STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of KEVIN MICHAEL YORK, Deceased.

LINDA S. MORRIS,

Petitioner-Appellant,

v

MICHAEL S. HARMON,

Respondent-Appellee.

UNPUBLISHED
February 5, 2002

No. 226514
Wayne Probate Court
LC No. 98-592963-SE

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Petitioner appeals as of right from a probate court judgment quieting title to the deceased's house in respondent's favor. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo." *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). However, the court's factual findings are reviewed for clear error. *Id*. A finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake has been made. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). This Court "will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *Id*.

There must be delivery of a deed to pass title. *Schultz v Silver*, 323 Mich 454, 461; 35 NW2d 383 (1949). The purpose of the delivery requirement is to show the grantor's intent to convey a present interest in the property described in the deed. *Energetics, Ltd v Whitmill*, 442 Mich 38, 53; 497 NW2d 497 (1993); *Lintner Estate v Meier*, 344 Mich 119, 124; 73 NW2d 205 (1955). Physical delivery of the deed to the grantee creates a rebuttable presumption of an intent to pass title. *Resh v Fox*, 365 Mich 288, 291; 112 NW2d 486 (1961). In addition, the grantee must accept the deed for it to be effective. *Gibson v Dymon*, 281 Mich 137, 140; 274 NW 739 (1937). The grantee's possession of the deed creates a rebuttable presumption of delivery. *Schultz, supra*. "Any act presumptively a delivery will not be a delivery if the intent to make it

such is wanting." *Gibson, supra.* In cases such as this, for the deed to be operative after the grantor's death, it "must have been made operative by delivery by the grantor during life and it must have conveyed a present interest in the land." *Hynes v Halstead,* 282 Mich 627, 634; 276 NW 578 (1937). In other words, the grantor must "intend that the transfer of possession of the deed shall make the deed effective as a conveyance." *Wilcox v Wilcox,* 283 Mich 313, 318; 278 NW 79 (1938).

The evidence in this case was clearly sufficient to sustain the probate court's ruling. Prior to his death, York mentioned to Barbara Neely that he wanted respondent to have everything after he was gone. At Neely's suggestion, York had an attorney prepare a deed transferring the house to respondent. York executed the deed on March 4, 1998, and delivered it (and apparently the unrecorded warranty deed under which he held title) to respondent a few days later with instructions that he "take care of this" the following week. William Bowden, Carl Christensen, and Neely confirmed that respondent had possession of the quitclaim deed before York died. In addition, York told Augustine Meisner and Bowden that he had transferred the house to respondent because "he wanted him taken care of after he was gone." Respondent took steps to see that the deeds were in order for recording but ended up not recording them because he and York were worried the transfer might affect York's medical benefits. Consequently, he kept the deeds in his desk and recorded them after York died. There was no evidence that York expressly reserved the right to recall the deed, and thus the fact that respondent would have given it back to him had he asked for it does not preclude a finding of delivery. *Heinecke v Portus*, 299 Mich 668, 670-671; 1 NW2d 32 (1941). Respondent's acceptance of physical delivery of the deed coupled with York's statements that he had transferred the house to respondent so he would be protected after York's death was sufficient to prove delivery. *Lintner Estate, supra*; *McMahon v Dorsey,* 353 Mich 623; 91 NW2d 893 (1958).

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra