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ATTORNEYS FOR APPELLANTS:

KONRAD M.L. URBERG
Urberg Law Office, LLC
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE:

THOMPSON SMITH
John Martin Smith & Thompson Smith, P.C.
Auburn, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS LEE KELLER and)
SHIRLEY JEAN ROHRS,)
)
Appellants/Cross-Appellees-Defendants,)

vs.)

No. 17A03-1012-CC-644

DANIEL RAY KELLER,)
)
Appellee/Cross-Appellant-Plaintiff.)

APPEAL FROM THE DEKALB CIRCUIT COURT
The Honorable Kirk D. Carpenter, Judge
Cause No. 17C01-0405-CC-29

June 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

This is the third appeal of an ongoing dispute among three siblings concerning the sale and distribution of proceeds from two family farms. This time, Thomas Lee Keller (“Tom”) and Shirley Jean Rohrs (“Shirley”) challenge the trial court’s calculation of the amount of tillable acreage as well as its determination that certain personal property should not be subject to sale by public auction because it is either worthless or has already been gifted to the person in possession. Daniel Ray Keller (“Dan”) cross-appeals, challenging the trial court’s calculation of cash rent due on the two family farms. Finding no error, we affirm.

Facts and Procedural History

Dan, Tom, and Shirley are siblings who inherited two farms when their mother died. Each sibling owns an undivided one-third interest in the Keller farm, and Dan and Tom each own an undivided one-half interest in the Derrow farm. In 2004, when it became apparent that the siblings could not agree on the operation of the two farms, Dan filed a partition action. The trial court concluded that physical partition was impracticable and ordered that both farms be sold by public auction, with proceeds to be distributed according to ownership percentage.

Tom and Shirley appealed, challenging the public auction of the Keller farm. This Court affirmed, and transfer was denied.¹ Thereafter, the trial court appointed an auctioneer and ordered a date for the sale. Tom and Shirley filed a motion to stay the auction pending a second appeal. In that appeal, they challenged the trial court’s determination regarding the

¹ *Keller v. Keller*, 878 N.E.2d 525 (Ind. Ct. App. 2007), *trans. denied* (2008).

auction procedures and appointment of the auctioneer. Again, this Court affirmed the trial court's decision in an unpublished memorandum decision,² and the farms were sold at auction and the proceeds divided according to each sibling's ownership percentage.

Following the sale of the two farms, the siblings were left with certain unresolved accounting issues. On June 29, 2010, the trial court held a hearing to resolve issues such as taxes, expenses, insurance, upkeep, cash rent due, and the disposition of certain personal property. On August 20, 2010, the trial court entered an order containing findings of fact and conclusions thereon, which included calculations of tillable acreage of both farms for purposes of determining the cash rent due, the amount of cash rent due per acre, and the disposition of certain pieces of farm equipment. Tom and Shirley now appeal, claiming that the trial court erred in basing its tillable acreage calculations on aerial photographs provided by the United States Department of Agriculture Farm Services Agency ("FSA") instead of using Global Positioning System ("GPS") calculations performed by a representative of Custer Grain Company. They also assert that the trial court erred in disposing of certain disputed personal property, namely, a tractor with several attachments and a skid loader.³ Dan cross-appeals, claiming that the trial court erred in determining the cash rent due per acre. Additional facts will be provided as necessary.

² *Keller v. Keller*, No. 17A03-0810-CV-487 (Ind. Ct. App. Mar. 11, 2009).

³ An October 2006 order lists disputed personal property to include two tractors, a "WD 45" tractor and an "AC" tractor. Appellants' App. at 42. However, the record indicates that the two were actually the same tractor, "an AC WD45 tractor." Tr. at 47.

Discussion and Decision

I. Tillable Acreage

Tom and Shirley contend that the trial court erred in determining the amount of tillable acreage of the Keller and Derrow farms. The trial court issued special findings of fact and conclusions thereon. As such, we apply a two-tiered standard of review, considering first whether the evidence supports the findings and then whether the findings support the judgment. *Hardy v. Hardy*, 910 N.E.2d 851, 855 (Ind. Ct. App. 2009). In conducting such review, we neither reweigh evidence nor judge witness credibility; instead, we consider only the evidence most favorable to the judgment. *Id.* at 856. We will set aside the trial court's findings and conclusions only if they are clearly erroneous, meaning that the record contains no facts or inferences to support them and that we are left with the firm conviction that a mistake has been made. *Id.*

Here, the parties presented evidence of two methods for determining total tillable acreage. The trial court adopted the FSA figures from the aerial photographs taken of the Keller and Derrow farms. Tom and Shirley assert that the FSA method for determining tillable acreage was less reliable than the GPS method. In so arguing, they ask us to reweigh evidence, which we may not do. The record contains exhibits using the FSA and GPS figures as well as page after page of testimony concerning the relative accuracy and subjectivity of the two methods, and the trial court was in a better position than we to evaluate such evidence. In sum, we find no reversible error in the trial court's findings regarding the tillable acreage of both farms.

II. Exclusion of Personal Property

Tom and Shirley also assert that the trial court erred in excluding from public auction a tractor with certain attachments and a skid loader. In its August 2010 order, the trial court concluded that “all of the personal property in contention was either worthless or was already gifted during the lifetime of the mother to at least one of the parties, therefore, the Court makes no further order concerning the contested personal property.” *Id.* at 18. Tom and Shirley argue that the trial court’s order is inconsistent with its October 26, 2006 order, which states that “[a]ll of the parties agree to a public auction sale of the subject personal property with the net proceeds to be divided equally between the parties.” Appellants’ App. at 42. As of 2010, these disputed items had not been sold by auction, and Dan was in possession of them.

Tom and Shirley assert that because Dan did not challenge the 2006 court order via appeal or otherwise, he has waived the right to claim ownership of these items. To the extent they rely on Finding Number. 14 in the trial court’s 2006 order, we note that it states that “Dan has waived any interest in any *other* personal property *previously* in dispute.” *Id.* at 43 (emphases added). Thus, it does not apply to the tractor, attachments, and skid loader, which the trial court specifically labeled as “disputed” items to be sold by auction, with the proceeds to be divided equally among the siblings. *Id.* at 42.

Between 2006 and 2010, the tractor, attachments, and skid loader were never sold. By 2010, the trial court determined that they were either worthless or gifted to Dan. When asked at a 2010 hearing why he did not want the items sold at auction and the proceeds distributed,

Dan testified that they were “given to me by my Mom.” Tr. at 218. Tom and Shirley did not offer any rebuttal to Dan’s testimony, and the trial court was free to believe or disbelieve Dan’s claim of ownership by gift. Moreover, concerning the trial court’s alternate finding of worthlessness, we note that the parties offered varying estimates of the value of the tractor and skid loader, with figures as low as \$500 to \$1000 for each. *Id.* at 216. Finally, the record shows that the trial court was aware of its prior order and did not overlook it. *Id.* at 68. Instead, the trial court merely evaluated the status of these unsold disputed items as of 2010 and entered its order accordingly. We decline Tom and Shirley’s invitation to reweigh evidence regarding the value and disposition of these items. As such, we conclude that the trial court’s disposition of the tractor, attachments, and skid loader was not clearly erroneous.

III. Cash Rent Due

On cross-appeal, Dan challenges the trial court’s denial of his motion to correct error on the issue of the amount of cash rent due on the family farms for 2005 through 2008. We review a trial court’s denial of a motion to correct error for an abuse of discretion. *Hlinko v. Marlow*, 864 N.E.2d 351, 353 (Ind. Ct. App. 2007), *trans. denied*. An abuse of discretion occurs where the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it or where the trial court has misinterpreted the law. *Id.*

In its August 2010 order, the trial court entered the following finding: “33. For the years 2005, 2006, 2007, 2008, 2009 the Court establishes the rent at \$80.00 per acre on the Derrow Farm and \$100.00 per acre on the Keller Farm which was the amount established by the Court after the hearing on February 19, 2009.” Appellants’ App. at 18. However, in

Findings 40 and 45, the trial court entered lower cash rent figures that increased in 2008 and capped out in 2009 at Dan's desired figures of \$80.00 and \$100.00 per acre for the Derrow and Keller farms respectively.⁴ In his motion to correct error, Dan argued that Findings 40 and 45 contained erroneous figures and that the 2009 figures should be applied retroactively to cover cash rents due for 2005 through 2008. However, instead of amending Findings 40 and 45 to comport with the figures Dan desired, the trial court determined that "[t]he error by the Court was made in [Finding] 33, not in the other [findings] and therefore the Court now corrects the error so that [Finding] 33 should read to be changed to be consistent with the other [findings] of the order." *Id.* at 13.

On cross-appeal, Dan cites nothing in the record to support his claim for the higher cash rent figures except a letter to opposing counsel asserting that Tom's cash rent proposal was below market value. Plaintiff's Ex. 1. In contrast, Tom testified about how he arrived at his proposed cash rent figures for the two different properties and explained that he had used as a guideline the per acre figure that the family had charged a third party who had farmed a portion of the Derrow property in 2003. Tr. at 24. Moreover, at the December 2010 hearing on Dan's motion to correct error, the trial court clarified its intent and corrected the discrepancies among the cash rent figures contained in its August 2010 order: "I did the math the way I intended to do it [in Findings 40 and 45]. Uh, I did not put it down ... in the [findings] the way I intended to so ... I will make the correction." *Id.* at 222. We conclude

⁴ In Finding 40, the trial court entered cash rent due on the Derrow farm at \$60 per acre for 2005 through 2007, increasing to \$65 per acre in 2008 and \$80 per acre in 2009. Appellants' App. at 19. In Finding 45, the trial court entered cash rent due on the Keller farm at \$72 per acre for 2005 through 2007, increasing to \$80 per acre in 2008 and \$100 per acre in 2009. *Id.* at 20.

that the trial court acted within its discretion in using the figures in Findings 40 and 45 and in denying Dan's motion to correct error on the issue of cash rent due for 2005 through 2009.

Accordingly, we affirm.

Affirmed.

NAJAM, J., and ROBB, C.J., concur.