

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE R. HAEFLER,
Plaintiff-Appellee,

UNPUBLISHED
December 18, 2001

v

JANET L. HAEFLER,
Defendant-Appellant,

No. 225614
Newaygo Circuit Court
LC No. 98-017793-CK

and

MARY D. LAVALLEE,
Defendant.

GEORGE R. HAEFLER,
Plaintiff/Counter-Defendant-
Appellee,

v

JANET L. HAEFLER and MARY D.
LAVALLEE,
Defendants/Counter-Plaintiffs-
Appellants.

No. 225615
Newaygo Circuit Court
LC No. 98-017794-CB

JANET L. HAEFLER,
Plaintiff-Appellant,

v

No. 225616
Newaygo Circuit Court

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant-Appellee.

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

In these consolidated cases, Janet L. Haefler appeals as of right the trial court's orders requiring that a certain parcel of property be sold and granting her certain credits. We affirm in each case. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

George Haefler and Janet Haefler entered into a land contract with George J. Lavallee (now deceased) and Mary D. Lavallee for the purchase of a parcel of property. The purchase price was \$68,000 (later reduced by \$6,000). Janet Haefler made a down payment in the amount of \$30,000. The contract required monthly payments in the amount of \$271.36 to be made for thirty-six months. A balloon payment for the remaining amount was due on September 1, 1998. Janet Haefler and George Haefler purportedly entered into a separate contract providing that she was to make the down payment on the property, and that he was to make the monthly and balloon payments and pay the taxes and insurance on the property. The original document disappeared, and Janet Haefler drafted a second agreement from her memory.

In August 1998, the relationship between Janet Haefler and George Haefler ended. On August 18, 1998, Janet Haefler made the final balloon payment in the amount of \$17,792. Mary D. Lavallee executed a warranty deed conveying the property to Janet Haefler, only. The parties filed three suits regarding the property. In the first case George Haefler sought to have the deed conveying ownership of the property to Janet Haefler set aside and to have him and Janet Haefler designated as co-owners of the property. In the second case George Haefler sought dissolution of the informal partnership between himself and Janet Haefler and an equitable division of the partnership property. In the third case Janet Haefler sought to terminate George Haefler's interest in the property and have herself declared the sole owner thereof.

At trial, the parties gave confusing and contradictory testimony regarding their performance of their obligations. The parties produced what appeared to be a copy of the first agreement and the original of the second agreement. Janet Haefler asserted that she could not recall which document she drafted first in time. George Haefler denied that he signed either document but acknowledged that he agreed to make the monthly payments and to pay the insurance and taxes. Janet Haefler maintained that George Haefler signed both agreements. She denied that he made the monthly payments as required and stated that she made the balloon payment because he breached the agreement. Both parties claimed that they paid for improvements to the property.

The trial court found that George Haefler did not breach any agreement that existed and that he made the monthly payments from his assets. Furthermore, the court found that Janet Haefler's act of making the balloon payment twelve days before it was due prevented George Haefler from fulfilling this obligation. The court concluded that George Haefler and Janet

Haefler were owners as tenants in common of the property and that such interests were properly severed by partition. The court found that neither party proved by a preponderance of the evidence claims regarding payments made for improvements to the property. The court concluded that Janet Haefler was entitled to recover from George Haefler the amount of the balloon payment, any real estate taxes she paid, and \$2,300 she paid for a septic system. The balance of the sale price was to be divided equally between the parties.

In an equity action we review the trial court's findings of fact for clear error and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

Janet Haefler argues that the trial court erred by failing to enforce the contract between her and George Haefler. She asserts that the copy of the first agreement was admissible because the original had been destroyed. MRE 1004. Furthermore, she asserts that the trial court failed to follow basic principles of equity when it divided the property and did not give her additional credit for the down payment. We disagree and affirm the trial court's orders granting Janet Haefler credit for the balloon payment, the taxes, and the septic system and requiring that the property be sold. Janet Haefler acknowledged that she did not know which agreement she drafted first in time and that she did not know what differences, if any, existed between the two documents. Given Janet Haefler's uncertainty regarding the terms of any agreement and George Haefler's denial that he signed any agreement, the trial court's finding that it could not conclude that the parties had an enforceable written agreement was not clearly erroneous. *Id.*

Equity examines a situation as a whole and grants relief as dictated by good conscience. *Thill v Danna*, 240 Mich 595, 597; 216 NW 406 (1927). The trial court found that Janet Haefler made the down payment and that George Haefler made the monthly payments and paid a portion of the taxes. Janet Haefler points to no evidence that demonstrates that these findings were clearly erroneous. The trial court concluded that Janet Haefler was entitled to additional credit for those sums that the evidence showed she did not agree to pay. The balance of the sale price of the property was to be divided equally between the parties. The trial court's decision allowed the parties to share the benefit of Janet Haefler's down payment and George Haefler's monthly payments, as they agreed, and to share the benefit of any increased sale price resulting from the improvements made to the property. We conclude that the trial court's resolution was fair and equitable under all the circumstances. *Id.*

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham