

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

MILDRED BLACKWELL,

Plaintiff,

v

File No. 03-7934-CK
HON. PHILIP E. RODGERS, JR.

ALLAN BLACKWELL and
DEBRA BLACKWELL,

Defendants.

John W. Unger (P21679)
Attorney for Plaintiff

Gregory G. Justis (P27148)
Attorney for Defendants

DECISION AND ORDER

The Plaintiff Mildred Blackwell filed this action against her son and daughter-in-law, Defendants Allan and Debra Blackwell, seeking to rescind or void a quit claim deed and recover the proceeds of a mortgage.

On January 30, 2004, the parties and their attorneys appeared for a final settlement conference prior to trial which was scheduled for February 19, 2004. At that conference, counsel represented to the Court that there were no genuine issues of material fact, that the only issue was whether the quit claim deed had been delivered which was a legal question and that the Court could resolve the case on cross motions for summary disposition. The Court canceled the trial date and scheduled a hearing on cross motions for summary disposition for April 19, 2004.

On March 12, 2004, the Plaintiff filed a motion for summary disposition, pursuant to MCR 2.116(C)(10). On April 12, 2004, the Defendants filed an answer to the Plaintiff's motion claiming that there are genuine issues of material fact and the Plaintiff's motion should be denied. Alternatively, the Defendants sought summary disposition in their favor, pursuant to MCR 2.116(C)(10) and (I)(2).

The Court reviewed the motion and the answer. On April 19, 2004, the Court heard the arguments of counsel. The Court now issues this written decision and order and, for the reasons stated herein, denies the Plaintiff's motion and grants summary disposition for the Defendants.

STANDARD OF REVIEW

MCR 2.116(C)(10) provides that summary disposition may be entered on behalf of the moving party when it is established that, "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

The applicable standard of review for a motion for summary disposition brought pursuant to MCR 2.116(C)(10) was set forth in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999) as follows:

This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J. Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the

opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

I.
DELIVERY

The Plaintiff claims that the subject deed is invalid because it was never delivered to Defendant Allan Blackwell and that her intent was to convey her property only at death.

Delivery is a matter of the intention of the grantor as manifested by the circumstances surrounding the acts. *McMahon v Dorsey*, 353 Mich 623; 91 NW2d 893 (1958). Recording a deed gives rise to a presumption of delivery. This presumption merely shifts the burden of producing evidence onto the party questioning the delivery. *Hooker v Tucker*, 335 Mich 429, 434; 56 NW2d 246 (1953); *Havens v Schoen*, 108 Mich App 758, 761; 310 NW2d 870 (1981). The purpose of the delivery requirement is to show the grantor's intent to convey the property described in the deed. *Schmidt v Jennings*, 359 Mich 376, 383; 102 NW2d 589 (1960); *Weber v Fitzpatrick*, 345 Mich 313, 317; 76 NW2d 68 (1956).

The Plaintiff admits that she executed the deed and it is undisputed that the deed was recorded the next day in the Office of the Antrim County Register of Deeds. It is also undisputed that the Plaintiff and Defendant Allan Blackwell went to the bank together and obtained a \$30,000 mortgage on the home. All of these circumstances are dispositive evidence that the quit claim deed was delivered. There is no claim of undue influence as Plaintiff admits she authorized the deed without a request from the Defendant.

In addition, the Plaintiff testified regarding her intent on direct examination at her deposition:

Q. You've testified [the quit claim deed] was your estate plan, correct?

A. Uh-huh.

Q. And did you think that this would take care of things when you died?

A. Yes.

Q. Did you believe that during your lifetime you would retain any power or authority over the property?

A. Thought that it would be only lasting until I die and then take over.

* * *

Q. Was there anything you didn't think you could do with the property while you were alive?

A. No.

* * *

Q. When did you intend this deed to take effect?

A. I would expect it to take effect when I died.

The Plaintiff testified on cross examination as follows:

Q. Did you know you were signing a deed, ma'am?

A. Yes.

Q. What?

A. I didn't know it's to sign what I thought it was [sic]. I thought I was signing a quit claim deed.

Q. Okay. I think it does say quit claim deed. So you knew you were signing a quit claim deed, correct?

A. No. I thought they - - I didn't know what they called it, just quit claim deed. But I knew it would last until my death.

The Plaintiff also testified that, when she went to the bank and took out the mortgage loan, Defendant Allan Blackwell went with her and also signed the loan papers.

Defendant Allan Blackwell's testimony during his deposition was, for the most part, consistent with the Plaintiff's testimony. He offered the following explanation of the Plaintiff's motivation for executing the deed:

Q. . . . did you realize that your mother was asking you to sign a deed?

A. After I read it, yeah. Because she told me she didn't want my brother's half of the house to go to the state for all the child support he owes.

* * *

A. She just said if she dies, she didn't want my brother's half of the house to go to the state.

Q. That's why she put the house in your name?

A. Exactly.

* * *

Q. So, in essence, this was, as you understood it, a way for your mother to make a will in essence?

A. Mm-hmm.

Q. Is that a yes?

A. Yeah, as far as I know. That's all I knew. She wanted to have the house in my name, so that the state couldn't take my brother's half.

Q. It was just her way of doing a will?

A. Right. I guess if that's what you want to call it.

Joyce Mullens, who testified that she assisted the Plaintiff in obtaining and filling out the quit claim deed form, testified as follows:

A. [The Plaintiff] told me the reason she was doing it is because if she died that her other son, Marvin, would get half the house and the state would take it for child support. She told me that's why she was doing it.

The Plaintiff has not refuted this testimony regarding her intent. Therefore, reasonable minds could not differ and must conclude that the Plaintiff executed and delivered the quit claim deed conveying all of her right, title and interest to herself and her son Defendant Allan Blackwell "as joint tenants with right of sole survivorship."

During the Plaintiff's lifetime, the Plaintiff and Defendant Allan Blackwell each have a personal life estate with a contingent remainder. See, *Snover v Snover*, 199 Mich App 627; 502 NW2d 370 (1993), referencing the Michigan Land Title Standards (5th ed), Standard 6.4. Only upon the death of the Plaintiff will the entire estate pass to Defendant Allan Blackwell. This will preclude the state from reaching any interest Marvin may have otherwise had in the house to satisfy his child support obligation. Therefore, the Plaintiff's understanding and desire that the deed only take effect upon her death to preclude her other son Marvin from acquiring any interest in the house is, by operation of law, precisely what occurs.

At the same time, by executing the quit claim deed, delivering it to the Defendant and taking out a joint mortgage, the Plaintiff created a present joint tenancy with her son Defendant Allan

Blackwell. The "joint tenancy" involved in this case was created by the express words "with right of sole survivorship." See, *Ballard v Wilson*, 364 Mich 479, 481; 110 NW2d 751 (1961) and *Mannausa v Mannausa*, 374 Mich 6, 8; 130 NW2d 900 (1964) ("with right of survivorship"); *Jones v Green*, 126 Mich App 412, 413; 337 NW2d 85 (1983) ("with full rights of survivorship"). Each tenant has a right to possession of the whole property. Cameron, Michigan Real Property Law §9.7.

By law, the Plaintiff Mildred Blackwell and her son Defendant Allan Blackwell share possession of the entire estate and each is entitled to an undivided share of the whole. Upon the death of either of them, the other takes the whole estate.

The Plaintiff has not denied that this was her intent when she executed the quit claim deed. It appears to the Court that the Plaintiff's real concern is that she has been dispossessed. Whether the Plaintiff has been wrongfully dispossessed is separate and distinct from whether the quit claim deed is valid. This particular issue has not been pled in this action and the Court has no jurisdiction to rule upon it. As for the issue of whether the quit claim deed is valid, the Court finds that it is and grants summary disposition for the Defendants.

II. PROCEEDS OF THE MORTGAGE

The Plaintiff also seeks, on a conversion theory, to recover the proceeds of a \$30,000 mortgage. In her pleadings, the Plaintiff claims that she took out the mortgage in order to get some remodeling and repairs done on the house, that she gave most or all of the money to Defendant Allan Blackwell and that he did not use it to repair or remodel the house, but instead he used it to purchase a truck.

Defendant Allan Blackwell admits that he purchased a truck, but he also claims that he made repairs and remodeled the home. Plaintiff signed off on the title to the truck after the Defendant purchased it with mortgage proceeds. The truck title would not have been in her name had the Defendant purchased it with independent funds.

It is undisputed that the Defendant Allan Blackwell made repairs and remodeled the house. The Plaintiff testified to that fact at her deposition, as follows:

Q. Were any repairs or remodeling done while you were living there?

A. Yeah. He did some. He did quite a bit of remodeling and then he did - - he repaired quite a bit of it but didn't get it all done.

Q. What did he do?

A. Remodeled in the house. He was fixing the floors and the wall boards.

Q. So he did quite a bit of it but not all of it before you left?

A. Uh-uh.

Q. What has he done since you've left?

A. Nothing, I guess. I haven't - -

Q. Do you know what he's done since you've left?

A. Uh-uh.

Q. You have to answer yes or no.

A. No.

Joyce Mullens corroborated the Plaintiff's testimony when she testified as follows:

Q. Do you have any knowledge or information as to how much was spent improving Mildred's home after the mortgage loan was obtained in late 2001, 2002?

A. No, I don't. I know it's thousands. My God, they tore walls out and put all new stuff out, tore out two or three layers of floor and put in new floors, redid the bathroom completely, and they made the bathroom handicapped for Mildred I remember.

Since the Defendant Allan Blackwell and his mother Plaintiff Mildred Blackwell are joint tenants with right of survivorship, they each have the same rights and responsibilities with respect to the subject property. According to the Plaintiff's deposition testimony, they both signed the loan documents. Therefore, the Defendant's interest in the property is burdened with the mortgage just as the Plaintiff's interest in the property is burdened by the mortgage. Since it is unrefuted that the Defendant Allan Blackwell made repairs and remodeled the house, the Plaintiff's action for

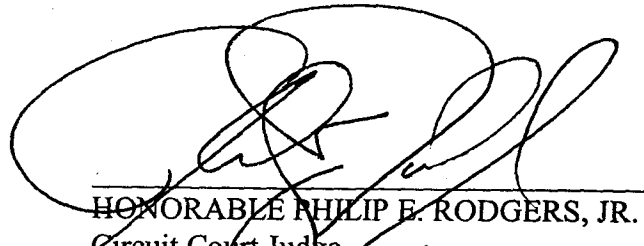
conversion is without merit.¹ The Defendants' motion for summary disposition on this point should be and hereby is granted.

CONCLUSION

It is unfortunate that these immediate family members have been unable to live together and instead have become embroiled in this litigation. There is no evidence before the Court that would suggest that the quit claim deed is, for any reason, invalid. Summary disposition in favor of the Defendants is granted. This case is dismissed. Each side to bear its own costs and attorney fees.

IT IS SO ORDERED.

This decision and order resolves the last pending claim and closes the case.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge
Dated: 4/29/04

¹This is not to say that the Plaintiff may not be entitled to partition and an accounting. See, MCL 600.3304; *Fenton v Miller*, 116 Mich 45; 74 NW 384 (1898). In equity, the Defendants may then be entitled to the increased value of the premises by reason of the improvements. *Id.*