

# Matrix Mech. Corp. v. Harrison

Court of Appeals of Virginia  
March 25, 1997, Decided  
Record No. 2068-96-4, Record No. 2069-96-4

**Reporter:** 1997 Va. App. LEXIS 176

MATRIX MECHANICAL CORPORATION v. WILLIAM C. HARRISON and EVELYN G. HARRISON -and- JIMMIE D. MITCHELL v. WILLIAM C. HARRISON and EVELYN G. HARRISON

**Notice:** [\*1] PURSUANT TO THE APPLICABLE VIRGINIA CODE SECTION THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.

**Prior History:** FROM THE CIRCUIT COURT OF FAIRFAX COUNTY. Gerald Bruce Lee, Judge.

**Disposition:** Reversed and remanded.

## Core Terms

trial court, deeds, delivery, conveyance, contempt, deed executed, business day

## Case Summary

### Procedural Posture

Defendants, an individual grantee of a deed and the company to which he then conveyed the land in dispute, sought review of the decision of the Circuit Court of Fairfax County (Virginia), which entered a judgment of contempt against defendants in plaintiff grantors' action for the return of the land.

### Overview

Defendants obtained deeds to two properties. When plaintiffs brought an action against defendants for a return of the property, the parties agreed to dismiss the action. The order of dismissal in the trial court commanded that defendants execute a deed to plaintiffs for the property, and plaintiffs were to pay the costs of the proceedings. When the deed was not delivered to plaintiffs within the five-day period prescribed by the trial court's order, plaintiffs filed a motion for contempt. The trial court found defendants in contempt of court. On appeal, the court reversed the judgment of the trial court. The court held that the evidence proved that defendants failed to deliver executed deeds conveying the property to plaintiffs. However, the court order only required defendants to execute the deed within five days. The court held that the

terms "execution" and "delivery" were separate acts involved in the conveyance of land. Here, the trial court's order specifically required execution within five days. It did not require delivery. While delivery was necessary to give the order meaning, the order did not require delivery within five days.

### Outcome

The court reversed the judgment of the trial court.

## LexisNexis® Headnotes

Civil Procedure > Sanctions > Contempt > General Overview  
Evidence > Burdens of Proof > General Overview

**HN1** In a show cause hearing, the moving party need only prove that the offending party failed to comply with an order of the trial court. Once the movant proves failure to comply, the burden is upon a defendant to prove that the offending action or inaction is justified.

Civil Procedure > Appeals > Standards of Review > General Overview

**HN2** A court may speak only through its written orders. When a court reviews ambiguous provisions in an order or decree, the rules of construction require that primary consideration be given to an interpretation which would support the facts and law of the case in order to avoid a result that will do violence to either. Moreover, such an interpretation is a question of law, to be construed like other written instruments, and read in connection with the entire record.

Real Property Law > Deeds > Construction & Interpretation

**HN3** An executed deed and delivery are mutually exclusive elements in the conveyance of real property. Thus, a deed does not become operative until it is delivered with the intent that it shall become effectual as a conveyance.

Contracts Law > Contract Interpretation > General Overview

**HN4** That precision is the watchword of legal drafting is understated by the Virginia rule that legal words are to be understood according to their legal meanings.

**Counsel:** J. Howe Brown, Jr., Judge Stephen H. Moriarty (Chadwick, Washington, Olters, Moriarty & Lynn, P.C., on briefs), for appellant Matrix Mechanical Corporation.

James V. Irving (Ritzert & Leyton, P.C., on briefs), for appellant Jimmie D. Mitchell.

Claude D. Convisser (Joseph D. Morrissey; Morrissey, Hershner & Jacobs, on briefs), for appellees.

**Judges:** Present: Judges Willis, Bray and Senior Judge Hodges. MEMORANDUM OPINION BY JUDGE JERE M. H. WILLIS, JR.

**Opinion by:** JERE M. H. WILLIS, JR.

### Opinion

MEMORANDUM OPINION \* BY JUDGE JERE M. H. WILLIS, JR.

In these consolidated appeals, Matrix Mechanical Corporation (Matrix) and Jimmie D. Mitchell contend that the trial court erred in finding them in contempt of court. Because we conclude that [\*2] the evidence failed to prove contempt of court, we reverse the judgment of the trial court and dismiss contempt proceedings. We need not address the other issues raised on appeal.

#### I.

In December, 1994, Mitchell "obtained" executed, undelivered deeds to two properties. He recorded the deeds, and, thereafter, conveyed the properties to Matrix. In February, 1995, William C. Harrison and Evelyn G. Harrison filed a bill of complaint against Matrix and Mitchell, seeking the return of the real estate.

On May 10, 1995, by agreement of the parties, the trial court entered an "Order of Dismissal with Prejudice." As it pertains to this appeal, the May 10, 1995 order provides:

ORDERED, that Matrix Mechanical Corporation shall execute special warranty deeds within five business days after entry of this order, to convey the property located at Adrienne Drive, which is the subject of this action, to Evelyn G. Harrison, *femme sole*;

ORDERED, upon conveyance of the Adrienne Drive property, William C. Harrison will pay to Matrix Mechanical Corporation, all costs which they expended in the acquisition, and maintenance of the Adrienne Drive

property.

On May 30, 1995, [\*3] the Harrisons moved that Matrix and Mitchell be ordered to show cause why they should not be held in contempt of court due to "the fact that more than five (5) business days have elapsed since entry of the order, [and] the properties have not been conveyed to Evelyn G. Harrison."

#### II.

*HNI* "In a show cause hearing, the moving party need only prove that the offending party failed to comply with an order of the trial court." *Alexander v. Alexander*, 12 Va. App. 691, 696, 406 S.E.2d 666, 669 (1991) (citation omitted). Once the movant proves failure to comply, the burden is upon the defendant to prove that the offending action or inaction was justified. *Id.* Therefore, we must determine first whether the trial court erred in finding that the Harrisons proved that Matrix and Mitchell had failed to comply with the trial court's May 10, 1995 order.

#### III.

On November 9, 1995, the trial court conducted an *ore tenus* hearing on the Harrisons' motion to show cause. The evidence proved that Matrix failed to deliver executed deeds conveying the Adrienne Drive property to Ms. Harrison within five business days after the May 10, 1995 order. Thomas P. Gorman, Matrix's original attorney, testified [\*4] that he withheld delivery of the deeds because the Harrisons refused to pay the costs associated with the acquisition and maintenance of the property. He contended that the May 10, 1995 order contemplated a reciprocal and contemporaneous exchange of the deeds to Ms. Harrison and payment of Matrix's associated costs. Because the parties could not agree on the amount to be paid Matrix for acquisition and maintenance costs, he withheld delivery of the executed deeds pending resolution of that dispute.

The trial court concluded that Matrix's failure to deliver the deeds constituted contempt of court, and awarded the Harrisons damages and attorneys' fees. In reviewing the May 10, 1995 order, the trial court found that: "The term 'upon conveyance' creates a condition precedent, that condition precedent being that Matrix comply with the preceding order and deliver warranty deeds within five days after entry of the order."

At the November 9, 1995 hearing, the trial court dismissed Mitchell from the contempt proceedings. In the Harrisons' original bill of complaint, they alleged that Matrix was the alter ego of Mitchell. The trial court held that the May 10, 1995 order, dismissing the Harrisons'

\* Pursuant to Code § 17-116.010 this opinion is not designated for publication.

[\*5] bill of complaint with prejudice, resolved against the Harrisons the question whether Matrix was the alter ego of Mitchell.

On March 28, 1996, the trial court considered the Harrisons' motion to reconsider Mitchell's dismissal from the contempt proceedings. Disregarding its prior holding, the trial court ruled that: "Matrix's contempt is due to the actions and inactions of Mr. Mitchell personally . . ." Accordingly, the trial court found Mitchell in contempt, held him jointly and severally liable for the award entered against Matrix, and ordered that he pay additional damages to the Harrisons.

#### IV.

At issue in this case is the trial court's holding that the May 10, 1995 order required the delivery of executed deeds to Ms. Harrison within five business days.

**HN2** "[A] court may speak only through its written orders," *Clephas v. Clephas*, 1 Va. App. 209, 211, 336 S.E.2d 897, 899 (1985). When a court reviews ambiguous provisions in an order or decree, the rules of construction require that primary consideration "be given to an interpretation which would support the facts and law of the case in order to avoid a result that will do violence to either." *Parrillo v. Parrillo*, 1 Va. [\*6] App. 226, 230, 336 S.E.2d 23, 25 (1985) (citing *46 Am. Jur. 2d Judgments §§ 72-76* (1969); 11A Michie's Jurisprudence *Judgments and Decrees* § 5 (Repl. vol. 1978)). Moreover, such an interpretation is a question of law, to be construed like other written instruments, and read in connection with the entire record. See *46 Am. Jur. 2d Judgments §§ 93-97* (2d ed. 1994).

Under well-established legal principles, **HN3** the "executed deed" and "delivery" are mutually exclusive elements in the conveyance of real property. See e.g., Minor, *The Law of Real Property*, §§ 1030, 1065 (2d ed. Frederick D. G. Ribble 1928). Thus, "[a] deed does not become operative until it is *delivered* with the intent that it shall become effectual as a conveyance." *Leftwich v. Early*, 115 Va. 323, 328, 79 S.E. 384, 386 (1913) (emphasis added). Indeed:

The term "execution" of a deed connotes all acts which are necessary to the operative-ness of the instrument, including signing, sealing when necessary, attestation and acknowledgement when required by statute, and delivery to the grantee or to someone in his behalf. *Nevertheless, a deed is often said to be executed, using [\*7] the word in a sense excluding delivery*; and it is convenient and in accordance with standard practice to treat of signing, sealing, and attesting separately from delivery.

*23 Am. Jur. 2d Deeds § 105* (1983) (footnotes omitted) (emphasis added).

The May 10, 1995 order specifically required Matrix to execute the deeds within five days. It did not require delivery. Thus, Matrix was not required to deliver the executed deeds to Ms. Harrison within five business days. While the trial court opined that the provision requiring Matrix to execute deeds in five days was meaningless without delivery, the language of the order contains no ambiguity in this regard. Matrix was required to execute the deeds within five business days. Matrix and the Harrisons were then obliged to deliver the deeds and pay the acquisition and maintenance costs, respectively. While execution of the deeds was a necessary prerequisite to delivery, the May 10, 1995 order set forth no requirement that Matrix make delivery within five business days. **HN4** That precision is the watchword of legal drafting is understated by our rule that legal words are to be understood according to their legal meanings.

[\*8] *Smith v. Smith*, 15 Va. App. 371, 374, 423 S.E.2d 851, 853 (1992). Because neither Matrix nor Mitchell was required to deliver the deeds within five days, the trial court erred in holding that Matrix and Mitchell had failed to comply with the May 10, 1995 court order.

The judgment of the trial court is reversed, and the contempt proceedings are dismissed.

*Reversed and dismissed.*