STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN E. MORGAN and
CHERYL L. MESSNER,

Plaintiffs-Appellants,

v

CARI ANN PUTNAM,

Defendant-Appellee.

UNPUBLISHED
July 30, 1999

No. 204389
Jackson Circuit Court
LC No. 96-078212 CH

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiffs brought an action to quiet title to a Jackson County parcel of property. Defendant counterclaimed seeking a declaration that she held fee simple title to the property, an order ejecting plaintiffs from the property, and damages for plaintiffs' breaches of their warranties of title. Pursuant to MCR 2.116(C)(7), (8) and (10), the trial court granted defendant's motion for summary disposition of plaintiffs' claim, and granted defendant summary disposition with respect to her quiet title and ejectment counterclaims. Subsequently, the trial court also granted defendant summary disposition regarding her breach of warranty claim, ordering that plaintiffs reimburse defendant in the amount of $15,000 for expenses defendant incurred in defending her title. Plaintiffs now appeal as of right the trial court's orders granting defendant summary disposition. We affirm in part, reverse in part and remand.

We first consider plaintiffs' contention that the trial court erred in summarily quieting title to the property in defendant based on its finding that an integration clause in the real estate contract precluded plaintiffs' introduction of any parol evidence indicating that an equitable mortgage existed. It is well settled that this Court reviews a trial court's decision on a motion for summary disposition de novo. *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996).

Plaintiff Morgan drafted the real estate contract he and defendant's former husband ("Morano") entered into while Morgan was a licensed attorney practicing real estate law. The real estate contract, in which the parties agreed to transfer the property at issue from plaintiffs to Morano by warranty deed,[1] undisputedly contained an integration clause to the following effect:

> 14. This Agreement constitutes the entire Agreement between the parties hereto and the parties acknowledge that there are no additional written or oral understandings between the parties with respect to the subject matter contained herein. The parties also further acknowledge that the terms of this Agreement shall survive the closing to the extent there remain any obligations unfulfilled as between the parties hereto not set forth in the closing documents.

In addition to this paragraph, a second indication of the parties' integration intention appears within the document. A page attached after the purchase agreement's signature page contains the following paragraph:

> If any of the terms of the above agreement are to be modified, the modification shall be set forth below and shall be binding upon the parties hereto only by acknowledgment by their signatures affixed below the written modifications, if any, hereinafter set forth and dated below.

This paragraph is followed by approximately one-half page of open space, in which it appears any modifications to the purchase agreement were to be made. The end of the page contains signature lines for plaintiffs, as sellers, and defendant and Morano, as purchasers. No alternate terms were inserted in the open space, however, and no one signed this proposed modification page.

Plaintiffs argue that despite the explicit integration clause, parol evidence should be allowed to show that the agreement was not in fact integrated, which showing would in turn permit plaintiffs to introduce different terms by parol evidence. The January 7, 1991 purchase agreement purported to convey the disputed property to Morano. On January 9, 1991, plaintiffs executed a warranty deed conveying the property to Morano, which deed the Jackson County Register of Deeds recorded on January 11, 1991. Neither the purchase agreement nor warranty deed indicated that Morano intended to or had agreed to subsequently reconvey the property to plaintiffs pursuant to a land contract. Plaintiffs allege, however, that this reconveyance, evidenced by a prior May 21, 1990 purchase agreement, constituted a part of the deal.

In *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486; 579 NW2d 411 (1998), this Court recently addressed the effect of an integration clause on the admissibility of parol evidence.

> The first issue before us is whether parol evidence is admissible with regard to the threshold question of integration even when the written agreement includes an explicit merger or integration clause. In other words, the issue is whether *NAG* [*Enterprises, Inc v All State Industries, Inc*, 407 Mich 407, 410-411; 285 NW2d 770 (1979)] applies to allow parol evidence regarding this threshold issue when a contract includes an explicit merger clause. While this issue is one of first impression, its answer turns on well-established principles of contract law. [*UAW-GM, supra* at 493.]

This is the same issue now raised by plaintiffs. In *UAW-GM*, this Court applied accepted contract principles to reach the following conclusion:

> [W]e hold that when the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud that invalidate the integration clause or where an agreement is obviously incomplete "on its face" and, therefore, parol evidence is necessary for the "filling of gaps." 3 Corbin, Contracts, § 578, p 411. [*UAW-GM*, *supra* at 502.]

After reviewing the parties' January 7, 1991 purchase agreement, we find that neither exception delineated in *UAW-GM* applies to the instant case. The purchase agreement's express integration clause thus precludes the admission of parol evidence to show the agreement was not integrated. *Id*. We conclude therefore that the trial court properly granted defendant summary disposition because plaintiffs failed to establish any ownership interest in the disputed property that would entitle them to their requested relief. Pursuant to the clear and unambiguous terms of the January 1991 purchase agreement and warranty deed, plaintiffs transferred title in the disputed property to Morano, who in turn quitclaimed the property to defendant, who thus holds the superior interest in the property.[2] Furthermore, our disposition of this issue renders unnecessary that we review plaintiffs' other, varied bases for alleging that the trial court erred in granting defendant summary disposition with respect to the quiet title issue.

Plaintiffs next contend that the trial court lacked jurisdiction to revisit and amend the final judgment in this case to award defendant attorney fees because an appeal was already pending in this Court. Plaintiffs filed two separate claims of appeal in this matter. Plaintiffs' first appeal in this matter, Docket No. 203868, filed on June 6, 1996, dealt solely with plaintiffs' claims of error concerning the trial court's ruling on the quiet title issue. By the time Docket No. 203868 was filed, however, defendant had filed a motion with the trial court arguing that it should amend its judgment to permit defendant to recover the costs she had incurred in defending title to the property. Plaintiffs argue that MCR 7.208(A) divested the trial court, immediately on the proper filing of plaintiffs' June 6, 1996 claim of appeal, of any authority to revisit its judgment. On July 23, 1998, however, this Court on its own motion dismissed Docket No. 203868 on the basis that the May 16, 1997 "Final Judgment" appealed from did not represent the final order with respect to the lower court proceedings. Because this Court thus lacked jurisdiction over plaintiffs' claim of appeal in Docket No. 203868, MCR 7.202(8)(a)(i); 7.203(A)(1), plaintiffs' argument that the trial court lacked jurisdiction to consider defendant's request for costs is without merit.

Lastly, plaintiffs argue that the trial court's award of $15,000 in attorney fees to defendant contravenes Michigan policy regarding the recovery of litigation fees and costs. The trial court initially granted plaintiffs summary disposition with respect to defendant's counterclaim that plaintiffs breached their warranties of title. The court later reversed its decision, however, amending its prior judgment to award defendant attorney fees amounting to $15,000, as reimbursement for her expense in defending her title to the disputed property. The trial court based its decision on *Bloom v Hendricks*, 111 NM 250; 804 P2d 1069 (1991), a New Mexico Supreme Court opinion. We review the trial court's

decision whether to award attorney fees for an abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997).

Michigan follows the "American Rule" regarding attorney fees, which provides that attorney fees are not ordinarily recoverable as an element of costs or damages unless expressly allowed by statute, court rule, or common law exception. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 474; 521 NW2d 831 (1994). Exceptions to the general rule that attorney fees are not recoverable must be narrowly construed. *Brooks v Rose*, 191 Mich App 565, 575; 478 NW2d 731 (1991). In the instant case, the parties do not contend that any statute or court rule would explicitly permit defendant's recovery of attorney fees. Nor do the parties contend that a judicial exception fashioned by Michigan courts allows for attorney fees.[3]

The trial court instead applied an exception created by the New Mexico Supreme Court. In *Bloom*, *supra*, a grantee sued her grantor for failing to defend the grantee's title in a quiet title action involving a third party who attempted to divest the grantee of title to a portion of the property, which title the grantor had warranted. *Id*. at 252-253. The *Bloom* Court reasoned that "when the grantor bears some responsibility for the substance of an adverse claim or had actual or constructive knowledge of a potential adverse claim when he warranted his title and agreed to defend it, the grantee can recover the costs of a defense, including reasonable attorney fees." *Id*. at 252. The instant case, however, did not involve plaintiffs' potential duty to defend against attack by a third party the title they had warranted. In this case, the plaintiffs/grantors themselves instead challenged the very meaning and effect of the deed they had given Morano. The trial court's award of attorney fees in this case therefore did not compensate a grantor's failure to defend a third party suit challenging the grantee's title, as in *Bloom*. Because we do not find *Bloom* controlling, and considering the Michigan public policy against expanding exceptions to the American rule, *Brooks*, *supra*, we conclude that the trial court abused its discretion in awarding defendant attorney fees. On remand, the trial court is ordered to reinstate its May 16, 1997 order granting plaintiffs summary disposition with respect to defendant's counterclaim for damages arising from plaintiffs' alleged breach of warranty of title.

We affirm the trial court's grant of summary disposition to defendant regarding the quiet title issue, reverse the trial court's grant of summary disposition to defendant regarding attorney fees for breach of warranty, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage

[1] Defendant later received title to the property from her former husband pursuant to their divorce settlement.

[2] We note that the because the trial court clearly considered documentary evidence beyond the allegations within plaintiffs' complaint, the court improperly relied on MCR 2.116(C)(8) [failure to state a claim] as its basis for dismissing plaintiffs' claim. MCR 2.116(G)(5); *Patterson v Kleiman*, 447

Mich 429, 432; 526 NW2d 879 (1994) (When considering such a motion, the trial court must rely only on the pleadings.). Summary disposition remains proper, however, pursuant to MCR 2.116(C)(10) because the purchase agreement and warranty deed clearly transferred title to Moran, and, as a matter of law, the agreement's integration clause precludes plaintiffs' introduction of any evidence that they and Moran intended the deed as an equitable mortgage. Because summary disposition of the quiet title issue remains proper pursuant to MCR 2.116(C)(10), we may affirm the trial court's decision in this respect. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998) (When this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning.).

[3] Defendant notes the exception, judicially created by Michigan courts, that permits a plaintiff to recover as damages from a third party the attorney fees the plaintiff expended in a prior lawsuit the plaintiff was forced to defend or prosecute because of the wrongful acts of the third party. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 468; 487 NW2d 807 (1992). Defendant then wonders, "[I]f Morano or his grantees can recover from [plaintiffs in the event defendant had to defend her title against a third party], why shouldn't they be able to recover when [plaintiffs themselves] challenge[] title? The first-party third-party distinction is meaningless." We note in response the following observations:

> Generally, attorney fees are not recoverable unless expressly authorized by statute or court rule. *This rule is especially significant in our jurisprudence to prevent trial courts from utilizing economic sanctions against litigants who desire to exercise their constitutional right to a jury trial*. [*McKelvie v City of Mt Clemens*, 193 Mich App 81, 84; 483 NW2d 442 (1992) (emphasis added).]

Recognition of this public policy supports the narrow construction of exceptions to the American rule adhered to by Michigan courts. *Brooks, supra*.