

STATE OF MICHIGAN
COURT OF APPEALS

MARION ALICE DATE, a/k/a MARION ALICE
KRAATZ,

UNPUBLISHED
February 1, 2000

Plaintiff/Counterdefendant-Appellee,

v

No. 210885
Wayne Probate Court
LC No. 94-536994 SE

JENNETH FRIZZELL, Personal Representative of
the Estate of ALICE LORETTA KRESS, Deceased,
a/k/a ALICE LORETTA O'NEAL,

Defendant/Counterplaintiff- Appellant.

Before: Murphy, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant/counterplaintiff, Jenneth Frizzell, personal representative of the estate of Alice Loretta Kress (decedent), appeals as of right from a probate court order reforming a quitclaim deed that gave plaintiff/counterdefendant, Marion Alice Date, sole ownership of a home which the decedent left to both plaintiff and defendant in her will. We affirm.

Defendant argues that the probate court did not have equitable jurisdiction to reform the quitclaim deed, and thus, it improperly awarded the decedent's home to plaintiff. We disagree. The determination of whether a trial court has subject-matter jurisdiction is a question of law subject to de novo review. *Todd v Dep't of Corrections*, 232 Mich App 623, 627; 591 NW2d 375 (1998).

The jurisdiction of the probate court is governed by MCL 700.21(a); MSA 27.5021(a), which provides in relevant part:

The court has exclusive legal and equitable jurisdiction of all of the following:

(a) Matters relating to the settlement of the estate of a deceased person, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, the following proceedings:

- (i) The internal affairs of the estate.
- (ii) Estate administration, settlement, and distribution.
- (iii) Declaration of rights involving estates, devisees, heirs, and fiduciaries.
- (iv) The construction of a will.
- (v) The determination of heirs.

Under subsection (ii), the probate court has exclusive legal and *equitable* jurisdiction to hear claims regarding the administration, settlement, and distribution of an estate. The term “settlement” as used in the statute “includes the full process of administration, distribution, and closing” of the decedent’s estate. MCL 700.10(2); MSA 27.5010(2).

In this case, the trial court properly recognized that in order for the decedent’s estate to be settled, i.e., administered, distributed and closed, a determination had to be made as to who would receive the decedent’s home. The probate court, sitting as the trier of fact, determined from the proofs that the decedent intended for plaintiff to have the home upon the decedent’s death. In order to settle the decedent’s estate, the trial court reformed the quitclaim deed consistent with the decedent’s intent to make plaintiff the sole owner of the decedent’s home. Therefore, because the proceeding involved a settlement of the decedent’s estate, the probate court had exclusive jurisdiction to reform the deed under MCL 700.21(a)(ii); MSA 27.5021(a)(ii).¹

Defendant next argues that plaintiff did not present sufficient evidence to satisfy the clear and convincing standard of proof for reformation of a deed. We disagree.

Courts will reform an instrument to reflect the parties’ actual intent where there is clear and convincing evidence that both parties reached an agreement, but as the result of mutual mistake, or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties. *Theophelis v Lansing General Hosp*, 430 Mich 473, 492-493; 424 NW2d 478 (1988); *Olsen v Porter*, 213 Mich App 25, 29; 539 NW2d 523 (1995).

After a thorough review of the record, we agree with the trial court’s finding that there was clear and convincing evidence to support reformation of the deed. Stanley Marentette, the financial planner who drafted the quit claim deed and the power of attorney for the decedent in 1990, testified that the decedent unmistakably wanted plaintiff to have the home as a reward for caring for the decedent over the years. David Date, plaintiff’s ex-husband, testified that the decedent lived with his family while he was still married to plaintiff and that the decedent often spoke about deeding her home to plaintiff. Date stated that the decedent did not want defendant to have the home because she did not need the house. Further, Richard McCann, the decedent’s grandson, testified that the decedent discussed with him on several occasions her desire for plaintiff to have her home after she died, and that she did not want defendant to have the home because defendant was in a better financial position and did not need the house. Alisha Trout, the decedent’s granddaughter, testified that she was present when the quitclaim deed was prepared, and the purpose of the quitclaim deed was to give plaintiff the house because she

had taken care of the decedent. Finally, plaintiff testified that the decedent lived with her since March 1990, and the decedent often told her that she wanted plaintiff to have the house and that defendant did not need the house. Thus, there was substantial evidence that the decedent was a strong and alert woman in fine mental health when she signed the quitclaim deed and that her health did not start to deteriorate until the following year.

Because defendant did not rebut any of the testimony presented by plaintiff, and simply offered evidence pertaining to her expenditures on the decedent's home, we concur with the trial court's finding that plaintiff presented clear and uncontroverted evidence that the decedent intended to give plaintiff joint ownership of the house with rights of survivorship. Accordingly, the trial court properly reformed the quitclaim deed to reflect the decedent's intent.

Finally, defendant argues that the probate court erred by rejecting her claim for reimbursement under an unjust enrichment theory of relief. We disagree. This Court reviews a trial court's findings of fact in a bench trial for clear error. *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997). A finding is clearly erroneous when, although evidence supports it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

In order to establish unjust enrichment, defendant must show that (1) plaintiff received a benefit from defendant, and (2) an inequity resulted to defendant because of plaintiff's retention of the benefit. *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). If these two elements are proven, the law will impose liability in order to prevent unjust enrichment. *Id.*

The probate court did not clearly err in finding that plaintiff was not unjustly enriched by the repairs made by defendant to the decedent's home. Although the record shows that defendant did expend funds to have work done on the decedent's home, several witnesses testified that the work was done after the decedent died, the quality of the work performed was poor, and much of the work remained unfinished. Further, defendant was unable to identify several of the bills she claimed represented expenditures on the decedent's home, and many of these bills were dated well after plaintiff's complaint was filed. Finally, because most of the work on the house was done after this litigation commenced, plaintiff was at least a co-owner of the home, and we agree with the trial court that plaintiff should have been consulted about the construction. On this record, the trial court's finding that plaintiff did not truly receive a benefit from the work performed on the home at defendant's expense was not clearly erroneous. Thus, defendant failed to satisfy the elements of unjust enrichment, and the probate court properly rejected defendant's claim for reimbursement.

Affirmed.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder

¹ We note that because this was a declaration of rights involving heirs, namely plaintiff and defendant, the probate court also had exclusive jurisdiction over this case pursuant to MCL 700.21(a)(iii); MSA 27.5021(a)(iii).