

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN OSTEOPATHIC COLLEGE
FOUNDATION,

UNPUBLISHED
July 30, 2002

Plaintiff-Appellee,

v

UNIFIRST CORPORATION,

No. 231736
Oakland Circuit Court
LC No. 1999-019160-CH

Defendant-Appellant.

Before: Murray, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from the circuit court's judgment in favor of plaintiff. Plaintiff sued defendant to quiet title to a piece of land in Pontiac. The circuit court concluded that plaintiff was the record title holder to the property and rejected defendant's theory as not supported by the evidence. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

An action to quiet title is an equitable action, and the findings of the trial court are reviewed for clear error while its holdings are reviewed de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). In an action to quiet title, the plaintiff has the burden of proof and must establish a prima facie case of title. If the plaintiff establishes a prima facie case, the defendant then has the burden of proving superior right or title. *Beulah Hoagland Appleton Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999).

On appeal defendant argues that it presented sufficient facts to warrant the presumption that the city received title to the corner parcel from plaintiff through a deed which was never recorded and is now lost. We find no error in the circuit court's findings or ultimate conclusion.

The evidence presented showed that the piece of land in question belonged to plaintiff by virtue of a deed recorded in 1976. The records of the register of deeds do not show that plaintiff ever gave up title to this particular piece of land. Defendant's theory that the City of Pontiac acquired title to the property by a now-lost deed is speculative at best. The sole evidence in support of defendant's theory of a transfer by a lost deed was the fact that the land was listed as belonging to the City on the tax assessor's records, a fact which could be explained by a clerical error committed when the original property was divided into three smaller parcels. Defendant presented no other evidence suggesting a transfer of title to the property. The circuit court did

not clearly err by finding that defendant had failed to prove its theory that the city had acquired title by a deed now lost and by entering judgment for plaintiff.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra