Hargadine, William A. v. Pulte, Hermann 1858 St. Louis 405/7

Old Box 598/14

Oct. 1858
F 1857
Napton
aff
A = W. Holmes
R = C. Gibson

COA = ejectment
27
423

Har. claims title through (Philipine Bernadine) widow of Philip A. Pulte

Hermann is son of Pulte & holds poss.
found for Hermann

O = intestacy to holds b/c not provided for

Page 1

State of Missouri
County of St. Louis } S.S. Be it remembered, that at the October Term. in the year of our Lord one thousand eight hundred and fifty seven, begun and held in the City of St. Louis, County and State aforesaid, among other the following proceedings were had, to wit:

Saturday October 24th 1857

Agreed Case filed.

William A. Wargadine
vs
Hermann A. Pulte } Agreed case filed in this cause.

Which agreed case is in the words and figures as follows, to wit:

William A. Wargadine, Plaintiff
vs
Hermann A. Pulte, Defendant } In the St. Louis Land Court. Oct Term. 1857. Submission on Agreed Case.

Agreed Case.

The above named parties to a real controversy now existing between them make an agreed case containing the facts upon which the said controversy depends, to wit: It is agreed that, on the twenty sixth day of August, in the year (1844) eighteen hundred and forty four, Philip A. Pulte, died seized in fee simple estate of and in the following described lot of ground, situate in the City of St. Louis, County of St. Louis, to wit: Lot No (44) four in Block No (93) ninety three of Julia B. Soulard's Third Addition to the City of St. Louis, containing thirty feet in front on the West side of Decatur street, by one hundred and fourteen feet in depth to an alley, and bounded north by lot No (3) three, and South by lot No (5) five, of said Block, East by Decatur street and West by said alley, according to the plat of said addition on file in the Recorders Office, of said County

That on the Thirteenth day of December, in the year eighteen hundred and forty two, the said Philip A. Pulte, being of sound and disposing mind and memory, and *about the age of twenty† years, made his last will and testament of that date, attested in due form of law, in the manner following, to wit:

× above
† twenty one

"I the undersigned Philip A. Pulte, of the City and County of St. Louis, State of Missouri, being in good health, and "of sound and disposing mind, and naturally anxious to "dispose of my worldly affairs, and property in such "a manner, as to prevent future doubts and difficulties, "declare and publish this my last will and testament: "First, it is my wish and will that all my just debts "are fully paid: Second: I hereby grant, give and "bequeath unto my beloved wife, Phillipine Bernar-"dine, all and singular my property and estate, real, "personal, and mixed, in law and equity, including as "well all I possess at present, as such as I may acquire "hereafter, To have and to hold the same unto her my "said wife, as her own and exclusive property and to the "exclusion of all and every person or persons, be the same "relatives or not, forever. Third. I hereby make, "constitute, and appoint my said wife, Phillipine Bernar-"dine, the sole executrix of this my last will and tes-"tament, and administratrix of my estate, and it is "my earnest wish and request, that the proper author-"ities will give my said wife every facility, as far as it "is compatible with existing laws, in furtherance and "carrying out of this my last will and testament so "that any security to be given, in form of law, to be com-"plied with, may be dispensed with, unless due necessity "may call for the same.

"In Testimony, whereof I, the said Philip A Pulte "have hereunto set my hand and seal at the City of St. Louis

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" aforesaid, this thirteenth day of December, A. D. eighteen
" hundred and forty two, Executed in duplicate. Done signed,
" sealed, and published in our presence, who at the request
" of the said Doctor P. A. Pulte, have signed these pres=
" ents as witnesses in his presence and the presence of each
" other.

Edward Kutawa, Julius Kutawa, Fred Ketschmar, Witnesses.

Dr Phil A Pulte (Seal)

"

That the said testator died, in the City of St. Louis, leaving the said Phillipine Bernardine, his widow and four children, lawful issue of them, the said Philip A. Pulte, and the said Phillipine Bernardine, his wife, to wit: Herman Pulte, born the 19th day of Nov 1832. Emma Pulte, born the 4th day of June 1837. Carl Pulte, born the 24th day of September, 1842. and Gustavus Pulte, born the 10th day of October 1840. his sole heirs at law; and that, at the date of said will, at the time of his death, the said testator resided in said City together with his said family. That said will was, on the
30th thirteenth day of August, in the year 1844. duly proved, established, admitted to probate and recorded, in the Probate Court, of the County aforesaid. That all the right and title in and to the lot of ground above herein described, which the said Phillipine Bernardine, widow of said Philip A. Pulte, derived from the said testator through and by virtue of said will, is now vested, by derivative conveyances duly executed and recorded, in the said plaintiff, William A. Hargadine. That the title of said Hargadine, is derived under a deed of trust made by said Phillipine Bernardina, to secure a debt contracted by her second husband Adolph Ahl. The said plaintiff being purchaser at a sale made under said deed of trust and knowing at the time all the facts herein stated, no advancement was ever made by said P. A. Pulte, to any of his children, and that Herman A. Pulte,

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is now in possession of the said lot of ground, holding the same under and by virtue of all the right and title thereto, which the said Herman, Emma, Carl, and Gustavus, desired from their said father, as his heirs at law as aforesaid, and holding the same for himself and said Emma, Carl, and Gustavus.

And it is further agreed, that if the said William A. Hargadine, plaintiff, shall, by the opinion of the Court, on the above case, be adjudged to have the better title to the premises aforesaid, he shall reciver judgment for the possession thereof, together with one cent damages, and the monthly value of accrueing rents and profits, at the rate of fifteen dollars a month, from and after the Sixth day of May, in the year, 1857, until the possession of the premises be delivered up to him with his costs in this behalf expended: otherwise judgment to be given for the said defendant: saving and reserving to either party the right to have an appeal, or writ of error, in due course of law, to the Supreme Court.

And the parties aforesaid do hereby submit the above agreed case and the matters of controversy therein contained for the determination and judgment of the St. Louis Land Court, this 20th day of October in the year 1857.

Nathl. Holmes.
Atty for the party plaintiff

C. Gibson
for the defendant.

State of Missouri }
County of St. Louis } S.S. William A. Hargadine, the above named party plaintiff, maketh oath and saith that the matters of controversy contained in the foregoing agreed case are real, and and that the proceedings herein, are had in good

faith to determine the rights of the parties.
Sworn to and Subscribed before
me this 24" day of October 1857.
Liberty Waite.
Justice of the Peace } W. A. Hargadine.

And afterwards the following further proceedings were had in this cause to wit:

Saturday November 7" 1857.

Submitted to Court.

William A. Hargadine
vs
Hermann A. Pulte } Now at this day come the said parties by their respective attorneys, and submit to the Court the agreed case heretofore filed in this cause, and the Court having heard and not being fully advised of and concerning the premises takes time to consider thereon.

And afterwards the following further proceedings were had in this cause, to wit:

Monday November 9" 1857.

Judgment.

William A. Hargadine
vs
Hermann A. Pulte } Judgment. Now at this day come again the said parties by their respective attorneys, and this cause being heretofore submitted to the Court, and the Court being now fully advised of and concerning the premises, doth find the issues herein joined, in favor of the defendant. It is therefore ordered and adjudged by the Court, that the plaintiff take nothing by his said suit, but that the defendant go hence without day, and recover of said plaintiff his costs and charges herein expended and have execution therefor.

And afterwards the following further proceedings

were had in this cause. to wit:

Tuesday November 10th 1857.

Motion overruled

William A. Hargadine
vs
Herman A. Pulte } Now at this day comes said plaintiff by his attorney. and files herein a motion for a new hearing, and the same being submitted to the Court, and the Court having heard and being fully advised of and concerning the premises. doth order and adjudge that said motion be overruled.

And afterwards the following further proceedings were had in this cause. to wit:

Tuesday November 10th 1857.

Bill of Exceptions filed

William A. Hargadine
vs
Herman A. Pulte. } Bill of Exception filed in this cause

Which Bill of Exceptions is in the words and figures as follows. to wit:

Bill of Exceptions

William A. Hargadine. Pltff
vs
Herman Pulte. Deft } In the St. Louis Land Court. Oct. 3. 1857.

Be it remembered that on the Seventh day of November. 1857. the plaintiff filed his ~~his~~ motion to set aside said judgment and for a new hearing of said cause, as follows.

Motion for New Trial

William A. Hargadine. Pltff.
vs
Herman Pulte. Deft. } In the St. Louis Land Court. Oct 7. 1857.

Now at this day comes the said plaintiff and moves the Court the Court hereto set aside the judgment aforesaid. and grant a new hearing of said cause. for the reason.

1st That on the facts stated in said agreed case, the law is with the plaintiff: and

2nd That the judgment aforesaid should have been for the plaintiff, instead of the defendants.

A. Holmes, atty for pltff.

which motion, being duly heard and considered, was by the Court overruled, to which decision of the Court, overruling said motion, the plaintiff by his counsel excepted: and prayed the Court to allow, sign, and seal this his bill of Exceptions, which is done, this 10th day of November, 1857.

C. B. Lord. Seal

State of Missouri }
County of St. Louis } S.S. I, Charles A. Mantz, Clerk of the St. Louis Land Court, within and for the County aforesaid, certify the foregoing to be a true and correct copy of the Record and proceedings in the case wherein William A. Hargadine is plaintiff, and Hermann A Pulte, is defendant as fully as the same remains of Record in my office.

In testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of St. Louis this 11th day of November, A. D. 1857.

C. A. Mantz, Clerk.

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The State of Missouri, ss.

The State of Missouri, to the Honorable the St Louis Land Court — **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the S. Louis Land Court

wherein William A. Hargadine was plaintiff and Herman Pulte was defendant

in a Civil Action manifest error hath intervened, to the great damage of said plaintiff as by his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the third Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office in the City of Saint Louis, the Eleventh day of November in the year of our Lord one thousand eight hundred and fifty-Seven.

$1.50 paid by N. Holmes for plaintiff.

W. S. Glanville.
CLERK.

State of Missouri,
County of St. Louis, } S.S.

In obedience to the command of the within Writ, I, Charles A. Mantz, Clerk of the St. Louis Land Court, within and for the County and State aforesaid, hereby certify the foregoing to be a true and correct transcript of the record and proceedings in the case wherein William A. Hargadine is plaintiff against Hermann Pulte, as fully as the same remains of Record in my office,

In Testimony whereof I hereto set my hand and affix the seal of the St. Louis Land Court, at office in the City of St. Louis, this 13th day of November, A. D. 1857—

C. A. Mantz, Clerk—

Words 2100 $315 -
2 cent 100
4.15

98

(14)

Oct. Term. 1858

William A. Hargadine, P.E.

vs.

Hermann Putte, D.E.

Land Court

N. Holmes for Plff.

C. Gilson for Deft.

Filed 16 November 1858

W. S. Glanville

Clk

Transcript $4.15 paid by Plaintiff

Appgt. Mt. 38/ notice filed/ agreement/ agreed stat/ arg. & sub/

Affirmed 9 Dec. 1858 Bp. 513/

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William A. Hargadine
Pltff in Error
v.
Herman Palte
Deft in Error

In the Supreme Court.
March P. 1858.

And now at this day comes the said plaintiff, by his attorney, and says that there is manifest error in the record and proceedings in said cause, in this, to wit:

1st That the Court below erred in overruling the plaintiff's motion for a new hearing of said cause: and in this,

2d That, on the said agreed case, the judgment should have been given for the plaintiff, and not for defendant;

Wherefore the plaintiff prays judgment, & that the judgment aforesaid may be reversed, annulled, and for nought held and esteemed.

N. Holmes
Atty. for Pltff. in Er.

There is no error in the record
C. Gibson
P. J.

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No. ~~198~~

Supreme Court

Wm. A. Hargadine
Pltf. in Er.

v.

Hermann Pulte.
Deft. in Er.

Assignment of Errors.

N. Holmes
Atty for pltf.

Filed 15 March 1858
Wm. S. Glanville
Cl.

William A. Hayadine
Plff. in Err.
v.
Herman Palte
Deft. in Err.

In the Supreme Court,
at St. Louis.
March T. 1858

Take notice that a writ of error has been sued out of the Supreme Court, in the above entitled cause, returnable to the March Term of said Court, 1858: when & where you may appear, if you think proper.

A. H. Jones
Atty. for Plff. in Err.

To the above named deft. in Error, or his attorney

Service of the above notice is hereby acknowledged, this 10th day of February, 1858.

C. Gibson

98 (100)

Supreme Court

Wm. A. Hargadine
Pltff. in Err.
v.
Herman Rulte
Deft. in Err.

Notice of mist. of error

Filed 16 March 1858
Wm. S. Glanville
Ch

Wm. A. Hargadine, Pltf. in Error
v.
Herman Pulte, Deft. in Error

In the Supreme Ct. U. S. 1858.

It is agreed between the parties aforesaid that there is an error in the transcript of the record in this case, which should be corrected as follows: Instead of the words, near top of page 2 "about the age of twenty years" following the words "the said Philip A. Pulte being of sound and disposing mind and memory and", read "above the age of twenty one years", in the said agreed case.

A. Holmes
Atty. for Pltf. in Er.

O. Gibson p.d.

And it is further agreed that on the third page of said transcript, it should read "thirtieth day of August, 1844", instead of "thirteenth day of August, 1844", as the date when said will was proved.

A. Holmes
Atty. for Pltf. in Er.

O. Gibson
p.d.

No. 98

Supreme Court

Wm A. Hargadine

v.

Herman Patte

Agreet. of Counsel
to correct the Transcript.

Filed 6 Nov. 1858.
Wm S Glanville
Clk.

William A. Hargadine
Plff. in Error.
v.
Herman Pulte
Deft. in Error.

In the Supreme Court.

Oct. T. 1858.

Statement.

This was a submission, in the St. Louis Land Court, upon an agreed case, the essential parts of which are as follows: That on the 26 day of August, 1844, Philip A. Pulte died seized in fee simple estate of and in the lot (therein particularly described) being Lot No. 4 in Block No. 93 in Julia C. Sonland's Third Addition to the City of St. Louis, containing 30 feet in front on the West side of Decatur Street by 114 feet in depth to an alley; that on the 13th day of Dec. 1842, the said Philip A. Pulte, being of sound and disposing mind and memory and above the age of twenty one years, made his last will and testament of that date, attested in due form of law, in the following words: "I the undersigned Philip A. Pulte, of the City & County of St. Louis and State of Missouri, being in good health and of sound and disposing mind and memory, and naturally anxious to dispose of my worldly affairs and property in such a manner as to prevent future doubt and difficulties, declare and publish this my last will and testament: First, it is my wish and will that all my just debts are

" fully paid: Second, I hereby grant, give
and bequeath unto my beloved wife, Phil-
" lipine Bernardine all and singular my
property and estate, real, personal, and mix-
" ed, in law and equity, including as well
all I possess at present as such as I
may acquire hereafter, to have and to
" hold the same unto her my said wife, as her
own and exclusive property and to the
" exclusion of all and every person or
persons, be the same relatives or not, for-
" ever. Third, I hereby make, constitute
and appoint my said wife Phillipine Ber-
" nardine the sole executing of this my
last will and testament and adminis-
tration of my estate, and it is my earnest
" wish and request, that the proper authorities
will give my said wife every facility, as
" far as it is compatible with existing laws
in furtherance and carrying out of this, my
" last will and testament, so that any security
to be given in form of law to be complied with
" may be dispensed with unless dire necessi-
ty may call for the same. In testimony
" whereof &c.; that the testator died in the
city of St. Louis leaving said Phillipine Ber-
nardine his widow, and four children,
their lawful issue, to wit: Herman
Pulte, born the 19 Nov. 1832; Emma,
born the 4th June, 1837; Carl, born the
24th Sept. 1842; and Gustavus, born the
10th Oct. 1840, his sole heirs at law,
and that at the date of said will, and

which happened in July 1844

at the time of his death, the said testator resided in the city of St. Louis together with his said family; that said will was, on the 30th day of August 1844 duly proved and admitted to probate; that the right and title of the said Phillipine Bernadine under said will is now vested in the plaintiff; that his title is derived through a deed of trust made by said Phillipine to secure a debt contracted by her second husband, Adolphe Nohl, the plaintiff being purchaser at a sale made under said deed of trust and knowing at the time all the facts herein stated; that no advancement was ever made by said Philip A. Pulte to any of his children, and that Herman Pulte is now in possession of said lot of ground holding the same under and by virtue of all the right & title thereto, which the said Herman, Emma, Carl, and Gustavus derived from their said father as his heirs at law. And it was further agreed that, if the plaintiff should be adjudged to have the better title to the premises, he should recover judgment for possession, one cent damages, and monthly value of accruing rents and profits at the rate of fifteen dollars a month from the 6th day of May, 1857, until possession should be delivered up to him with his costs in this behalf expended: otherwise judgment to be given for the defendant, saving and reserving to either party the right to have

an appeal or writ of error, in due course of law, to the Supreme Court.

The case having been heard, the Court gave judgment for the defendant. The plaintiff moved for a new trial, and his motion being overruled, an exception taken, & a bill of exceptions filed, the case is brought up by writ of error.

N. Holmes.
Atty for Plt in Error.

C. Gibson
pd.

No. 98

Supreme Court
Wm. A. Hargadine
Plt in Error
v.
Herman Pulte.
Deft in Error.

Statement.

Filed 8 Nov. 1858.
Wm. J. Glanville
Clerk.

Hargadine
vs
Putte } Points for appellee

II "In reading this will (of Dr Putte) it is not "in the power of the court, from the will "alone, to say whether the testator had a child "living or not, or whether he ever had one".
Bradley vs Bradley 24. Mo. Rep. 316.

The expression in the habendum "to have & hold the same unto her my said wife, as her own & exclusive property & to the exclusion of all & every person or persons, be the same relatives or not" would argue that the testator had no children

Men do not call their own children "relatives, nor "persons" They occupy a much nearer & dearer position than that.

A man does not say he is sending a relative to school, when he is sending his child. He does not call his children his "relatives"

Take this will to any common man & ask him if the testator's children were named or if there was any thing in the will indicating even that he ever had any children & the universal response would be that there was nothing

All the cases decided in this court or elsewhere, sustaining wills, where similar points have been made, ~~that the fact the~~ are based upon the idea that the fact of the testator having a child or children logically

But take this will according to its terms made in 1842. but by its own terms it was to operate on all the property Dr Pitts might have at his death. It was to speak from the day of his death. How could he tell in 1842. that all or any of his children would survive him? Might he not reasonably provide for for this contingency. That his will being executed in due form & laid aside, his children might all die in the mean time without having descendants, & that from forgetfulness, disease absence or any other cause, he might not change it to suit the altered circumstances of his family. That he therefore meant to give every thing to his wife as against his "relations" but not as against his children. That he must be presumed to know the law that unless he named his children or provided for them, they would not be cut off.

I submit that this is no case for any strained constructions against the defendants.

I submit

The appellees therefore say that the judgment ought to be affirmed

Because

1. There is nothing in this will from which it follows that Phillip A. Putte ever had any children.

2. There is nothing to show that his children were present to his mind when he made it;

3 That it may well be supposed that he meant the will should cut off his relations but not his children

Hargadine
vs
Putte.

Points for appellees.

C. Gibson

The appellant himself by contending, that ~~that~~ it was necessary to show that Dr Putte was living with his family ~~also~~ at the time of the execution of the will proves that the will in his own contemplation was defective. & that it did not of itself show that Dr Putte remembered his children or that ~~he~~ ever had children

Hargadine
vs
Pulte

Brief for appellant

Filed 9 Nov. 1858.
W.S. Glanville
Cl.

B. Gibson

Wm. A. Hargadine
Plff. in error
v.
Herman Pulte
Deft. in error

In the Supreme Court,
Oct. T. 1858.

N. Holmes for the plaintiff in error:

1. The case of Hockensmith v. Slusher, (26 Mo. 237), settles the principles of this case and the construction of the Statute, (§ 30, R. Stat. 1835, tit. Wills (p. 620), which is the same as §s 11 & 12 of the R. C. 1845, tit. Wills, and §s 10 & 11 of R. C. 1855, tit. Wills).

The intent of the testator, in this will, to give the whole estate to his wife, the mother, and to cut off the children, is clearly indicated by the general tenor of the will, and pointedly expressed in the words, "to the exclusion of all and every person or persons, be the same relatives or not"; and this expression in the will, in connection with the fact, that the testator was living with his family, at the date of the will and at the time of his death, is sufficient to negative all presumption of unintentional omission or forgetfulness.

The children were certainly persons, ~~and these words cannot be taken as intended~~ ~~or to exclude them~~

2. The children are sufficiently named under the term "relatives", that is, mentioned to be excluded.

1 Rop. Leg. 100, 106, "relatives" and "relations" used as convertible terms; so also, the words "all persons related to" the testator, Ibid. 102-3; 3 Greenl. Cruc. 213, the term "relations" is sufficient to describe devisees; is nomen collectivum, and means in law all those who would take under the Statute of Distributions, Ib. 216; 2 Sarm. Wills, 45, 47; 1 Rop. Leg. 100 & n. (13), 102; 4 Kent's Comm. 537, n. (d), (7th ed.).

No. 98.

Supreme Court.

Wm A. Hargadine
Pltff. in error.
v.
Herman Pulte.
Deft. in error.

Brief for Pltff. in error.

Filed 9 Nov. 1858.
W. S. Clarville
Cl.

Hargadine v. Pulte

This case falls within the principles & reasoning of the case of Bradley v. Bradley 24. Mo. R. 311. where a testator declares his wife to be his sole heir, the implication of an exclusion of his children is just as strong as where the estate is given to the wife "as her own & exclusive property, & to the exclusion of all & every person or persons, be the same relatives or not." In truth, the multiplication of words in this last case rather weakens the force of the first clause, as the phrase "relatives" might be very naturally understood as not embracing one's children.

The other judges concurring, the judt. is affirmed.

W. B. Napton

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Hargadine
v.
Pulte

Opinion
of the Court

Napton
Affirmed

Filed 9 Decbr. 1858.
W. S. Glanville clk.