

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Taryn Harrison,
*Appellant-Defendant / Counterclaim
Plaintiff / Third Party Plaintiff,*

v.

Theresa Harrison, as Personal
Representative of the
Unsupervised Estate of Fredric
Stephen Harrison, and Stephen
Harrison,

*Appellees-Plaintiffs / Counterclaim
Defendants,*

and

April 20, 2023

Court of Appeals Case No.
22A-PL-1807

Appeal from the
Fayette Circuit Court

The Honorable
Hubert Branstetter, Jr., Judge

Trial Court Case No.
21C01-2203-PL-107

Theresa Harrison, as Personal
Representative of the
Unsupervised Estate of Fredric C.
Harrison,
Appellee-Third Party Defendant.

Memorandum Decision by Senior Judge Shepard
Judges Riley and Vaidik concur.

Shepard, Senior Judge.

- [1] Taryn Harrison appeals the trial court’s grant of a preliminary injunction in favor of Appellees. Concluding the trial court erred in granting the injunction, we reverse.

Facts and Procedural History

- [2] Taryn Harrison (Taryn) was formerly married to Fredric C. Harrison (Fred), who is now deceased. Fred was the father of Joni Harrison and Fredric Stephen Harrison (Steve), who is also now deceased. Theresa Harrison (Theresa) is the widow of Steve, and Stephen Allen Harrison (Stephen) is the son of Steve and Theresa.
- [3] Taryn and Fred were divorced in 2017. Although their settlement agreement required Fred to quitclaim five parcels of property to Taryn, it provided that Fred could still use the parcels as he previously had and could rent the property to his son Steve.

- [4] In February 2020, Fred signed a ten-year cash farm lease with his son and grandson, Steve and Stephen, for a portion of the property. Fred died in June 2021, and Steve died in October 2021. Theresa (“PR”)¹ serves as personal representative of the estates of both Fred and Steve.
- [5] After Fred’s death and during the term of his lease with Steve and Stephen, Taryn entered into a farm lease with a third party for the same property that Fred had leased to his son and grandson. PR and Stephen requested a preliminary injunction to enjoin Taryn from interfering with their use of the farmland during the lease term. After hearing the matter, the trial court granted a preliminary injunction. Taryn moved to correct error, which the court denied.

Issues

- [6] Taryn presents four issues for our review, which we consolidate and restate as:
- I. Whether the trial court improperly allowed testimony barred by the Dead Man’s Statute; and
 - II. Whether the trial court erred by granting the injunction.

¹ We will refer to Theresa in her capacity as personal representative of Steve’s estate as “PR.”

Discussion and Decision

I. Dead Man's Statute

- [7] Taryn contends the trial court erroneously considered the testimony of Theresa, Stephen, and Joni in violation of the Dead Man's Statute. We review a court's ruling on witness competency for an abuse of discretion. *In re Unsupervised Est. of Harris*, 876 N.E.2d 1132 (Ind. Ct. App. 2007) (citing *Kalwitz v. Ests. of Kalwitz*, 759 N.E.2d 228 (Ind. Ct. App. 2001), *trans. denied*). An abuse of discretion occurs when the court's decision is against the logic and effect of the facts and circumstances before it or the court has misinterpreted the law. *Willis v. Dilden Bros., Inc.*, 184 N.E.3d 1167 (Ind. Ct. App. 2022) (quoting *Poiry v. City of New Haven*, 113 N.E.3d 1236 (Ind. Ct. App. 2018)), *trans. denied*.
- [8] Indiana's Dead Man Statutes prohibit testimony by survivors in certain circumstances in proceedings involving a decedent's estate. *See* Ind. Code §§ 34-45-2-4, -5. The general purpose of these statutes is to protect a decedent's estate from spurious claims by guarding against false testimony by a survivor. *Arnett v. Est. of Beavins by Beavins*, 184 N.E.3d 679 (Ind. Ct. App. 2022) (citing *Gabriel v. Gabriel*, 947 N.E.2d 1001 (Ind. Ct. App. 2011)).
- [9] The section of the Dead Man's Statutes cited by Taryn provides in pertinent part as follows:

(a) This section applies to suits by or against heirs or devisees founded on a contract with or demand against an ancestor:

(1) to obtain title to or possession of property, real or personal, *of, or in right of, the ancestor*; or

(2) to affect property described in subdivision (1) in any manner.

....

(c) . . . neither party to a suit described in subsection (a) is a competent witness as to any matter that occurred before the death of the ancestor.

Ind. Code § 34-45-2-5 (2004) (emphasis added). However, this statute does not apply here because Fred did not own the property at the time of his death; he had quitclaimed the property to Taryn in 2017 as part of their divorce settlement. *See Kalwitz*, 759 N.E.2d 228 (holding that Ind. Code § 34-45-2-5 did not apply where decedent did not hold property at time of his death). Accordingly, the trial court did not abuse its discretion when it allowed Theresa, Stephen, and Joni to testify.

II. Grant of Injunction

[10] Taryn claims the trial court erred when it determined that PR and Stephen had a reasonable likelihood of success at trial. Her argument is based on the following two provisions of the divorce settlement agreement:

6. So long as [Fred] is physically and mentally capable of using the parcels of real estate in the same manner as he would had the parties remained married, then [Fred]’s son Steve Harrison has the first option to cash rent the real estate at the current rate.

. . . .

19. Neither party shall be permitted to take out any loans, borrow any money, or in any way encumber or place a lien on the Real Estate without first obtaining the written permission of the other party.

Appellant's App. Vol. II, pp. 44, 46. Taryn contends that although Fred was permitted to rent the real estate, he could do so only while he was still capable of farming. In light of Fred's passing, he was no longer able to farm, and continuation of the lease constitutes an encumbrance on the property to which she did not consent.

[11] For their part, Appellees contend that Taryn was bound by the lease because the settlement agreement gave Fred the authority to lease the farmland to Steve, and Taryn permitted Fred to do so.

[12] "The grant or denial of a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion." *Ind. Fam. & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind. 2002) (citing *Harvest Ins. Agency, Inc. v. Inter-Ocean Ins. Co.*, 492 N.E.2d 686 (Ind.1986)). When determining whether to grant a preliminary injunction, the trial court is required to make special findings of fact and state its conclusions thereon. *Barlow v. Sipes*, 744 N.E.2d 1 (Ind. Ct. App. 2001) (citing Ind. Trial Rule 52(A)), *trans. denied*. "We will reverse the trial court's judgment only when it is clearly erroneous." *City of Gary, Indiana v. Majestic Star Casino, LLC*, 905 N.E.2d 1076, 1082 (Ind. Ct. App. 2009) (citing *Barlow*, 744 N.E.2d 1), *trans. denied*. "A judgment is clearly erroneous when a

review of the record leaves us with a firm conviction that a mistake has been made.” *City of Gary*, 905 N.E.2d at 1082 (citing *CSX Transp., Inc. v. Rabold*, 691 N.E.2d 1275 (Ind. Ct. App. 1998), *trans. denied*). Preliminary injunctions should be issued sparingly and only in rare instances in which the law and facts are clearly within the moving party’s favor. *Holcomb v. T.L.*, 175 N.E.3d 1177 (Ind. Ct. App. 2021) (citing *U.S. Land Servs., Inc. v. U.S. Surveyor, Inc.*, 826 N.E.2d 49 (Ind. Ct. App. 2005)).

[13] To obtain a preliminary injunction, the movant must demonstrate by a preponderance of the evidence: (1) a reasonable likelihood of success on the merits; (2) the remedies at law are inadequate; (3) the threatened injury to the movant outweighs the potential harm to the nonmovant from the granting of an injunction; and (4) the public interest would not be disserved by granting the injunction. *Great Lakes Anesthesia, P.C. v. O’Bryan*, 99 N.E.3d 260 (Ind. Ct. App. 2018) (citing *Cent. Ind. Podiatry, P.C. v. Krueger*, 882 N.E.2d 723 (Ind. 2008)). “If the movant fails to prove any of these requirements, the trial court’s grant of an injunction is an abuse of discretion.” *Ind. Fam. & Soc. Servs. Admin.*, 769 N.E.2d at 161 (citing *Boatwright v. Celebration Fireworks, Inc.*, 677 N.E.2d 1094 (Ind. Ct. App. 1997)). Although Taryn challenges the trial court’s assessment on both the first and second factors, we address only the first factor, as it is dispositive.

[14] The law favors Taryn in this case. Paragraph 6 of the settlement agreement provided Fred with something akin to, and what amounted to under these circumstances, a life estate in the farmland. *See Life Estate*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“An estate held only for the duration of a

specified person's life, usu. the possessor's."). Generally, a lease given by a life tenant terminates with his death and the right of possession of the lessee likewise terminates because a life tenant has no power to grant an interest in the property greater than that which he himself holds. Annotation, *Life Tenant's Death as Affecting Rights Under Lease Given by Him*, 14 A.L.R. 4th 1054 § 2 (1982). Indeed, Indiana has recognized this tenet for over a century. See *Richardson v. Scroggham*, 159 Ind. App. 400, 307 N.E.2d 80 (1974) (acknowledging that death of lessor/life tenant terminated lessee's right to remain in possession of land); see also *Lowrey v. Reef*, 1 Ind. App. 244, 27 N.E. 626 (1891) (acknowledging that death of lessor, who owned only life estate in land, put an end to lessee's rights under lease and right to possession of land).

[15] Thus, Fred's life estate in the farmland, as well as any lease thereon entered into by him, expired upon his death. Moreover, "the lessee of a life tenant is charged with notice of the extent of his landlord's title." *Life Tenant's Death as Affecting Rights Under Lease Given by Him*, *supra*, at 1054 § 2. Thus, it is of no moment that PR and Stephen, as they allege in their brief, did not know the terms of the settlement agreement, particularly the provision requiring Fred to quitclaim the property to Taryn and granting him the equivalent of a life estate in the farmland.

[16] Of note, too, is that the lease between Fred, his son, and his grandson is a cash farm lease form that contained blanks to be filled in with specific terms as well as some standardized language. One such paragraph states, "The provisions of this lease shall be binding upon the heirs, executors, administrators, and

successors of both Landlord and Tenant in like manner as upon the original parties, except as provided by mutual written agreement.” Appellant’s App. Vol. II, p. 29 (Lease, ¶ 6). However, we observe that, in a lease with a life tenant/lessor, this type of provision has been held not to be binding on the remainderman, which in the case before us is Taryn. *See Olmstead v. Nodland*, 828 N.E.2d 338 (Ill. App. Ct. 2005) (holding that farmland lease by life tenant/lessor terminated when life tenant died and life tenant’s ownership interest in property expired; explaining that even though lease contained boilerplate language providing it was binding on heirs of parties, remainderman is not heir to life tenant, at least with respect to property subject to life tenancy, because remainderman takes not *through* life tenant but *after* life tenant and through original grantor (who may actually be life tenant)).

Conclusion

[17] The trial court’s conclusion that PR and Stephen have a reasonable likelihood of success on the merits is clearly erroneous. Accordingly, we reverse the trial court’s order granting a preliminary injunction.

[18] Reversed.

Riley, J., and Vaidik, J., concur.