STATE OF MICHIGAN

COURT OF APPEALS

HENRY A. PETERSEN,

Plaintiff-Appellant/Cross-Appellee,

v

JEANNE MARIE OBERT,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
May 6, 2004

No. 244304
Mecosta Circuit Court
LC No. 00-013885-CH

Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing his claims. Defendant cross-appeals, seeking resolution of several underlying issues in her favor in the event this Court grants plaintiff's appeal. We affirm.

This case arises out of plaintiff's attempt to create an estate plan to dispose of his real property, which he claims was not carried out as he intended. Plaintiff is defendant's father. He lives on a 215-acre farm, which was owned by his father, and then by plaintiff since 1960. Defendant and her husband moved onto the farm property in 1993, made some improvements, and helped with the farming. Plaintiff left school in the ninth grade and can only read several simple words. Plaintiff decided it was time to make a will to dispose of his property upon his death and avoid probate court and attorney fees. His plan was to give the farm to defendant and $50,000 to his other daughter. The attorney who prepared the documents prepared a deed that conveyed title to the farm property to defendant and reserved a life estate in plaintiff, together with a note and mortgage on the property for $50,000 to be executed by defendant in favor of her sister. Plaintiff signed the documents without asking any questions, and without telling the lawyer that he could not read. He did admit at trial that he could read the word "deed." After the deed was recorded, the township sent a tax bill in defendant's name. Plaintiff simply requested that future tax bills be changed back to his name. In 1997 or 1998, plaintiff and defendant had a falling out and defendant moved off the farm. When plaintiff tried to sell the farm in 1998 or 1999, he discovered that he no longer held title to the farm. After defendant declined to transfer the property back to plaintiff, he commenced this action to set the deed aside. The circuit court dismissed the case at the close of plaintiff's proofs, concluding that the statute of limitations had expired and that laches did not operate to extend the time in which to file suit.

Plaintiff asserts that his action was equitable in nature, and that therefore the six-year residual statute of limitations for personal actions, MCL 600.5813,[1] should not have been applied to bar his equitable claim. Plaintiff asserts that there is no applicable limitation period on such a claim, and that suit can be brought at any time, unless defendant establishes prejudice under the equitable doctrine of laches. We disagree.

Whether a statute of limitations bars a cause of action is a question of law that this Court reviews de novo. *American Commercial Liability Ins Co v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

Plaintiff relies on *Lothian v Detroit*, 414 Mich 160; 324 NW2d 9 (1982), where the Court discussed the interplay between a statute of limitations and laches. In discussing the traditional approaches to the use of statutes of limitations in equitable actions, the *Lothian* Court acknowledged that "where the relief is in its nature one of equitable and not legal cognizance, and the remedy is of a purely equitable nature, equity follows its own rules," quoting *Michigan Ins Co of Detroit v Brown*, 11 Mich 265, 272 (1863). Plaintiff relies on the *Lothian* Court's observation that:

> Thus, laches might be viewed from two different perspectives in the traditional context: (1) in cases which are "purely equitable" or which display "compelling equities", laches may be invoked by a defendant to bar a plaintiff's claim without reference to any statutory limitations period, *i.e.*, a claim may be held barred by laches early in the lawsuit, or long after all available statutory limitations provisions have expired, see *Rodgers v Beckel*, 172 Mich 544, 550; 138 NW 202 (1912); or (2) in equity cases in which corresponding relief is available at law, the existence of laches generally will be ascertained with reference to an analogous statute of limitation. [414 Mich at 170.]

Plaintiff acknowledges, however, that *Lothian* left it unclear whether the traditional laches rule for cases that are purely equitable in nature was superseded by MCL 600.5815, which provides:

> The prescribed period of limitations shall apply equally to all actions whether equitable or legal relief is sought. The equitable doctrine of laches shall also apply in actions where equitable relief is sought.

In *Attorney General v Harken*, 257 Mich App 564; 669 NW2d 296 (2003), this Court analyzed whether the six-year limitations period under MCL 600.5813 applied to the plaintiff's equitable

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[1] In his brief, plaintiff asserts that the circuit court erred in applying the statute of limitations rather than the doctrine of laches. He further argues that even if it was proper to apply a statute of limitations, the court erred in applying MCL 600.5813 rather than the fifteen-year statute for the recovery of lands, MCL 600.5801. However, at argument plaintiff readily conceded that he did not make this argument below, and that MCL 600.5801 does not appear to apply on its face. Under these circumstances, we do not address this argument further.

action seeking an injunction. The plaintiff argued that statutes of limitation are not applicable to equitable actions. *Id*. at 571. In holding that MCL 600.5813 applied, this Court relied on MCL 600.5815. This Court found that the Legislature's express statement that statutes of limitation apply to equitable actions was controlling. *Id*. We therefore conclude that the circuit court did not err applying a statutory period of limitations in this case.

Next, we address plaintiff's argument that the court erred in finding that laches can shorten, but cannot lengthen, a limitations period beyond that set forth by statute because purely equitable causes of action can be decided without reference to any statutory period of limitations under the traditional rule of laches. We disagree. We review a trial court's conclusions of law de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

MCL 600.5815 superseded the traditional rule that in purely equitable actions, only laches will control. *Harken*, *supra* at 571. Thus, the applicable statute of limitations was properly applied in the instant case. While the second sentence of § 5815 states that laches will also apply to equitable actions, the use of the word "also" means "in addition to," so that both the statute of limitations and laches apply. Plaintiff asserts that under the second sentence, laches can be employed to extend the statute of limitations, not simply shorten it. However, as recognized in *Lothian*:

> Neither *Seguin* [*v Madison*, 328 Mich 600; 44 NW2d 150 (1950),] nor *Moross* [*v Oakman*, 257 Mich 464; 241 NW 181 (1932),] supports the remarkable proposition that laches may be applied to breathe life into an expired cause of action. Laches is not, by any stretch of the imagination, an affirmative device. It is, instead, a cut-off measure, interposed as a defense designed to lay to rest claims which are stale as well as prejudicial to the defendant. It is equity--and the *absence* of laches - - which have in tradition occasionally permitted plaintiffs to proceed in the face of an expired statutory limitations period. [*Lothian*, *supra* at 175. Emphasis in original.]

Thus, the circuit court did not err in concluding that the doctrine of laches, also applicable to equitable claims under 600.5815, does not operate to extend an expired statutory limitation, but rather, may operate to shorten it if prejudice is occasioned by a plaintiff's delay *within* the period of limitations.

In light of our ruling, we need not address defendant's arguments on cross-appeal.

Affirmed.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Donald S. Owens