

Heggen v. Pemelton

Texas Supreme Court
836 S.W.2d 145 · September 9, 1992

OPINION

GONZALEZ, Justice.

The primary issue in this case is whether the trial court properly impressed an equitable lien on the petitioner's separate property homestead to secure the just and right division of the marital estate. The court of appeals affirmed the trial court's judgment. 809 S.W.2d 642. We hold that a judgment awarded to one spouse cannot be secured by a lien on the other spouse's separate property homestead unless the amount covers reimbursement for improvements made by the community to the separate property. Thus, we reverse and remand this cause to the trial court for further proceedings consistent with this opinion.

I.

Charlotte Heggen and Billy Gene Pemel-ton were married in 1960. In 1965, they settled on a 32-acre ranch owned by Ms. *146 Heggen's parents, who later deeded the tract as a gift to Ms. Heggen in 1969. In 1976, Ms. Heggen's parents deeded her another 127 acres, receiving in exchange a promissory note; her parents subsequently forgave the payments on this note. The Pemeltons operated a horse farm and ranch on these properties until the mid-1980s, when circumstances forced them into bankruptcy.

Ms. Heggen filed for divorce in January 1988, alleging that discord and incompatibility rendered the marriage insupportable. Mr. Pemelton counterclaimed, alleging, among other things, cruelty, mental anguish, and physical harm. After a jury trial, the trial court granted judgment for Mr. Pemelton. As part of the division of property, the court awarded Ms. Heggen the 32-acre separate property homestead as well as Mr. Pemelton's right of reimbursement for any homestead improvements made with community funds.

The court also ordered Ms. Heggen to pay \$150,000 to Mr. Pemelton for his community interest in the homestead and imposed an equitable lien on the homestead in order to enforce the court's judgment. The court granted this money judgment to Mr. Pemelton to ensure a just and right division of the marital estate.¹

II.

When dividing marital property on divorce, trial courts may impose equitable liens on one spouse's separate real property to secure the other spouse's right of reimbursement for community improvements to that property. See, e.g., *Dakan v. Dakan*, 125 Tex. 305, 83 S.W.2d 620, 627 (1935); *Smith v. Smith*, 715 S.W.2d 154, 160 (Tex.App.—Texarkana 1986, no writ); *Eggemeyer v. Eggemeyer*, 623 S.W.2d 462, 466 (Tex.App.—Waco 1981, writ dism'd) on remand from, 554 S.W.2d 137 (Tex.1977). Although courts may impress equitable liens on separate real property to secure reimbursement rights, they may not impress such liens, absent any compensable reimbursement interest, simply to ensure a just and right division. Compare *Mullins v. Mullins*, 785 S.W.2d 5, 11 (Tex.App.—Fort Worth 1990, no writ) and *Smith*, 715 S.W.2d at 157 with *Eggemeyer*, 554 S.W.2d at 141 and *Johnson v. Johnson*, 804 S.W.2d 296, 299-300 (Tex.App.—Houston [1st Dist.] 1991, no writ). In the case before us, the trial court granted Mr. Pemel-ton

an equitable lien on separate real property to secure a judgment imposed by the court simply to ensure a just and right division. Thus, the trial court erred because it allowed this lien against Ms. Heg-gen's separate real property for reasons other than to secure Mr. Pemelton's reimbursement interest.

III.

The Texas Constitution specifically protects homesteads from forced sale except to satisfy liens securing purchase money, tax, or home improvement debts. See Tex. Const. art. XVI, § 50; see also Tex.Prop. *147 Code § 41.002; see, e.g., *Laster v. First Huntsville Properties Co.*, 826 S.W.2d 125 (Tex.1991); *Eggemeyer v. Eggemeyer*, 623 S.W.2d 462, 466 (Tex.Civ.App.—Waco 1981, writ dismissed)(invalidating equitable lien on husband's homestead interest), on remand from, 554 S.W.2d 137 (Tex.1977); *Spence v. Spence*, 455 S.W.2d 365, 369 (Tex.Civ.App.—Houston [14th Dist.] 1970, writ refused n.r.e.)(homestead not subject to forced sale to satisfy debts).²

In *Eggemeyer*, the trial court permitted an equitable lien on the husband's one-third interest in the spouses' homestead, which was then occupied by his ex-wife, to secure the payment of accrued child support, taxes, and homestead improvements. The court of appeals reformed the lien, upholding it as to the tax and improvement debts, but eliminating the security for the overdue child support payments. The court held that article XVI, section 50 of the Texas Constitution, though permitting liens on homesteads for unpaid taxes and home improvements, does not allow liens to secure other debts such as delinquent child support payments. *Id.* at 466-67; see also *Smith v. Smith*, 187 S.W.2d 116, 121 (Tex.App.—Fort Worth 1945, no writ).

In its opinion upholding the trial court's judgment, the court of appeals purported to follow several earlier appellate court decisions that had approved of imposing equitable liens on homesteads to secure rights of reimbursement. 809 S.W.2d at 648-49; see, e.g., *Wierzchula v. Wierzchula*, 623 S.W.2d 730, 732 (Tex.Civ.App.—[1st Dist.] 1981, no writ); *Buchan v. Buchan*, 592 S.W.2d 367, 371 (Tex.Civ.App.—Tyler 1979, writ dismissed); *Brunell v. Brunell*, 494 S.W.2d 621, 623 (Tex.Civ.App.—Dallas 1973, no writ); see also *Wren v. Wren*, 702 S.W.2d 250, 252 (Tex.App.—Houston [1st Dist.] 1985, writ dismissed). These cases, however, either approve in dicta of imposing liens on homesteads without actually doing so, or they involve pre-existing valid liens of the type which pass constitutional muster, i.e., liens securing purchase money interests, taxes, or improvements. See, e.g., *Wierzchula*, 623 S.W.2d at 732-33 (approved of equitable liens securing homestead interests but failed to impress one); *Brunell*, 494 S.W.2d at 623-24 (court partially reformed equitable lien on homestead already burdened by purchase money lien); *Wren*, 702 S.W.2d at 252 (approved in dicta of homestead liens but did not impose one).

Of particular import to the case before us, the court in *Kamel v. Kamel*, 760 S.W.2d 677, 679 (Tex.App.—Tyler 1988, writ denied), permitted an equitable lien on a homestead, because the spouses had jointly executed, acknowledged, and recorded home improvement liens against the homestead. *Kamel*, 760 S.W.2d at 678. Thus, if the trial court finds on remand that Mr. Pemelton's reimbursement claim satisfies these strictures — that is, "[t]he homestead of a family or a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in *148 writing, with the consent of both spouses ..then the court could impress an equitable lien on the separate property homestead to secure the husband's right of reimbursement. See Tex. Const. art. 16, § 50

(1992).

Finally, the court of appeals erred in its constitutional analysis of the trial court's judgment by confusing the "right of reimbursement" with the "homestead interest." This confusion probably was engendered by the trial court's problematic judgment which transferred Mr. Pemel-ton's reimbursement right in one breath and then awarded him an amount equal to that right in the next. The right of reimbursement is an economic interest possessed by a spouse who has contributed to the improvement of property awarded to the other spouse. The homestead interest is a legal interest created by the constitution that provides prophylactic protection from all but the three types of constitutionally permitted liens against homesteads. This interest, unlike the right of reimbursement, gives protective legal security rather than vested economic rights.

IV.

The lien imposed on Ms. Heggen's separate property homestead was invalid for two reasons. First, it burdened her separate real property for reasons other than to secure Mr. Pemelton's reimbursement interest; that is, the trial court impermissibly imposed it to secure a just and right division. And second, it imposed a lien on Ms. Heggen's homestead that, based on the record, did not fit into any of the categories allowed by the Texas Constitution; that is, it was not a tax lien, it was not a purchase money lien, nor was it an improvement lien for which the "work and material [had been] contracted for in writing, with the consent of both spouses." Tex.Const. art. XVI, § 50

Permitting Mr. Pemelton to enforce his judgment lien could lead to the foreclosure of Ms. Heggen's homestead, a result contrary to the protections plainly afforded homesteads by our constitution. This result also would divest Ms. Heggen of her separate real property without sufficient legal basis. See Eggemeyer, 554 S.W.2d at 142 (divesting spouse of title to separate real property not within trial court's discretion); see also Laster, 826 S.W.2d at 129. For the reasons outlined above, we reverse the judgment of the court of appeals and remand this cause to the trial court for a division of the marital property consistent with this opinion.

CORNYN, J., concurs joined by COOK, J.

Footnotes

1 The trial court's judgment concerning the lien read as follows:

Judgment and Lien to Equalize Division.

For the purpose of a just and right division of property made in this decree, IT IS FURTHER ORDERED AND DECREED that Respondent, BILLY GENE PEMELTON, recover of and from Petitioner, CHARLOTTE PEMEL-TON, judgment for

\$150,000.00',

payable six months after the entry of this decree, together with judgment interest thereon at the rate of 10% per annum, compounded annually, for which let execution issue.

This judgment is part of the division of community property between the parties and is given as Respondent's interest in the homestead of the parties and shall not constitute or be interpreted to be any form of spousal support, alimony, or child support.

For the purpose of securing this judgment awarded to Respondent BILLY GENE PE-MELTON, for

1150,000.00,

IT IS FURTHER ORDERED AND DECREED that Respondent BILLY GENE PEMELTON is granted an equitable lien against the real property described as 32 acres of land, more or less, together with improvements thereon....

In its property award to Ms. Heggen, the court provided that she should receive:

Any and all reimbursement due the community estate from the separate estate of Charlotte Pemelton for improvements to the separate real property of Charlotte Pemelton through the use of community funds, time, toil and talent, such reimbursement being found by the jury to have enhanced the value of Charlotte Pemelton's separate real property by \$301,500.00.

2 The Texas Constitution provides foreclosure protection for homesteads in article 16, section 50 which says that:

The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for

the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses,

in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or claimant of the property claimed as homestead, if married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defea-sance shall be void.

(emphasis added).