STATE OF MICHIGAN

COURT OF APPEALS

GRANT HOOPER AND BERTHA HOOPER,

Plaintiffs-Appellants,

v

DONALD E. HOOPER,

Defendant-Appellee.

UNPUBLISHED
February 29, 2000

No. 221079
Sanilac Circuit Court
LC No. 98-026036-CH

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Plaintiffs, as trustees of their respective revocable trusts, appeal as of right from an order dismissing their quiet title action as time-barred under MCL 600.5801(4); MSA 27A.5801(4). Plaintiffs sought to invalidate a deed that was executed on January 28, 1974, and conveyed title in three parcels of land to themselves and their twin sons, one of whom is defendant in this case. Plaintiffs argue that the trial court erred when it determined that plaintiffs' action was barred by MCL 600.5801(4); MSA 27A.5801(4). We disagree and affirm.

Whether a statute of limitation bars a cause of action is a question of law that this Court reviews de novo. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997). This Court reviews a trial court's findings of fact for clear error. *Giordano v Markovitz*, 209 Mich App 676, 678-679; 531 NW2d 815 (1995); MCL 2.613(C). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Cimock v Conklin*, 233 Mich App 79, 84; 592 NW2d 401 (1998).

MCL 600.5801; MSA 27A.5801 provides in relevant part:

> No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.

* * *

(4) Other cases. In all other cases under this section, the period of limitation is 15 years.

The residual fifteen-year period of limitation is applicable to actions to quiet title. *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993); *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). The crux of plaintiffs' argument is that the statute never commenced to run against them because defendant never dispossessed them of their property. Given the fact that plaintiffs have always had at least some interest in the disputed property, resolution of the issue in this case therefore entails a determination of if, and when, plaintiffs' claim accrued.

The trial court found that the 1974 deed was recorded by one of the grantees on July 28, 1981. Grant Hooper never denied that he recorded the deed, only that he could not recall ever doing so. Moreover, a copy of a Sanilac County register of deeds receipt indicates that on July 7, 1981, Grant Hooper paid $3 to record a deed, and the deed itself indicates that it was recorded on the same date. The trial court did not clearly err in finding that one of the grantees recorded the 1974 deed on July 28, 1981.

Plaintiffs instituted the present action in order to clear the cloud on their title to the three parcels that were the subject of the conveyance in the 1974 deed. The trial record is unclear respecting plaintiffs' intention after they executed the 1974 deed and the trial court made no findings of fact in that regard. Nevertheless, the cloud that existed on the title to the parcels owed its existence to the fact that plaintiffs executed different deeds (the 1974 deed and another pair of deeds in 1980) conveying the same parcels to different parties. The problem was exacerbated by the fact that Grant Hooper recorded the 1974 deed after the 1980 deeds were recorded. While Bertha Hooper testified that she did not know that Grant Hooper had ever recorded the 1974 deed, she did participate in the execution of all the deeds and must be charged with knowledge that a cloud on title existed at that time.

The recording of the 1974 deed raised a presumption of its delivery to defendant. *Havens v Schoen*, 108 Mich App 758, 761; 310 NW2d 870 (1981). The effect of this presumption was to place the burden on plaintiffs to move forward with evidence showing that no delivery and no intent to convey an interest in the property took place. *Id*. Plaintiffs offered no testimony to rebut this presumption; they testified only that they could not recall the circumstances surrounding the execution and recording of the 1974 deed. Therefore, the cloud that plaintiffs sought to remove was firmly in place on July 28, 1981. At this point, defendant's entitlement to the property became clear, and plaintiffs' claim accrued. MCL 600.5801; MSA 27A.5801. We therefore conclude that the trial court correctly concluded that the statute of limitations barred plaintiffs' quiet title action.

Plaintiffs argue that the statute never began to run against them because defendant never dispossessed them of the property, citing MCL 600.5829(5); MSA 27A.5829(5). In our view,

dispossession is not the crucial event in a case where, as here, plaintiffs at all relevant times had an interest in the property, and defendant only believed that he had a joint interest in the three parcels. Because defendant's claim of interest in the property could only be asserted through the 1974 deed that granted him a joint tenancy with right of survivorship, defendant would have had no reason to attempt to dispossess plaintiffs of the property.

Plaintiffs finally argue that the equities of the case weigh in their favor. We conclude that this argument is without merit. Plaintiffs admit that their actions in executing the conflicting deeds may have been foolish, but they argue that the problems were only the result of their desire to avoid probate and provide for the children. Plaintiffs also argue that their house is located on the three parcels of property at issue and that if they lose the present case, they will also lose their home. This argument is not supported by the record. The 1974 deed conveys title to the three parcels to plaintiffs, defendant, and Ronald Hooper as joint tenants with right of survivorship. The deed therefore creates joint life estates in each cotenant with indestructible contingent remainders. *Albro v Allen*, 434 Mich 271, 275-276; 454 NW2d 85 (1990). The deed does not strip plaintiffs of their home; it only requires them to share their interest in the property with their twin sons.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens