

O/a ~~3-6-86~~
3-6-86

IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

Case No. 67,186

REED A. BRYAN, III, et al.,

Petitioner,

vs.

CENTURY NATIONAL BANK OF
BROWARD, as Personal Repre-
sentative of the Estate of
CAMILLE PERRY BRYAN, Deceased.

REED A. BRYAN, III, et al.,

Petitioner,

vs.

JAMES H. BRYAN, SR., STUART
BRYAN and LUCY GARDNER OWENS,

Respondents.

RESPONDENTS/HEIRS' BRIEF ON THE MERITS

H. T. Maloney, Esquire
PATTERSON & MALONEY
Attorneys for Respondents/Heirs
790 East Broward Boulevard, Suite 400
Post Office Box 030520
Fort Lauderdale, Florida 33303
Telephone: (305) 522-1700

TABLE OF CONTENTS

<u>Item</u>	<u>Page</u>
Statement of the Facts and Argument	1-5
Conclusion	6
Certificate of Service	7

STATEMENT OF THE FACTS AND ARGUMENT

The Respondents/Heirs adopt the argument prepared by the Respondent/Century National Bank of Broward, in its Brief on the Merits dated this date, as their argument.

The Respondents/Heirs do state the following facts which militate an affirmance of the Decision of the Fourth District Court of Appeal in Case No. 83-2098 and Case No. 83-2133, since the following scenario is what the Court approval will prevent or, at least, carefully scrutinize.

On the 11th day of July, 1977, when CAMILLE PERRY BRYAN was 98 and a half years old, she petitioned the Probate Court in Broward County for a voluntary guardianship. The Sun Bank (formerly known as Century Bank) was appointed guardian (A.1, 2), (T.316-317).

The Petition for Voluntary Guardianship was signed by William Meeks (A. 3) (T.319), a member of the firm of McCune, Hiaasen, Crum, Ferris and Gardner. This firm was general counsel for the Century National Bank of Broward; represented Century National Bank of Broward in the guardianship; and petitioned the Court for approval of the deed in question in this case. William Meeks and REED A. BRYAN, III, are members of this firm.

On the 22nd day of August, 1980, the Petitioner, REED A. BRYAN, III, who personally was the attorney for CAMILLE PERRY BRYAN, had her execute a deed (A.4) (R.393) transferring to him the home in

which CAMILLE PERRY BRYAN lived. She was 101 years of age. The deed was drawn by REED A. BRYAN, III, or his office; he took it to CAMILLE PERRY BRYAN and was present when it was signed; he brought his secretary to be one of the witnesses, and he kept possession of the deed after it was signed (A. 5 - 7) (T.196-198).

At the time the deed was executed, REED A. BRYAN, III, also had CAMILLE PERRY BRYAN execute a Petition for Order Confirming Sale (A. 8 -11) (R.394-397). In the presence of the two witnesses, REED A. BRYAN, III, read the contents of the deed and the Petition for an Order Confirming Sale to CAMILLE PERRY BRYAN. In the Petition for an Order Confirming Sale, the following language is contained:

"The Petitioner and the Ward further desire to lessen the estate tax consequences to the Ward's family and estate by transferring the subject property as part of an estate planning procedure, as contemplated in §744.441, Florida Statutes."

REED A. BRYAN, III, also explained this tax advantage to CAMILLE PERRY BRYAN (A.12-13) (T.74-75).

In June, 1980, either REED A. BRYAN, III, or William Meeks talked to Lowell Mott, the trust officer for Sun Bank, about a contemplated transfer of the home. Lowell Mott indicated that the only way it could be done would be with the approval of the Court (A.14) (T.321). The next thing that Mr. Mott heard about this transaction was in a letter dated September 8, 1980, signed by William Meeks, transmitting a Petition for an Order Confirming Sale, which had already been executed by CAMILLE PERRY BRYAN.

Even though Mr. Meeks and REED A. BRYAN, III, were representing the Guardian, the Guardian was not present at the execution of the Petition for an Order Confirming Sale or the deed, nor was the Guardian informed that such a Petition or deed was to be executed. In fact, at the time the Petition for an Order Confirming Sale was received by the Guardian, the Guardian still did not know that a deed had been executed and was under the impression that a Court Order would be obtained prior to obtaining a deed (A.15-16) (T.324-325).

Pursuant to the request to go forward on the Petition for an Order Confirming Sale, Mr. Meeks was instructed to appear at a trust committee meeting of Sun Bank to make a presentation on what was captioned by the trust officer as being a very unusual situation (A.17-20) (T.326-329). At that meeting, Mr. Meeks was authorized to proceed on the Petition for an Order Confirming Sale, but, only after consents had been obtained from all of the heirs that would be affected by this transaction (A.21) (T.334).

Without authority, Mr. William Meeks filed the Petition for an Order Confirming Sale and notified Sun Bank via Mr. Mott, by mail, in January, 1981 (A.22,23) (T.337,345). Mr. Mott went to the hearing as administrator of the voluntary guardianship with Mr. Meeks, who was representing him in that capacity (A.24) (T.338). It was at that hearing that Mr. Mott first learned that the consents had not been received (A.25) (T.339). Mr. Mott was directed, after reporting this fact to Sun Bank, to have Sun Bank removed as

the Petitioner, and Mr. Meeks or REED A. BRYAN, III, hired another attorney of their choice to represent Sun Bank and Mr. Mott (A.26) (T.340).

Even though the deed and Petition for Order Confirming Sale were executed on August 22, 1980, as indicated above, no action was taken on the filing of the Petition for an Order Confirming Sale until February 4, 1981, when CAMILLE PERRY BRYAN had already been hospitalized for a broken hip and was unavailable or incompetent to testify concerning the transaction.

During the pendency of the hearing on the Petition for an Order Confirming Sale, CAMILLE PERRY BRYAN suffered her demise in May, 1981 (A.27) (T.342). During the pendency of the hearing on the Petition for an Order Confirming Sale, REED A. BRYAN, III, first recorded the deed that he received on March 13, 1981 (A.28) (T.259). Neither before the hearing on the Petition for an Order Confirming Sale, during said hearing, or for a substantial period thereafter (until January 29, 1982), did REED A. BRYAN, III, make any formal tender of any monies due pursuant to the alleged transfer. This began when REED A. BRYAN, III, took possession of the house over the objection of the Personal Representative of CAMILLE PERRY BRYAN's estate in January, 1982 (A.29-30) (T.347-348).

With the exception of the letter to his sister, on the 31st day of October, 1980, REED A. BRYAN, III, commenced writing letters to the other heirs requesting their consents to the house transfer. This was after CAMILLE PERRY BRYAN was hospitalized for her broken

hip (A.31-51). In the letters, REED A. BRYAN, III, indicated that the house had been appraised at \$160,000 some three years prior to the writing. On October 20, 1980, Sun Bank had received an appraisal showing the value of the house to be \$375,000 (A.52-72), (Pet's Exhibit #6 entered into evidence in the voluntary guardianship proceedings on April 1, 1981, which was introduced in evidence unnumbered and of which the Court stated it would take judicial notice (A. 73)(T.365)). At the time of the transfer, REED A. BRYAN, III, believed the value of the house to be \$230,000 to \$275,000 (A.74)(T.253). Also in the letters to the heirs, REED A. BRYAN, III, said substantially the following: Obviously, too, it's quite a substantial estate tax savings for all of us. In addition, her estate will also be augmented because I will be assuming the tax and maintenance expense (A.90-110).

The Court, in Paragraph 8 of its Final Judgment, found that the Petition for an Order Confirming Sale had been read to CAMILLE PERRY BRYAN in its entirety. The Court, in Paragraph 9 of its Final Judgment, found that REED A. BRYAN, III, had written letters to the legatees of CAMILLE PERRY BRYAN stating that there would be a substantial estate tax savings for all of us due to the transaction--part sale and part gift--of the house to REED A. BRYAN, III. The Court found this statement to be a future condition which seemed misguided. The Court made no finding that, although CAMILLE PERRY BRYAN was informed that the transfer of the house was purportedly for tax planning, and the erroneous tax consequences were explained to her that this was of any import.

CONCLUSION

The Respondents/Heirs respectfully request the Decision of the Fourth District Court of Appeal be affirmed.

Respectfully submitted,

PATTERSON & MALONEY
Attorneys for Respondents/Heirs
790 E. Broward Blvd., Suite 400
P.O. Box 030520
Fort Lauderdale, Florida 33303
Telephone: (305) 522-1700

By: 
H. T. MALONEY
Florida Bar No. 049910

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing, Respondents/Heirs Brief on the Merits was furnished, by mail, to the following named attorneys on January 27, 1986:

KENNETH R. MIKOS, ESQUIRE
FRIEDRICH, BLACKWELL, MIKOS & RIDLEY, P.A.
2900 East Oakland Park Boulevard
Fort Lauderdale, Florida 33306

REED A. BRYAN, III,
In proper person,
c/o McCUNE, HIAASEN, CRUM, FERRIS & GARDNER
P.O. Box 14636
Fort Lauderdale, Florida 33302

JOHN BERANEK, ESQUIRE
KLEIN & BERANEK, P.A.
Suite 503 - Flagler Center
501 South Flagler Drive
West Palm Beach, Florida 33401

PATTERSON & MALONEY
Attorneys for Respondents/Heirs
790 E. Broward Blvd., Suite 400
P.O. Box 030520
Fort Lauderdale, Florida 33303
Telephone: (305) 522-1700

By: 
H. T. MALONEY
Florida Bar No. 049910