

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 5, 2007 Session

KENNETH BUCKNER, ET AL. v. CHARLES YARBER

**Appeal from the Chancery Court for Bradley County
No. 03-165 Jerri S. Bryant, Chancellor**

No. E2006-00475-COA-R3-CV - FILED MAY 30, 2007

Kenneth Buckner and his wife, Brenda Buckner, and Eugene Buckner and his wife, Linda Buckner, sued Charles Yarber seeking, among other things, to reform or rescind certain deeds pertaining to real property located in Bradley County, Tennessee. The case was tried without a jury and the Trial Court entered an order finding and holding, *inter alia*, that certain deeds from Charles Yarber and Pearl Yarber to Kenneth and Brenda Buckner, and to Eugene and Linda Buckner were void and were set aside, and that fee simple title was vested in the heirs of Anderson Yarber. All parties filed motions to alter or amend the judgment. After hearing argument on the motions to alter or amend, the Trial Court entered an order finding and holding, *inter alia*, that fee simple title vested in the heirs of Anderson Yarber per capita, that the property at issue had been reduced by a valid conveyance of 11.3 acres, and that certain deeds from Pearl Yarber to Charles Yarber were set aside. All parties appealed to this Court. We modify the Trial Court's order, in part, to show that a one-half undivided interest in the 57.5 acre tract at issue vested in the heirs of Anderson Yarber by representation. We reverse the Trial Court's order, in part, and hold that the deeds from Pearl Yarber to Charles Yarber were valid conveyances, as reformed, and are not to be set aside, and we further hold that the 57.5 acre tract was not reduced by a conveyance of 11.3 acres. We further affirm the Trial Court's order, in part, holding that the deeds from Pearl Yarber and Charles Yarber to Kenneth and Brenda Buckner, and to Eugene and Linda Buckner were void and are set aside. We remand this case to the Trial Court for a partition of the 57.5 acre tract pursuant to this Opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Modified, in part; Reversed, in part; Affirmed, in part; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

William J. Brown, Cleveland, Tennessee for the Appellant, Charles Yarber.

Robert B. Wilson, III, Cleveland, Tennessee for the Appellees, Eugene Buckner and wife, Linda Buckner.

April Perry Randle, Chattanooga, Tennessee for the Appellees, Kenneth Buckner and wife, Brenda Buckner.

OPINION

Background

The genesis of this lawsuit rests in an uncomplicated September 1949 deed from Nora Clayton conveying to Ulyss Yarber and Hilt Yarber as tenants in common real property containing 57.5 acres in Bradley County, Tennessee (“57.5 Acre Tract”). Ulyss Yarber and Hilt Yarber were brothers. The 57.5 Acre Tract never was partitioned between Ulyss and Hilt Yarber. To say that the ownership status as to this 57.5 Acre Tract was unclear at the time of trial would be a gross understatement. The situation faced by and presented to the Trial Court was one in complexity rarely seen outside of a final exam in a property law course.

In November of 1949, Hilt Yarber and his wife, Margaret Yarber, gave a deed for Hilt’s undivided one-half interest in the 57.5 Acre Tract that provided in pertinent part:

we, Hilt Yarber and wife, Margaret transfer and convey unto Anderson Yarber, Pearl Yarber, and Hobart Yarber, each for the rest of their natural lives, and on the death of the last survivor, then to the heirs of the said Anderson Yarber in fee simple, our undivided one-half interest in [the 57.5 Acre Tract]....

In April of 1956, Ulyss Yarber gave a deed attempting to convey his interest in a specific 11.3 acres of the 57.5 Acre Tract to Virgil Buckner and his wife, Martha Buckner. Then in April of 1957, Ulyss Yarber gave another deed attempting to convey his interest in another specific portion of the 57.5 Acre Tract, consisting of 17.4 acres, to Anderson Yarber and his wife, Pearl Yarber.

In January of 1957, Virgil and Martha Buckner gave a deed on the 11.3 acres that provided, in pertinent part:

we, VIRGIL BUCKNER AND WIFE, MARTHA BUCKNER, have this day bargained and sold and do hereby bargain, sell, transfer and convey unto ARNIE MCCLANAHAN, for and during the remainder of his life, and on his death, to his daughter, PEARL YARBER, and husband ANDERSON YARBER, their heirs and assigns forever, in fee simple, [the 11.3 acre tract]....

In 1979, both Kenneth Buckner and Eugene Buckner asked their grandfather, Anderson Yarber, for permission to live on the 57.5 Acre Tract. Permission was granted and over

the years Kenneth Buckner did extensive repair work on an existing house on the 57.5 Acre Tract. Kenneth and Brenda Buckner currently live in this house. Eugene Buckner placed a single-wide mobile home on the 57.5 Acre Tract and later replaced it with a double-wide mobile home where Eugene and Linda Buckner currently live. Eugene Buckner also made improvements including constructing a garage and utility building near his house. In addition, Eugene Buckner's son and his wife and children live near Eugene and Linda Buckner on the 57.5 Acre Tract.

Hobart Yarber died in April of 1980, leaving Anderson Yarber and Pearl Yarber the surviving life tenants under the 1949 deed from Hilt and Margaret Yarber.

In June of 1982, Charles Yarber, Anderson and Pearl Yarber's son; and Kenneth and Brenda Buckner executed a document¹ that provided, in pertinent part:

WHEREAS, [Charles Yarber] and [Kenneth and Brenda Buckner] understand their legal rights to a tract of land consisting of approximately 28 acres presently held as a life estate by ANDERSON YARBER and PEARL YARBER, and which 28 acres would pass to the heirs of ANDERSON YARBER and PEARL M. YARBER at their death; and WHEREAS, [Kenneth and Brenda Buckner] have made certain improvements on a tract of land within said 28 acres, said tract consisting of approximately 2 1/2 to 3 acres; and WHEREAS, it is the desire of both parties that [Kenneth and Brenda Buckner] receive said tract regardless of the legal rights they might have in the 28 acres. It is, THEREFORE, agreed and understood that in consideration that [Kenneth and Brenda Buckner] will convey all interest they might have by quit claim deed to [Charles Yarber] upon the death of the last to die of ANDERSON YARBER or PEARL M. YARBER to the 28 acres in which ANDERSON YARBER and PEARL M. YARBER have a life estate, that [Charles Yarber] will convey to [Kenneth and Brenda Buckner] the property on which they now live....

Also in June of 1982, Charles Yarber, and Eugene and Linda Buckner executed a document that contained substantially similar provisions to the document executed by Kenneth and Brenda Buckner but with regard to the acreage on which Eugene and Linda Buckner's house sits.

In September of 1982, Hilt and Margaret Yarber, Anderson and Pearl Yarber, Charles Yarber, and Horace B. Buckner filed a lawsuit ("1982 Lawsuit") via a Petition to Reform Deed or Partition Property with regard to the November 1949 deed from Hilt and Margaret Yarber that created a life estate in Anderson, Pearl, and Hobart Yarber with a remainder interest in the heirs of Anderson Yarber. The 1982 Lawsuit was tried solely upon the issue of whether the deed in question could be reformed to show fee simple title in Anderson and Pearl Yarber. The Trial Court entered

¹For ease of reference, the documents entered into by Charles Yarber, and Kenneth and Brenda Buckner, and by Charles Yarber, and Eugene and Linda Buckner in 1982 will be referred to collectively in this Opinion as the "1982 Agreements."

an order denying reformation due to the statute of limitations contained in Tenn. Code Ann. § 28-3-110, but reserving the issue of partition and issues raised in a counter-complaint.

At some point after commencement of the 1982 Lawsuit, Charles Yarber, Anderson and Pearl Yarber, and Eugene and Linda Buckner entered into a document titled Conditional Settlement², which provided, in pertinent part:

WHEREAS because of the facts giving rise to this law suit, Petitioners have been unable to convey a clear fee simple title to the above realty to the Defendants EUGENE and LINDA BUCKNER, the parties do hereby stipulate and agree as follows:

1. If by virtue of reformation, partition or other decree in this cause, EUGENE and LINDA BUCKNER are able to obtain a clear fee simple title to the above realty, the Petitioners agree that either by Court Order or Deed, the Defendants EUGENE and LINDA BUCKNER shall be vested with a clear fee simple title to [the approximately two acre parcel containing Eugene and Linda Buckner's house]....

2. If EUGENE and LINDA BUCKNER can obtain a clear fee simple title to the above realty, then EUGENE BUCKNER agrees to waive any right to the remainder of the real estate described in the Complaint that he might have by virtue of being an heir of ANDERSON YARBER.

3. If EUGENE and LINDA BUCKNER cannot obtain a clear fee simple title, to the above realty by virtue of this law suit, then EUGENE BUCKNER does not waive any of his rights as heir of ANDERSON YARBER, and all of EUGENE BUCKNER'S rights as heir of ANDERSON YARBER are preserved.

Kenneth and Brenda Buckner entered into a substantially similar Conditional Settlement with Charles Yarber, and Anderson and Pearl Yarber with reference to the 2 1/2 to 3 acre tract on which Kenneth and Brenda Buckner's house sits.

It is unclear from the record on appeal the date that the Conditional Settlements were executed by the attorneys representing the parties, but the Conditional Settlements were filed with the 1982 Lawsuit trial court in May of 1984. In May of 1985, that trial court entered an agreed order retiring the 1982 Lawsuit from the docket.

Anderson Yarber died in January of 1987, leaving Pearl Yarber as the last surviving life tenant under the 1949 deed from Hilt and Margaret Yarber.

²For ease of reference, the two documents titled 'Conditional Settlement' and entered into by Charles Yarber, Anderson and Pearl Yarber, Eugene and Linda Buckner, and Kenneth and Brenda Buckner will be referred to collectively in this Opinion as "the Conditional Settlements."

In April of 1995, Pearl Yarber gave a deed conveying her interest in the 11.3 acre tract to Charles Yarber. Additionally, in April of 1995, Pearl Yarber gave another deed conveying her interest in both the 17.4 acre tract and the remaining 28.75 acres of the 57.5 Acre Tract to Charles Yarber. Also in April of 1995, Pearl Yarber and Charles Yarber executed deeds purporting to convey to Kenneth and Brenda Buckner, and Eugene and Linda Buckner the two to three acres each that contained the homes of Kenneth and Brenda Buckner, and Eugene and Linda Buckner respectively.

Pearl Yarber died in March of 2003. At the time of Pearl Yarber's death, Charles Yarber, Kenneth Buckner, and Eugene Buckner were the heirs of Anderson Yarber. As discussed, Charles Yarber is the son of Anderson Yarber, and Kenneth and Eugene Buckner are Anderson Yarber's grandsons as they are the sons of Anderson Yarber's deceased daughter.

In June of 2003, Kenneth and Brenda Buckner, and Eugene and Linda Buckner filed this lawsuit against Charles Yarber seeking, in part, reformation or rescission of certain deeds and a partition of the 57.5 Acre Tract. The case was tried without a jury in September of 2004 and after trial, the Trial Court entered a Final Order finding and holding, *inter alia*, that the 1995 deeds from Pearl Yarber and Charles Yarber to Kenneth Buckner and Eugene Buckner were void and set aside and that fee simple title to the 57.5 Acre Tract was vested in the heirs of Anderson Yarber.

All parties filed motions to alter or amend, which the Trial Court heard in October of 2005. The Trial Court entered an Order on February 13, 2006 finding and holding, *inter alia*, that the 57.5 Acre Tract had been reduced by a valid conveyance of 11.3 acres, that the 1995 deeds from Pearl Yarber to Charles Yarber were to be set aside, and that the title to what remained of the 57.5 Acre Tract after the conveyance of 11.3 acres vested in the heirs of Anderson Yarber per capita. All parties to this lawsuit filed notices of appeal to this Court.

Discussion

Although not stated exactly as such, Charles Yarber raises three issues on appeal: 1) whether the Trial Court erred in not enforcing the 1982 Agreements and the subsequent Conditional Settlements; 2) whether the Trial Court erred in ordering the deeds from Pearl Yarber to Charles Yarber be set aside; and, 3) whether the Trial Court erred in holding that the property vested in the heirs of Anderson Yarber per capita. Kenneth, Brenda, Eugene, and Linda Buckner raise two additional issues, which we restate as: 1) whether the Trial Court erred in holding that the doctrine of acceleration of remainders applied to this case; and, 2) whether the Trial Court erred in holding that the 57.5 Acre Tract was reduced by a valid conveyance of 11.3 acres.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We first must consider the state of the title to the 57.5 Acre Tract. Notwithstanding how Ulyss Yarber treated his interest in the 57.5 Acre Tract, the 57.5 Acre Tract never was partitioned between Ulyss Yarber and Hilt Yarber, to whom the 57.5 Acre Tract was deeded as tenants in common. As such, the deeds over the ensuing years in the Ulyss Yarber chain that attempted to convey specific acreage were, at best, deeding only portions of Ulyss Yarber's one-half undivided interest in the entire 57.5 Acre Tract.

Hilt Yarber's one-half undivided interest in the 57.5 Acre Tract currently rests in the heirs of Anderson Yarber via the 1949 deed from Hilt and Margaret Yarber.

Ulyss Yarber's one-half undivided interest in the 57.5 Acre Tract was split for a time and after several conveyances eventually was rejoined and conveyed to Anderson and Pearl Yarber. After the death of Anderson Yarber, Pearl Yarber deeded her interest in Ulyss Yarber's one-half undivided interest in the 57.5 Acre Tract to Charles Yarber. Ulyss Yarber never had a 100% fee interest in any specific 28.75 acres, but rather had a one-half undivided interest in the entire 57.5 Acre Tract. As such, all that could be transferred by Ulyss Yarber, or anyone in this chain of title, was that one-half undivided interest in the 57.5 Acre Tract. The series of deeds in the Ulyss Yarber chain show a clear intent by each of the grantors to transfer the interest owned to the named grantees, which resulted in Ulyss Yarber's one-half undivided interest eventually being conveyed to Charles Yarber.

Therefore, Charles Yarber owns what once was Ulyss Yarber's one-half undivided interest in the 57.5 Acre Tract and the other one-half undivided interest, i.e., what was Hilt Yarber's interest, is currently owned by the heirs of Anderson Yarber. There is no dispute that the heirs of Anderson Yarber are Charles Yarber, Kenneth Buckner, and Eugene Buckner. Having clarified the current state of the title under the deeds to the 57.5 Acre Tract, we turn to the issues raised by the parties on appeal.

We next address whether the Trial Court erred in not enforcing the 1982 Agreements and the subsequent Conditional Settlements. We begin by considering the 1982 Agreements. The 1982 Agreements state that the parties are making an agreement regarding a 28 acre tract held as a life estate by Anderson and Pearl Yarber. However, as discussed above, the potential interest of Kenneth and Eugene Buckner as heirs of Anderson Yarber was as to a portion of a one-half undivided interest in the 57.5 Acre Tract, not an interest in a specific 28 acre tract. There was no 28 acre tract held as a life estate by Anderson and Pearl Yarber.

Land is unique and no one specific acre is exactly the same as any other. Given this, the 1982 Agreements were based upon a mutual material mistake of fact. The potential remainder interest of Kenneth and Eugene Buckner encompassed not any specific 28 acres of the 57.5 Acre Tract, but rather a portion of a one-half undivided interest in the 57.5 Acre Tract because the 1949 deed from Hilt and Margaret Yarber creating the life estate with a remainder to the heirs of Anderson Yarber was as to a one-half undivided interest in the 57.5 Acre Tract.

As this Court stated in *Klosterman Dev. Corp. v. Outlaw Aircraft Sales, Inc.*:

Where parties have apparently entered into a contract evidenced by a writing, but owing to a mistake of their minds did not meet as to all the essential elements of the transaction, so that no real contract was made by them, then a court of equity will interpose to rescind and cancel the apparent contract as written, and to restore the parties to their former positions, the rule being the same whether the instrument relates to an executory agreement or to one which has been executed. Furthermore, equity will grant relief on the ground of mistake, not only when the mistake is expressly proved, but also when it is implied from the nature of the transaction. It is not essential that either party should have been guilty of fraud.

[*Robinson v. Brooks*, 577 S.W.2d 207, 208 (Tenn. Ct. App. 1978)] (quoting 12 C.J.S. *Cancellation of Instruments* § 27 b (1)). The *Robinson* Court also provided the elements of mutual mistake necessary to authorize rescission:

In order to authorize relief for mistake the mistake generally must have been mutual, and it must have been material, and not due to the complainant's negligence; and complainant must show injury.

Id. At 209 (quoting 17A C.J.S. *Contracts* § 418(2)).

Klosterman Dev. Corp. v. Outlaw Aircraft Sales, Inc., 102 S.W.3d 621, 631-32 (Tenn. Ct. App. 2002).

The mistake of fact in the 1982 Agreements was mutual and material and Kenneth and Eugene Buckner would be damaged if these agreements were enforced. As such, they are entitled to rescission and the Trial Court did not err in refusing to enforce the 1982 Agreements.

In addition, even if rescission were not the proper remedy in this case, the 1982 Agreements were supplanted by the Conditional Settlements. "The ordinary rule in contractual matters is that the last agreement as to the same subject matter which is signed by all parties supersedes all former agreements and the last contract is the one which embodies the true agreement." *Bringhurst v. Tual*, 598 S.W.2d 620, 622 (Tenn. Ct. App.1980).

The Conditional Settlements were entered into by the same parties regarding the same subject matter after the 1982 Agreements were executed. In addition, the Conditional Settlements themselves acknowledge that the 1982 Agreements were inoperative since clear fee simple title could not be conveyed to Kenneth and Eugene Buckner as provided for in the 1982 Agreements.

The Conditional Settlements provided that if Kenneth and Brenda Buckner, and Eugene and Linda Buckner were able to obtain clear fee simple title by “virtue of reformation, partition or other decree in [the 1982 Lawsuit]” then Kenneth and Eugene Buckner would have an obligation to waive their rights as heirs of Anderson Yarber under the 1949 deed from Hilt and Margaret Yarber. If Kenneth and Eugene Buckner were not able to obtain clear fee simple title by virtue of the 1982 Lawsuit, then the Conditional Settlements specifically stated that Kenneth and Eugene Buckner did not waive their rights as heirs of Anderson Yarber.

Kenneth and Eugene Buckner were not able to obtain clear fee simple title by virtue of the 1982 Lawsuit. As such, the obligation of Kenneth and Eugene Buckner to waive their rights as heirs of Anderson Yarber never was triggered and, by the clear and unambiguous terms of the Conditional Settlements these rights were preserved. Thus, no obligations remained from the Conditional Settlements for the Trial Court to enforce.

The Trial Court reached the right result regarding the 1982 Agreements and the Conditional Settlements. “[I]f the Trial Judge reached the right result for the wrong reason, there is no reversible error.” *Shutt v. Blount*, 249 S.W.2d 904, 907 (Tenn. 1952). We affirm on this issue.

We next address whether the Trial Court erred in ordering the deeds from Pearl Yarber to Charles Yarber be set aside. After the death of Anderson Yarber, Pearl Yarber owned a one-half undivided interest in the 57.5 Acre Tract in fee by virtue of the deeds in the Ulyss Yarber chain. A one-half undivided interest was the interest Ulyss Yarber had owned and, therefore, was all that could be conveyed. Pearl Yarber also had a life estate in the other one-half undivided interest in the 57.5 Acre Tract by virtue of the 1949 deed from Hilt and Margaret Yarber. In April of 1995, Pearl Yarber made several deeds effectively conveying her interest in the one-half undivided interest that she owned in fee in the 57.5 Acre Tract to Charles Yarber. In addition, Pearl Yarber made a deed which granted her interest, i.e., her life estate, in the other one-half undivided interest in the 57.5 Acre Tract to Charles Yarber. By virtue of these deeds, Charles Yarber gained a one-half undivided interest in the 57.5 Acre Tract in fee, i.e., the original Ulyss Yarber interest, and a life estate interest in the other one-half undivided interest, i.e., the original Hilt Yarber interest, in the 57.5 Acre Tract that expired upon the death of Pearl Yarber. Thus, Charles Yarber currently owns the one-half undivided interest in the 57.5 Acre Tract in fee that can be traced back to Ulyss Yarber.

As this Court stated in *Brown v. Seal*:

The sale and conveyance by the holder of the life estate is not an ouster of the remaindermen; at least not unless they elect to so consider it. They can consider the conveyance as passing only the rights of the life tenant and the possession of the grantee as not inconsistent with their own rights to the fee title in remainder.

Brown v. Seal, 179 S.W.3d 481, 484 (Tenn. Ct. App. 2005) (quoting *Quarles v. Arthur*, 231 S.W.2d 589, 592 (1950)).

Pearl Yarber was free to convey her undivided life estate one-half interest in the 57.5 Acre Tract, which was, of course, subject to her life estate. This estate would, and did, automatically terminate upon Pearl Yarber's death. In addition, Pearl Yarber was the fee owner of the other one-half undivided interest in the 57.5 Acre Tract and certainly was entitled to convey this interest to whomever she chose. Given this, it was error for the Trial Court to set aside the deeds from Pearl Yarber to Charles Yarber. We reverse that portion of the Trial Court's order setting aside the deeds from Pearl Yarber to Charles Yarber, and those deeds are reformed to reflect the transfer to Charles Yarber of a one-half undivided interest, i.e., the original Ulyss Yarber interest, in the 57.5 Acre Tract.

Next, we address whether the Trial Court erred in holding that the property vested in the heirs of Anderson Yarber per capita. The 1949 deed from Hilt and Margaret Yarber provided that after the death of the last surviving life tenant, the one-half undivided interest in the 57.5 Acre Tract was to go to the heirs of Anderson Yarber in fee simple.

“In Tennessee, the legal meaning of the word ‘heirs’ is the class of persons upon whom descent is cast by the statute of descent.” *Fisher v. Malmo*, 650 S.W.2d 43, 46 (Tenn. Ct. App. 1983). The statute of descent, Tenn. Code Ann. § 31-2-104, provides, in pertinent part that a share of the intestate estate shall pass “To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation.” Tenn. Code Ann. § 31-2-104 (b)(1) (2001).

In the case now before us, Charles Yarber is the son of Anderson Yarber and the other heirs, Kenneth and Eugene Buckner, are the grandchildren of Anderson Yarber. As the heirs of Anderson Yarber are of differing degrees of kinship to Anderson Yarber, they will take their shares in the 57.5 Acre Tract via the Hilt Yarber deed by representation. We reverse the Trial Court's holding that the property vested in the heirs of Anderson Yarber per capita, and we hold that the one-half undivided interest in the 57.5 Acre Tract vested in the heirs of Anderson Yarber by representation. This results in the ownership of the one-half undivided interest in the 57.5 Acre Tract traced back to Hilt Yarber being as follows: Charles Yarber has one-half of this one-half undivided interest in the 57.5 Acre Tract; Kenneth Buckner has one-fourth of this one-half undivided interest in the 57.5 Acre Tract; and Eugene Buckner has one-fourth of this one-half undivided interest in the 57.5 Acre Tract.

We turn now to the issues presented by Kenneth and Eugene Buckner and consider whether the Trial Court erred in holding that the doctrine of acceleration of remainders applied to this case. We begin by noting that the Trial Court held that the doctrine of acceleration of remainders could not have applied in 1982 because Anderson Yarber was living at that time. In its memorandum opinion incorporated into the Final Order by reference, the Trial Court stated that the doctrine of acceleration could apply to the 1995 deeds from Pearl Yarber and Charles Yarber to Kenneth Buckner and Eugene Buckner. However, the Trial Court found that this would be contrary to the intent of the grantors.

“In construing deeds, courts are primarily concerned with ascertaining the intention of the grantor.” *Rutherford County v. Wilson*, 121 S.W.3d 591, 595 (Tenn. 2003). The Trial Court found and held that it was not the intent of Pearl Yarber and Charles Yarber, as the grantors, to give a gift of the land to Kenneth Buckner and Eugene Buckner that would be in addition to the share of the one-half undivided interest that Kenneth and Eugene Buckner were entitled to by virtue of being heirs of Anderson Yarber. We agree. Therefore, the Trial Court properly rescinded the 1995 deeds from Pearl Yarber and Charles Yarber to Kenneth Buckner and Eugene Buckner rendering the issue of whether the acceleration of remainders applied moot. We affirm the Trial Court’s holding rescinding the 1995 deeds from Pearl Yarber and Charles Yarber to Kenneth Buckner and Eugene Buckner. We, therefore, find that error, if any, in the Trial Court’s holding regarding the acceleration of remainders was harmless.

Finally, we consider whether the Trial Court erred in holding that the 57.5 Acre Tract was reduced by a valid conveyance of 11.3 acres. As discussed more fully above, the 57.5 Acre Tract was deeded to Ulyss and Hilt Yarber as tenants in common and never was partitioned. Thus, the deeds addressing 11.3 acres could convey only a portion of what was Ulyss Yarber’s one-half undivided interest in the 57.5 Acre Tract and were not deeds for any specific 11.3 acres. Given this, the 57.5 Acre Tract never was reduced by the attempted conveyance of a specific 11.3 acres. As discussed more fully above, the portion of the one-half undivided interest in the 57.5 Acre Tract actually conveyed by the deeds for 11.3 acres currently is vested in Charles Yarber. We reverse the Trial Court’s holding that the 57.5 Acre Tract was reduced by a conveyance of 11.3 acres.

We remand this case to the Trial Court for all necessary proceedings to effectuate a partition of the 57.5 Acre Tract with the direction that if at all practicable, the 57.5 Acre Tract is to be partitioned such that Charles Yarber, Kenneth Buckner, and Eugene Buckner each receives in his respective share that portion of the property that he and his family have located homes upon. If partition in kind is not practicable, the 57.5 Acre Tract is to be partitioned by way of a court-ordered sale with the net proceeds from the sale to be divided among Charles Yarber, Kenneth Buckner and Eugene Buckner in the proportions established in this opinion. In addition, we direct the Trial Court to take all necessary steps to ensure that, if necessary to effectuate clear title, any of the existing deeds are reformed to reflect our holdings in this Opinion.

Conclusion

The judgment of the Trial Court is: modified to reflect that the ownership interests in the 57.5 Acre Tract are as follows: Charles Yarber has a 75 percent undivided interest in the 57.5 Acre Tract; Kenneth Buckner has a 12.5 percent undivided interest in the 57.5 Acre Tract; and Eugene Buckner has a 12.5 percent undivided interest in the 57.5 Acre Tract; affirmed as to the rescission of the 1995 deeds from Pearl Yarber and Charles Yarber to Kenneth Buckner and Eugene Buckner; reversed as to the rescission of the 1995 deeds from Pearl Yarber to Charles Yarber; reversed as to the holding that the 57.5 Acre Tract was reduced by a conveyance of 11.3 acres; and affirmed as to the Trial Court’s refusal to enforce the 1982 Agreements and the Conditional Settlements. This cause is remanded to the Trial Court for a partition of the 57.5 Acre Tract pursuant

to this Opinion and for collection of the costs below. The costs on appeal are assessed one-half against the Appellant, Charles Yarber, and his surety; and one-half against the Appellees, Eugene and Linda Buckner, and Kenneth and Brenda Buckner.

D. MICHAEL SWINEY, JUDGE