

STATE OF MICHIGAN
COURT OF APPEALS

JOHN SWIDE and JOAN SWIDE,

Plaintiff-Appellants/Cross-
Appellees,

v

VERLA J. LINTON,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

April 16, 2002

No. 223354

Bay Circuit Court

LC No. 97-003339-CH

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

HOEKSTRA, J., (*concurring and dissenting*).

Respectfully, I disagree with the majority's conclusion that the equitable doctrine of clean hands precludes defendant from any recovery for improvements that she made to the property. It is undisputable that defendant's agreement violated rules promulgated under the Adult Foster Care Facility Licensing Act, MCL 400.701 *et. seq.* However, my review of the agreement between defendant and the now-deceased property owner does not persuade me that it was one-sided or unconscionable in its basic nature. At the time defendant made the agreement to obtain the property, she was providing \$800.00 per month worth of adult foster care and receiving payments of \$616.50 per month. The agreement called for her to provide lifetime care, and to pay the expenses of his funeral, back taxes on the property, and all costs associated with the transfer. Relative to the net value of the property, I cannot say that this agreement, on its face, amounts to inequitable conduct or bad faith. Further, I do not believe that every violation of a regulatory rule such as the one that defendant violated automatically requires that a court invoke the clean hands doctrine. On balance, it is my opinion that application of the doctrine is inappropriate on the facts of this case.

Nevertheless, I believe that plaintiffs are entitled to partial relief under MCR 3.411. Of the three grounds for awarding defendant compensation, I find no lawful basis on which the trial court could award compensation for the difference between what plaintiffs paid and what the court and plaintiffs deemed the property was worth, and for the funeral costs that defendant paid. Therefore, I would concur with the majority that defendant is not entitled to those awards. However, I find that the property taxes paid by defendant were an improvement within the meaning of MCR 3.411, and thus the trial court properly awarded compensation for her payment of them.

With regard to the cross-appeal, I join with the majority opinion.

/s/ Joel P. Hoekstra