

REAL ESTATE

KOPRIVEC V. RAILS-TO-TRAILS OF WAYNE COUNTY: WHAT DEED DRAFTERS NEED TO KNOW

by Connor E. Phalon

Real estate attorneys are praising a recent Ohio Supreme Court decision which denounced a longstanding, yet oft-criticized deed interpretation rule from 1929. The rule, which originated in the Court's decision in *In re Petition of Copsps Chapel Methodist Episcopal Church*, set forth that a fee simple determinable estate could only be created by including explicit reversionary language in a deed in favor of the grantor.

In *Koprivec v. Rails-to-Trails of Wayne County*, the Court set the record straight that the *Copsps Chapel* rule was no longer to be considered good law in Ohio. To the Court, the rule ran afoul of the central tenet of modern day deed interpretation law, namely that courts should give full effect to the intent of the parties as expressed within the four corners of the deed, regardless of the technical rules of construction.

The dispute in *Koprivec* centered on the ownership of an abandoned railroad corridor. At issue was an 1882 deed, which conveyed part of the corridor to a railroad company "and to its assigns forever." In its habendum clause, the deed stated that the grant was "forever for the purpose of construction and using thereon a Rail Road[.]" At the time of the *Koprivec* lawsuit and appeal, the corridor was owned by Rails-to-Trails of Wayne County, a non-profit organization.

Three separate landowners challenged Rails-to-Trails' ownership of the corridor in *Koprivec*. The landowners claimed ownership over sections of the corridor located adjacent to their respective properties. Two of the landowners contended that the 1882 deed created a fee simple determinable estate in the corridor, and that when the corridor ceased to be used for railroad purposes, it had reverted to them as successors-in-interest of the original grantors.

The court of appeals disagreed. The court relied on *Copsps Chapel* and reasoned that the deed did not create a fee simple determinable estate since it did "not contain a provision stating that the land would revert to the grantors if it was no longer used for railroad purposes." Accordingly, the court concluded that the deed created a fee simple absolute estate in favor of the railroad company instead.

The Ohio Supreme Court affirmed the above holding of the court of appeals. However, in reaching its decision, the Court refused to rely on the *Copsps Chapel* rationale.

In *Copsps Chapel*, the Court analyzed a deed which conveyed property to a church. The deed's habendum clause included the following language: "To have and to hold . . . unto the said grantees and their successors . . . so long as said lot is held and used for church purposes." Even though in 1929 the inclusion of conditional language like "so long as" had been understood to create a fee simple determinable estate, and an implied possibility of reverter in favor of the grantor, the Court found that "without any provision for forfeiture or revision [in the deed], such statement [was] not a condition or limitation of the grant." In other

words, a determinable fee could only be created by including explicit language in the deed saying that the property would revert to the grantor upon the occurrence of a stated event.

Contrary to *Copsps Chapel*, the Court in *Koprivec* opined that regardless of whether there is an explicit reservation of a right of reverter in a deed, it should be presumed that "when a grantor conveys a property to another 'for so long as it is used for X,' she means exactly that – that she intends for the property to be held by the grantee for so long as it is used for X. When the property stops being used for X, it reverts to the grantor."

The above rationale is consistent with the "modern" rule of deed construction discussed in the 1946 Ohio Supreme Court decision, *Hinman v. Barnes*. In *Hinman*, the Court established that "if the intention of the parties is apparent from an examination of the deed from its four corners, it will be given effect regardless of technical rules of construction."

Applying the "modern" rule to the case before them, the Court in *Koprivec* found that both the granting clause and the habendum clause in the 1882 deed conveyed the corridor to the railroad company without limitation. Conditional words typically used to create a fee simple determinable estate, like "so long as," "until" and "during," were not included in the deed, nor were words that suggested the possibility of forfeiture or termination. By contrast, the Court held that the use of the "forever" language in both of the clauses evidenced the intent of the original parties to convey a fee simple absolute estate.

As such, the Court affirmed the court of appeals' holding regarding the 1882 deed, and concluded that contrary to the arguments presented by the landowners, the railroad company held title to the corridor in fee simple.

What does all of this mean going forward? The Ohio courts will continue to place utmost emphasis on the plain language of a deed when interpreting the intent of the parties. To ensure you and your client are not before a judge arguing the issue of intent one day in the near future, it pays to be vigilant up front when drafting and reviewing deeds to make certain that all words of conveyance are clear, concise and included therein.

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