# STATE OF MICHIGAN

# COURT OF APPEALS

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DONALD K. CADARETTE, NORMAN DALE CADARETTE, and ROSE MAE HISKE,

Plaintiffs-Appellees/Cross-Appellants,

v

SHIRLEY BOBOLTZ,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
September 23, 2004

No. 246854
Alpena Circuit Court
LC No. 01-003137-CH

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Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

The parties appeal as of right from an order quieting title to a parcel of land within the estate of Mae A. Cadarette, a person presently deemed incompetent. Defendant claims that Cadarette conveyed the property to her, while plaintiffs claim that Cadarette conveyed the property to them. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court committed clear error by finding that Cadarette did not possess the requisite intent to pass title to the property to her, despite the fact that a deed executed on March 12, 1998 (the "Boboltz deed") in favor of defendant was recorded with the Alpena County Register of Deeds.

This Court "reviews equitable actions under a de novo standard. [It] review[s] for clear error the findings of fact supporting the decision." *Webb v Smith* (*After Second Remand*), 224 Mich App 203, 210; 568 NW2d 378 (1997); MCR 2.613(C). A finding of fact is clearly erroneous when, after complete review of the record, the Court is "left with a definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). This Court must give special deference to a trial court's findings regarding the credibility of witnesses. *Danielson v Lazoski*, 209 Mich App 623, 629; 531 NW2d 799 (1995).

We find no basis for reversal with respect to defendant's claim.

Passage of proper title by way of a quitclaim deed requires legal delivery, which manifests the grantor's intent to give present operative effect to the instrument by passing title to

the grantee. *Resh v Fox*, 365 Mich 288, 291; 112 NW2d 486 (1961). In cases where the legal question of the construction of the deed is not in dispute, the question of the grantor's intent is one for the trier of fact. See *id.* at 292; see also, generally, *Broffee v Le Fils*, 183 Mich 100; 149 NW 1028 (1914).

The physical transfer of a deed creates a presumption of delivery. *Resh*, *supra* at 291-292. Physical possession of an executed deed, however, is not *conclusive* proof of legal delivery. *McMahon v Dorsey*, 353 Mich 623, 626; 91 NW2d 893 (1958). Because physical possession merely creates a presumption of delivery and is not itself dispositive of delivery, countervailing evidence may be used to rebut this presumption. *Resh*, *supra* at 292. Evidence admissible to rebut the presumption of delivery created by the grantee's possession of the deed may be in the form of the subsequent acts of the parties. *Id.* The recording of a deed similarly creates a presumption of delivery. *Havens v Schoen*, 108 Mich App 758, 761; 310 NW2d 870 (1981). "The only effect of this presumption is to cast upon the opposite party the burden of moving forward with the evidence. The burden of proving delivery by a preponderance of the evidence remains with the party relying on the deed." *Id*. (citation omitted).

In seeking to prove constructive delivery of the Boboltz deed during trial, defendant relied on the presumption of delivery created by defendant's possession of the Boboltz deed and the recording of the Boboltz deed with the Alpena County Register of Deeds.

Defendant testified at trial that her mother, Cadarette, requested that defendant draft a quitclaim deed to Cadarette's domicile; Cadarette would remain a joint tenant with defendant until her death, when the property would pass to defendant. Cadarette retained possession of the Boboltz deed from March 12, 1998, the date of execution and notarization, until January 1999, when defendant allegedly personally received the Boboltz deed with the instruction to retain it for safekeeping. Defendant possessed the Boboltz deed for one month until Cadarette retrieved it in February 1999.

Defendant testified that she received the *recorded* Boboltz deed in her mailbox sometime in the first six months of 1999, but she gave conflicting testimony regarding exactly when she received it. Defendant testified that she discovered the recorded deed in her mailbox in an envelope addressed to defendant and recognized the handwriting on the envelope as Cadarette's. A former friend of Cadarette's, Ray Newhouse, testified on behalf of the defense that Cadarette had placed an envelope containing "very important business" in defendant's mailbox in May 1999, but Newhouse was not aware of the specific contents of the envelope.

Defendant presented evidence that the Boboltz deed, recorded on March 5, 1999, with the Alpena County Register of Deeds, was recorded by Cadarette and without the knowledge of defendant, because receipts from the Register of Deeds listed Cadarette as the payor of recording fees.

Plaintiffs, consisting of Cadarette's additional children, presented evidence calling into question whether Cadarette had actually recorded the deed herself and whether Cadarette constructively delivered the recorded deed by depositing it within defendant's mailbox. The Alpena County Register of Deeds, Kathy Matash, testified that it was common practice in the Register's office to place another person's name on the receipt for recording fees merely upon request, but she had no personal recollection regarding whether it was in fact Cadarette or

another who caused the Boboltz deed to be recorded. Plaintiffs also offered the testimony of plaintiff Rose Mae Hiske, defendant's sister, in which Hiske asserted her familiarity with both Cadarette's and defendant's handwriting and testified that the handwriting on the envelope allegedly containing the Boboltz deed was defendant's and not Cadarette's.

Being in the best position to judge the credibility of the testimony received, the trial court found "neither case [to be] very strong" because the proofs regarding recording and constructive delivery of the deed were based on circumstantial evidence alone. The trial court intimated that "the case is probably stronger" on plaintiffs' side regarding the handwriting on the envelope being defendant's and not Cadarette's. The trial court noted that defendant's testimony was "necessarily suspect" because defendant herself drafted the Boboltz deed. The trial court further found that the placement of the Boboltz deed in defendant's mailbox without the grantor's clear expression of purpose to be "more indicative of an intent to [return the deed] for safe keeping than to pass title."

The trial court's conclusion that it was more probable than not that the grantor did not intend the deed instrument to constitute a "completed legal act" does not instill in us a firm conviction that a mistake has been made, especially when deference must be given to the trial court's assessment of witness testimony. See *McMahon*, *supra* at 626, and *Danielson*, *supra* at 629. Indeed, this Court will not disturb a trial court's findings that were supported by the evidence, even if contrary evidence supporting the grantor's intent to pass title was also presented at trial. *Resh*, *supra* at 292. Because the alleged placement of the deed in defendant's mailbox occurred after Cadarette had already given the deed, once before, to defendant for "safekeeping;" because the deed was not transferred in person from Cadarette to defendant; because there was no other indication of a present intent to transfer title; and because the trial court found certain of defendant's testimony to be less credible than that of plaintiffs, we find no basis for reversal with respect to defendant's appeal.

Plaintiffs contend that the trial court erred by failing to grant them title to the property in question. They presented evidence that a deed granting title to them ("the Cadarette deed") was drafted on December 12, 1976, and that Cadarette physically delivered the deed to plaintiff Norman Cadarette ("Norman") in August or September of 1996. The deed was recorded with the Alpena County Register of Deeds on June 14, 1999. The court, as it found with regard to the Boboltz deed, found insufficient evidence of legal delivery with regard to the Cadarette deed, stating that the physical delivery by Cadarette "was for custodial purposes and was not intended by the grantor to pass fee title."

We find no basis for reversal with regard to plaintiffs' appeal. Indeed, as noted by the trial court, Cadarette, at the time she physically delivered the Cadarette deed to Norman, also physically delivered another deed to him – a deed granting a separate piece of property to *defendant*. The concurrent passing of two deeds – including one not involving plaintiffs – to Norman is evidence that Cadarette was physically delivering the deeds for safekeeping purposes and *not* for purposes of transferring title. Moreover, plaintiff Donald Cadarette testified that, when Cadarette handed the Cadarette deed to Norman, she stated, "'I want you to take care of these for safekeeping.'" The trial court's decision was supported by the evidence. We are not left with a firm conviction that a mistake occurred. *Walter, supra* at 456.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter