STATE OF MICHIGAN

COURT OF APPEALS

MARIE ABBOTT, Plaintiff-Appellant,	UNPUBLISHED November 15, 2005
v	No. 254875 Oakland Circuit Court
ESTATE OF RICHARD H. ABBOTT, Deceased, Defendant-Appellee.	LC No. 00-025588-NO

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff came to Michigan to reside with and care for her ill ex-husband, the decedent, in the decedent's home in Bloomfield Hills. Following the decedent's death, plaintiff continued to reside at the residence. Plaintiff alleges that on June 13, 1998, she suffered injury when she tripped and fell on the driveway of the decedent's premises. She brought suit against the decedent's estate, but the trial court granted defendant's motion for summary disposition on the ground that the condition of the driveway constituted an open and obvious hazard. In an unpublished opinion[1] this Court reversed the trial court's decision. Because it had not been ruled on below, this Court declined to consider defendant's argument that plaintiff was the owner of the property at the time of the accident. On remand, the trial court found that plaintiff had been in possession and control of the premise and granted summary disposition in favor of defendant.

On appeal, plaintiff asserts that the trial court erred in finding that she had possession and control of the premises at the time of her fall. Specifically, she contends that the trial court erred in finding that she owned the property at the time of the decedent's death pursuant to MCL 700.2606. Further, plaintiff agues that she did not exercise any control over the premises beyond that granted to her by the decedent when he requested she come and assist him during his illness.

[1] *Marie Abbott v Estate of Richard Abbott*, unpublished opinion per curiam of the Court of Appeals, issued April 8, 2003 (Docket No. 234846).

We review de novo a trial court's decision to grant or deny summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Similarly, the interpretation and application of a statute constitutes a question of law subject to review de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

Under MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine issue as to any material fact. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In deciding a motion under this rule, a court must consider "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party." *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). But it must only consider the evidence actually proffered. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). The mere possibility that a claim might be supported by evidence produced at trial is insufficient to defeat such a motion. *Id.*

When interpreting a statute, the "analysis must begin with the wording of the statute itself." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). It is presumed that the Legislature used each word of a statute "for a purpose, and, as far as possible, effect must be given to every clause and sentence." *Id.* Where the language of the statute is clear and unambiguous, courts must apply it as written. *Id.*

The statute at issue in the instant case, MCL 700.2606, states in pertinent part:

> (1) A specific devisee has a right to the specifically devised property in the testator's estate at death and all of the following:
>
> a) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property.
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> (b) Any amount of a condemnation award for the taking of the property unpaid at death.
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> (c) Any proceeds unpaid at death on fire or casualty insurance on, or other recovery for, injury to the property.
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> (d) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
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> (e) Real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property.
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> (f) Unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised

property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subdivisions (a) to (e).

Plaintiff argues that the statute merely speaks to the nonademption of specific devises and that the Legislature never contemplated that the statute would be used in a tort setting. However, the unambiguous terms of MCL 700.2606 state that a devisee has a right to specifically devised property at the time of the testator's death. Subsection (1)(f) does prevent the ademption of specific devises unless ademption was intended by the testator. But provisions of statutes must be read in the context of the entire statute so as to produce a harmonious whole. *Macomb Co Prosecuting Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). Here, the prevention of unintended ademption constitutes only one of the rights enjoyed by devisees in addition to a right to the specifically devised property. Contrary to plaintiff's argument, the specific listing of this right does nothing to limit a devisee's right to the property in question.

Further, "[t]he law favors an early vesting of estate in real property." *Hudson v Lindsay*, 383 Mich 126, 131; 174 NW2d 822 (1970). Upon the death of the owner, the title to real property passes to and vests in the decedent's heirs rather than his personal representatives. *Pardeike v Fargo*, 344 Mich 518, 522; 73 NW2d 924 (1955). As our Supreme Court explained in *In re Allen's Estate*, 240 Mich 661, 665; 216 NW 446 (1927), "[i]n a testate estate it is the will that gives title. When probated, it is an instrument of title, relating back to the death of the testator and taking effect as of that time." Consequently, the trial court did not err in holding that title to the property passed to plaintiff at the time of the decedent's death.

Although plaintiff obtained title to the property before the accident, premises liability does not depend solely upon ownership. *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980). Rather, "premises liability is conditioned upon the presence of both possession and control over the land." *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998). Thus, the defendant estate could possibly be liable for plaintiff's injuries if it had possession and control of the premises at the time of her fall. Conversely, defendant cannot be found liable if plaintiff possessed and controlled the property.

Our Supreme Court has defined a "possessor" as:

> "(a) a person who is in occupation of the land with intent to control it or
>
> (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
>
> (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b)." [*Merritt*, *supra*, quoting Restatement Torts, 2d, §§ 333-350, pp 183-233.]

It is undisputed that plaintiff was occupying the premises at the time of her accident. But plaintiff argues that her actions were nothing more than those of a social guest and do not establish that she had the intent to control the premises. A social guest is typically a licensee who is privileged to enter the land of another by virtue of the possessor's consent. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Generally, such

"a license is revocable at will and is automatically revoked upon transfer of title by either the licensor or licensee." *Kitchen v Kitchen*, 465 Mich 654, 658-659; 641 NW2d 245 (2002). See also *Toney v Knapp*, 142 Mich 652, 656; 106 NW 552 (1906)("The transfer of title by the licensor, or his death, of course, operates in law as a revocation of the license").

Here, plaintiff was a licensee of the decedent, but the transfer of the property's title at his death automatically revoked her license. Thus, contrary to her assertions, plaintiff did exercise control over the premises beyond that of a social guest of the decedent. Her continued occupation of the premises following the decedent's death and the revocation of her license provides some evidence of an intent to control the property. Plaintiff's mere assertions that she did not possess such intent are insufficient to create a genuine issue of material fact as to whether she was in possession of the property. Because plaintiff had possession and control of the property at the time of her fall, defendant cannot be found liable for her injuries. Thus, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray