STATE OF MICHIGAN

COURT OF APPEALS

LINDA BISHOP, PATSY SMITH, DONNA WHEELER, and GARY LOSHAW,

Plaintiffs-Appellees,

v

JOAN MAKAREWICZ, formerly known as JOAN HARNICK,

Defendant-Appellant.

UNPUBLISHED
August 17, 2004

No. 246920
Otsego Circuit Court
LC No. 02-009985-CH

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right the trial court's order quieting title to all oil, gas, and mineral rights in the real property at issue in favor of plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's grant or denial of summary disposition de novo. *Hoekstra v Bose*, 253 Mich App 460, 462; 655 NW2d 298 (2002).

Defendant argues that the trial court erred by purportedly modifying the warranty deed conveying title to the relevant property to reserve the oil, gas, and mineral rights at issue. That argument on appeal rests on the false premise that the trial court modified the warranty deed to provide for a reservation of oil, gas, and mineral rights in favor of plaintiffs. However, the trial court did not modify the deed, but rather simply applied its plain language. The deed included a provision that it was subject to encumbrances "which shall have accrued or attached since August 30, 1985," the date of the relevant land contract. That land contract included a provision reserving "all oil, gas and mineral rights" in favor of plaintiffs' decedent. This was plainly an encumbrance on the property that attached since August 30, 1985, and, thus, in accordance with the plain language of the deed, its conveyance of the property to defendant did not include the oil, gas, and mineral rights at issue. The trial court did not modify the deed by recognizing this point. Indeed, the order being appealed that quiets title to the oil, gas, and mineral rights in favor of plaintiffs does not indicate that it is modifying the deed. Instead, the order constitutes merely a declaration of certain rights provided by the plain language of the deed, not a modification or reformation of it. See *Gawrylak v Cowie*, 350 Mich 679, 683; 86 NW2d 809 (1957) ("a deed of conveyance, if not ambiguous in its terms, must be construed as written"). Accordingly,

defendant has not established any basis for relief based on her contentions that the trial court erred by modifying the deed.

Further, the oral agreement alleged by defendant would not be effective to modify the land contract to remove its reservation of oil, gas, and mineral rights. Under the plain language of MCL 566.1, an agreement to change or modify a contract regarding real property that is unsupported by consideration is not valid or binding unless it is in writing. There was no consideration provided by defendant with regard to the alleged oral modification because she only promised to continue making the land contract payments—payments that she was already obligated to make under the terms of the land contract. An agreement to perform a duty that is already required by an existing agreement does not constitute consideration for a modification of that agreement. *Yerkovich v AAA*, 461 Mich 732, 740-741; 610 NW2d 542 (2000). Thus, the oral agreement alleged by defendant provides no legal basis to alter the reservation of oil, gas, and mineral rights provided for by the land contract and warranty deed.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly