

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of CHARLES B. MILAM, Deceased.

CATHY COFFER, GAREY COFFER, SALLY
COFFER, and BRYCE COFFER,

UNPUBLISHED
February 22, 2002

Petitioners-Appellees,

v

No. 227364
Montmorency Probate Court
LC No. 94-004658-IE

PENNY C. SHUMAKER, Personal Representative
of the Estate of CHARLES B. MILAM, Deceased,

Respondent-Appellant.

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Respondent appeals as of right a probate court order granting the motion for summary disposition filed by petitioners. We reverse in part and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Charles Milam and his wife, Eva Milam, the mother of Garey Coffe and Bryce Coffe, purchased one forty-acre parcel of property and two ten-acre parcels of property. After Eva Milam died, Charles Milam married Marilyn Shumaker. Charles Milam did not deed the property to Marilyn. On May 5, 1994 Charles Milam executed a quitclaim deed transferring all three parcels of property to Garey Coffe and Bryce Coffe.¹ The deed's legal description of the forty-acre parcel was correct; however, the legal descriptions of the ten-acre parcels were incorrect.

On May 20, 1994, Charles Milam died intestate. Marilyn's guardian was appointed successor personal representative of Charles Milam's estate.² The two ten-acre parcels of

¹ Appellees Cathy Coffe and Sally Coffe, the wives of Garey Coffe and Bryce Coffe, respectively, were not parties to the transaction.

² Initially, Marilyn was appointed personal representative of Charles Milam's estate. Due to the onset of Alzheimer's disease, she was unable to continue in that position.

property were listed as the only assets of the estate. Marilyn elected to take her intestate share of the estate. The estate quitclaimed the property to Marilyn. The probate court assigned the residue of the estate, i.e., the two ten-acre parcels of property, to Marilyn, and closed the estate.

Petitioners moved to reopen the estate and to amend the order assigning the residue of the estate to Marilyn. They contended that they had an interest in the two ten-acre parcels of property. The probate court reopened the estate. Petitioners moved for summary disposition pursuant to MCR 2.116(C)(10). They argued that the deed should be reformed to reflect the correct legal descriptions of the two ten-acre parcels of property. Petitioners contended that Marilyn had no interest in those properties. The probate court granted petitioners' motion. The court held that equity allowed it to reform the deed to reflect the correct legal descriptions for the ten-acre parcels of property. The court also held that because Charles Milam was the sole owner of the properties, Marilyn had no dower interest therein.

We review a lower court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). "Dower" is defined as a widow's right to "the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage," MCL 558.1.

Respondent argues that the probate court erred by granting petitioners' motion for summary disposition. We agree, reverse the probate court's order in part, and remand for further proceedings consistent with this opinion.³ 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 probate court erred by concluding that Marilyn never held a dower interest in the two ten-acre parcels of property. Charles Milam was seized of estates in the two ten-acre parcels of property during his marriage to Marilyn; therefore, she held a dower interest in those properties. During a marriage, a husband cannot convey perfect title to property unless his wife releases her dower interest. *Gluc v Klein*, 226 Mich 175, 177; 197 NW 691 (1924). Marilyn did not release her dower interest at the time Charles Milam executed the deed. The probate court's reformation of the deed to grant ownership of the two ten-acre parcels of property to Garey Coffey and Bryce Coffey as of the date of the deed's execution changed the nature of the estate that was left upon Charles Milam's death. The reformation of the deed did not extinguish Marilyn's dower interest in those properties. Equity requires that Marilyn be allowed to withdraw her election of her intestate share of the estate and to elect to take her dower interest if she so chooses. MCL 700.2202(2)(c); *Thill*, *supra*.

Reversed in part and remanded. This Court retains no further jurisdiction.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens

³ Respondent does not challenge the authority of the probate court to reform the deed. That issue is not before this Court.