

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001077-MR

DEBORAH MURRAY

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NO. 02-CI-00295

RONNIE MURRAY AND
TAYLOR COUNTY BANK

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO AND TAYLOR, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Deborah Murray appeals from a judgment that determined her equitable interest in real property. She argues that she was entitled

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

to specific performance and, in the alternative, the trial court erred in determining the amount of her equitable interest. We affirm.

In May 1995, Deborah Murray began occupying a piece of property in Taylor County, Kentucky, after she entered into a purchase agreement with Pete and Mildred Carter. The Carters executed a contract for deed in favor of Deborah. Although not married, Deborah and Ronnie Murray lived together until they separated in October 2000. Between September 1995 and January 1999, Ronnie paid \$250.00 per month to the Carters. On January 12, 1999, Deborah and Ronnie borrowed funds from Taylor County Bank, which were used in part to pay off the balance owed to the Carters. Thereafter, the Carters deeded the property to Ronnie instead of to Deborah. While they lived on the property, each party was working and contributed to improvements on the property.

In February 2002, Ronnie executed a forcible detainer to evict Deborah and their two children from the property. Following a trial in Taylor Circuit Court, the jury found that Deborah possessed a valid contract for deed to the property and that she did not waive her right to enforce the contract. Subsequently, a second trial was held before the court on the issue of damages. The court determined that Deborah was entitled to possession of the property and that Deborah should compensate Ronnie \$24,000.00 for his interest in the property. The court further found that should Deborah decide not to compensate Ronnie for his interest, then Ronnie would compensate Deborah \$6,000.00 for her interest. In the event neither party was able to pay the other, then the property would be sold

with 20% of the proceeds going to Deborah and 80% of the proceeds going to Ronnie. Ultimately, the court ordered Ronnie to compensate Deborah \$6,000.00 for her interest in the property. This appeal followed.

Deborah first argues that she was entitled to specific performance because she had a valid contract for deed as found by the jury and that she had not waived the contract.

We have reviewed the record. Deborah did not seek specific performance of the contract in her complaint. On March 13, 2006, following the jury trial, the court entered an order stating that Deborah shall have until April 1, 2006, to notify the court and opposing counsel of her intent to seek specific performance. Such notice was not provided. On July 26, 2006, the court entered an order setting a hearing to determine Deborah's equitable interest in the property, which Deborah acquiesced to without objection. As specific performance was never requested, it could not be error for the trial court to fail to grant Deborah this remedy.

Next, Deborah argues that she was entitled to more than a \$6,000.00 equitable interest in the property. She argues that she is entitled to at least one-half of the \$11,000.00 improvements to the property and at least one-half of the \$11,000.00 paid to the Carters. In cases tried before the court without a jury, findings of fact will not be disturbed on appeal if they are supported by substantial evidence. Kentucky Rules of Civil Procedure 52.01.

The trial court found that the parties both contributed to the loan payments and improvements on the property. The trial court found that based on their incomes, Ronnie contributed 80% and Deborah contributed 20%. This is supported by substantial evidence in the record. We are not pointed to any evidence of record that contradicts these findings, nor are we convinced that the result is inequitable.

Accordingly, the order of the Taylor Circuit Court is affirmed.

STUMBO, JUDGE CONCURS.

TAYLOR, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

TAYLOR, JUDGE, DISSENTING: Respectfully, I dissent. On February 13, 2006, after a trial by jury, the jury determined that Deborah had a valid contract for deed, that the Carters had breached the contract (presumably by transferring their interest in the property to Ronnie) and that Deborah had not waived her right to enforce the contract. Subsequent to the jury verdict, the record reflects that the parties apparently agreed the trial court would determine whether Deborah would be entitled to specific performance under the contract or in the alternative, whether she would be entitled to her equitable interest in the property. The trial court then proceeded to enter judgment. I believe the agreement between the parties was a nullity and any further proceedings by the court were in error because once the jury determined that Deborah held a valid contract for deed, this case was clearly controlled by *Sebastian v. Floyd*, 585 S.W.2d 381 (Ky. 1979) which was not cited as authority by either party to this Court.

In *Sebastian*, the Kentucky Supreme Court addressed the legal status of contracts for deed, or what is also commonly referred to as installment land sale contracts. The Supreme Court in *Sebastian* made the following observation regarding the legal status of these contracts as follows:

When a typical installment land contract is used as the means of financing the purchase of property, legal title to the property remains in the seller until the buyer has paid the entire contract price or some agreed-upon portion thereof, at which time the seller tenders a deed to the buyer. However, equitable title passes to the buyer when the contract is entered. The seller holds nothing but the bare legal title, as security for the payment of the purchase price. (Citations omitted.)

Sebastian, 585 S.W.2d at 382.

As noted by the Kentucky Supreme Court in *Sebastian*, there is no practical distinction between an installment land contract and a purchase money mortgage. The Court went on to note that the seller under these contracts who holds “bare legal title” only is commonly referred to as an “equitable mortgagee.” *Id.* at 383.

Since the jury had concluded that Deborah had a valid contract for deed and that she had not waived her rights to enforce the agreement, then she should have been entitled to possession of the property and allowed to resume making payments under the contract. The deed to Ronnie was nothing more than a transfer or assignment of the Carters’ rights in the contract. If Deborah was in default, the only recourse for Ronnie, who had no greater interest in the property than the original sellers (the Carters), was to seek a judicial sale of the property at

the time of the default. In other words, the only remedy that *Sebastian* provides when a default occurs under an installment land contract is a judicial sale of the property. The record is silent as to whether Deborah was in default and the trial court clearly erred by not addressing whether a judicial sale of the property was warranted.

What is more perplexing about this case, and error in my opinion, is that the trial court, apparently under the guise of equity, awarded Ronnie an equitable interest in the property based in part upon payments he made from his personal account to the Carters during the period of September 1995 through January 1999. Since Ronnie was not a party to the contract, those payments, presumably made for the benefit of his former wife and children, were at minimum gifts to Deborah or perhaps rent, unless made under a separate agreement for repayment, which is not the subject matter of this proceeding. The trial court further erred, in my opinion, by determining Deborah's and Ronnie's equitable interest in the property in the same proportion to their incomes. I can find no authority for such an equitable remedy. As recently discussed by another panel of this Court in relying on *Sebastian*, there is no reason for a trial court to resort to equitable remedies when adequate legal remedies exist. *Bolen v. Bolen*, 169 S.W.3d 59 (Ky. App. 2005). Under *Sebastian v. Floyd*, 585 S.W.2d 381 (Ky. 1979) adequate legal remedies exist in my opinion.

For these reasons, I would reverse and remand this case to the circuit court for proceedings consistent with *Sebastian v. Floyd* and its progeny.

BRIEF FOR APPELLANT:

Samuel Todd Spalding
Lebanon, Kentucky

BRIEF FOR APPELLEES:

John C. Miller
Campbellsville, Kentucky