. Robison, Judge.

Appellants Mark Sweetland and Ruth Sweetland Reed are the co-trustees of a testamentary trust established by their father, Jack Sweetland. The purpose of the trust was to hold a four-acre parcel of lakefront property in Douglas County for the benefit of Jack's four children. Although the trust was established in California, the co-trustees filed the instant action in Nevada district court, seeking partition of the real property. The district court denied partition and instead ordered the property sold. The co-trustees have appealed the district court's judgment. The parties are familiar with the facts, and we do not recount them here except as necessary to our discussion.

Sale of property

NRS 39.010 permits the district court to partition a parcel of real property at the request of a tenant in common; however, if “partition cannot be made without great prejudice to the owners” the court can order the property sold. The record indicates that ownership of the Sweetland property was divided between the trust and each child individually by virtue of the gift deeds issued by Jack Sweetland in the late 1980s. Therefore, the trust and the four siblings own the property as tenants in common. Since there was no unity of ownership, NRS 39.010 applies, and the district court had jurisdiction to partition or sell the property.¹

The district court found and concluded that partition was impossible without great prejudice to some or all of the siblings. This is a factual determination entitled to great deference on appeal; therefore, we will not disturb the district court’s judgment if it is supported by substantial evidence.² We have carefully examined the record and conclude that substantial evidence supports the district court’s determination that no partition of the property was possible under the

¹The district court stated in its conclusion of law that “each sibling has a 25% vested interest as tenants in common in the property.” The record, however, indicates that the trust owned the property as tenants in common with each individual sibling and that this language was merely meant to describe each sibling’s beneficial interest in the proceeds of sale. In any event, this language does not affect the result in this case and any error appears harmless. NRCP 61.

²Wolford v. Wolford, 65 Nev. 710, 716-17, 200 P.2d 988, 991 (1948). Substantial evidence is evidence adequate to permit a reasonable mind to reach a given conclusion. Stratosphere Gaming Corp. v. Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

circumstances. We therefore affirm that portion of the district court's order directing that the property be sold.

Offsets

The district court concluded that the co-trustees' previous attempts to subdivide the property constituted a breach of their fiduciary duties. Consequently, it ordered that the co-trustees' share of the sale proceeds "be offset by the amount of funds charged in pursuit of the subdivision of the property[.]"

Whether the co-trustees breached a fiduciary duty in attempting to subdivide the property and whether any damages should be awarded is clearly the province of the California court.³ Since the trust was created in California, the courts of that state have exclusive jurisdiction over claims relating to trust administration.⁴ The district court's determination of resulting offsets was beyond its jurisdiction, and we vacate that portion of the district court's judgment.

Easement

The co-trustees also argue that the district court mischaracterized an easement in favor of the Sweetland property over land owned by respondents Sweetland Realty Company and SS Tahoe

³However, the district court could properly consider the co-trustees' actions in attempting to subdivide the property in determining whether to partition the property or order its sale, since a partition action is an equitable proceeding and the court may inquire into whether the party seeking equitable relief has unclean hands. See Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 610, 5 P.3d 1043, 1050 (2000) (noting that "one seeking equity may not do so with 'unclean hands'").

⁴Cal. Prob. Code § 17000(a).

LLC. We conclude that the co-trustees' claims are without merit. Evidence at trial indicated that the Sweetland siblings used the easements with the permission of the neighboring landowners. Thus, the district court correctly determined that an easement by implication, not a prescriptive easement, existed in favor of the Sweetland property.⁵

Conclusion

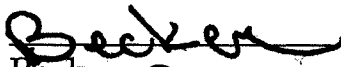
Substantial evidence supports the district court's decision to order a sale of the entire Sweetland property. However, we conclude that the district court lacked jurisdiction to impose offsets on the co-trustees' shares of the sale proceeds based upon findings relating to the internal administration of the trust.⁶ Accordingly, we

⁵See Boyd v. McDonald, 81 Nev. 642, 649, 408 P.2d 717, 721 (1965) (holding that one element of an easement by implication is permissive use); Wilfon v. Hampel 1985 Trust, 105 Nev. 607, 608, 781 P.2d 769, 770 (1989) (prescriptive easement requires a showing of five years of adverse, continuous, open, and peaceable use).

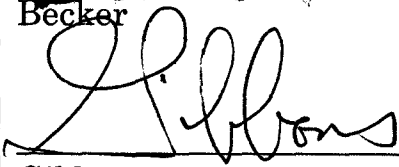
⁶The co-trustees also advanced the following arguments on appeal: (1) the district court erred in failing to disqualify the law firm of Robertson & Benevento due to a conflict of interest; (2) the district court lacked jurisdiction to make findings of fact relating to the co-trustees' alleged breaches of fiduciary duties and other related issues; (3) the district court erred in failing to quiet title to the entire property in the trust; and (4) the district court failed to accurately and clearly describe the scope of the easement. We have considered these arguments and conclude they lack merit.

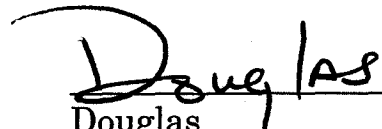
ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART.

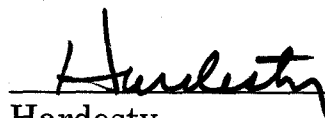

_____, C.J.
Rose



_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Chief Judge, Ninth Judicial District
Hon. Norman C. Robison, Senior Judge
Lester H. Berkson, Settlement Judge
Allison, MacKenzie, Russell, Pavlakis, Wright & Fagan, Ltd.
Brooke Shaw Zumpft
Bradley Paul Elley
Lemons Grundy & Eisenberg
Robertson & Benevento/Reno
Douglas County Clerk