STATE OF MICHIGAN

COURT OF APPEALS

FRANK R. HIX, JR.,

Plaintiff/Counter-Defendant-Appellant,

v

FRANK R. HIX, SR.,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
March 6, 2007

No. 265104
Shiawassee Circuit Court
LC No. 03-009713-CZ

Before: Whitbeck, C.J., and Bandstra and Schuette, JJ.

PER CURIAM.

Plaintiff Frank Hix, Jr. appeals as of right the trial court's judgment of no cause of action in this property and breach of contract action. We reverse the trial court's judgment and remand for further proceedings consistent with this opinion.

I. Basic Facts And Procedural History

Defendant Frank Hix, Sr., is plaintiff's father. On February 10, 1995, defendant and his wife, Doris Hix,[1] purchased 50 acres of rural land in Gaines, Michigan, on a land contract for $43,200 less $13,200 paid at closing. On the same day, defendant and his wife also purchased by warranty deed two of the 50 acres for $1,800. However, defendant was unable to finance a mobile home without a co-signor. Accordingly, in August 1995, plaintiff helped defendant purchase a mobile home for $59,193 from Warner Mobile Home Sales (Warner). Warner retained a security interest in the home that it then assigned to Green Tree Acceptance, Inc.

Defendant also required additional funds for construction associated with the home, including digging a basement, installing utilities, and constructing an attached two-car garage and driveway. Therefore, plaintiff, defendant, and Doris Hix jointly secured a mortgage totaling $100,809.40, secured by the mobile home and the two-acre parcel. Billing statements on the mortgage were sent in plaintiff's name.

[1] Doris Hix passed away before plaintiff commenced this action.

Plaintiff lived in the mobile home from 1995 until June 1998 when defendant allegedly asked plaintiff to move out because of financial and personal disputes between them. Plaintiff claimed that he contributed $800 to $1,000 in cash each week to support the household. Defendant, on the other hand, denied that plaintiff contributed to the household finances and contended that plaintiff owed him approximately $20,700 for a business loan.

Plaintiff filed suit in July 2003, seeking to resolve his interest in the mobile home; plaintiff asserted that he held a half interest in the mobile home as a joint owner with full rights of survivorship. Plaintiff noted that defendant and his wife paid off the land contract in June 2000 and then sold the remaining acreage for $85,000. However, plaintiff alleged, defendant did not pay off the mortgage, which included the debt originally owing on the land contract. Thus, plaintiff asserted that "[u]nless the mortgage . . . [is] refinanced or sold and Plaintiff is compensated for his contribution . . . , Plaintiff will be bound by the indebtedness without receiving any benefit of their use." Plaintiff therefore requested either that the mortgage be refinanced to remove his name or that the mobile home be sold and the proceeds equitably divided. In his answer, defendant denied that he and plaintiff jointly purchased the mobile home, asserting that plaintiff's signature was for the "sole purpose of acting as guarantor[.]"

Defendant filed a counter-complaint for breach of contract seeking repayment of the alleged business loan. Defendant also reasserted that, although plaintiff assisted defendant in financing the mobile home, the parties never intended that plaintiff would have any interest in the home. Accordingly, defendant sought a declaratory judgment that, absent a default in the mortgage payments, plaintiff had no interest in the mobile home. Plaintiff responded by denying the $20,700 debt.

Following a bench trial, the trial court determined that plaintiff did, at one time, have a half interest in the mobile home. However, the trial court found that plaintiff's interest was extinguished when the mobile home was incorporated into the underlying real property in which plaintiff had no interest. The trial court then concluded that any loss suffered by plaintiff was set-off by the $20,700 debt he owed defendant. Thus, the trial court determined that this case was "a wash." Accordingly, the trial court entered a judgment of no cause of action on both parties' claims. Plaintiff now appeals.

II. "Mobile Home": Personal Property Or Real Property?

A. Standard Of Review

Plaintiff contends that the trial court improperly determined that the mobile home in this case ceased to be a "mobile home" merely because it was set upon a foundation. The determination of whether the mobile home in this case merged with the real property on which it was placed involves legal questions of statutory interpretation, which we review de novo.[2]

[2] *Williams v City of Troy*, 269 Mich App 670, 675; 713 NW2d 805 (2005).

Following a bench trial, we review the trial court's findings of fact for clear error and its conclusions of law de novo.[3]

B. Affixture To Real Property

In 1987, the Legislature enacted the Mobile Home Commission Act (MHCA)[4] to provide, in pertinent part, for the titling of mobile homes.[5] The MHCA defines a "mobile home" as:

> a structure, transportable in 1 or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.[6]

There can be no dispute that the home at issue here is a "mobile home," as defined by the MHCA. Indeed, although contesting its current status, defendant concedes that because it was constructed on a chassis, the home at issue falls within the definition of a "mobile home."

Effective December 31, 1978, every mobile home located in Michigan and owned by an individual, rather than a dealer or manufacturer, is subject to the certificate of title provisions of the MHCA.[7] Accordingly, "[a] mobile home shall not be sold or transferred except by transfer of the certificate of title for the mobile home[.]"[8] To transfer or assign an ownership interest in a mobile home, the owner must indorse an assignment of the mobile home and, on payment of a fee, a new certificate of title will be issued.[9] The record in this case contains a copy of the requisite certificate of title, which indicates that plaintiff and defendant jointly purchased the mobile home and that they enjoy full rights of survivorship. There is no allegation in this case that either defendant or plaintiff ever transferred or assigned his interest in the mobile home.

Despite the absence of a formal transfer of title, defendant relies on *Ottaco, Inc v Gauze*,[10] to argue that once the mobile home in this case became permanently affixed to his real estate, its title was extinguished and merged with that of the underlying realty, thereby extinguishing plaintiff's ownership interest in the home. In *Ottaco, Inc*, the Gauzes purchased a mobile home and placed it on their property.[11] Green Tree Acceptance held a security interest in

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[3] MCR 2.613(C); *GlenLake-Crystal River Watershed Riparians v GlenLake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004).

[4] MCL 125.2301 *et seq.*

[5] 1987 PA 96, title, Eff. July 6, 1987.

[6] MCL 125.2302(g).

[7] MCL 125.2330(1).

[8] MCL 125.2330(3); see also MCL 125.2330a and .2330b.

[9] MCL 125.2330c(1) and (3).

[10] *Ottaco, Inc v Gauze*, 226 Mich App 646; 574 NW2d 393 (1997).

[11] *Id.* at 648.

the home. After the Gauzes failed to pay their property taxes, Equivest Financial purchased the property by tax deed. After the statutory redemption period expired, Equivest sold the land to Ottaco by quitclaim deed. Thereafter, Ottaco filed a quiet title action against the Gauzes and Green Tree.[12] On appeal, Green Tree argued that the trial court erred in granting Ottaco summary disposition on the ground that, because the mobile home was a fixture permanently attached to the land, Green Tree lost its security interest in the home after the redemption period expired on the tax sale.[13] In addressing Green Tree's claims, the *Ottaco* panel first considered whether the mobile home was a permanent fixture on the land.[14]

With respect to the law of fixture, the *Ottaco* panel explained as follows:

> Property is considered to be a fixture if (1) it is annexed to the realty, (2) its adaptation or application to the realty being used is appropriate, and (3) there is an intention to make the property a permanent accession to the realty. The focus is on the intention of the annexor as manifested by the objective, visible facts, rather than the annexor's subjective intent. "Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation."[15]

Applying these legal principles, the *Ottaco* panel concluded that the mobile home was a fixture to the real property. The home had been constructed on a concrete slab foundation, had an attached porch, and was connected to utility lines.[16] According to the panel, "In every respect, the mobile home was integrated with and adapted to" the residential use of the real property.[17] The *Ottaco* panel reached this conclusion despite the fact that the home could eventually be moved; the important fact was the Gauzes' intent to "make the mobile home a permanent accession to the realty."[18] Therefore, the panel found that title to both the land and the mobile home passed with the tax deed.[19]

The *Ottaco* panel also concluded that Green Tree's security interest in the mobile home was extinguished by the tax deed.[20] The panel reasoned that, because the mobile home was a

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[12] *Id.* at 648-649.

[13] *Id.* at 649.

[14] *Id.* at 651.

[15] *Id.* (internal citations omitted).

[16] *Id.*

[17] *Id.* at 651-652.

[18] *Id.* at 652; see *Mortgage Electronic Registration System v Pickrell*, 271 Mich App 119, 123 n 5; 721 NW2d 276 (2006) (confirming the *Ottaco* holding that a mobile home can become a fixture of the real property).

[19] *Ottaco, Inc*, *supra* at 652.

[20] *Id.* at 652-654.

permanent part of the real estate, as the holder of an undischarged lien on the property—i.e., its security interest in the mobile home—Green Tree was entitled to notice of the tax sale and the redemption period.[21] Green Tree did not dispute that it was given notice; thus, the *Ottaco* panel concluded that, having failed to redeem the property within the statutory period, Green Tree lost its interest in the mobile home.[22]

Since this Court's decision in *Ottaco*, the Legislature has amended the MHCA and codified that a mobile home is considered "affixed" to real property when (1) "[t]he wheels, towing hitches, and running gear are removed," and (2) "[i]t is attached to a foundation or other support system."[23]

The mobile home in this case is clearly affixed to the property. The components for the house were brought to the building site on a trailer chassis. Once those components arrived at the site, they were constructed into a house built on a foundation and basement. Defendant dug a well and installed a septic system, which were both attached to the house. Defendant also constructed a two-car attached garage and an attached sunroom. Central air conditioning and a hot tub are also included in the home's list of amenities. Thus, it is clear from the facts that defendant intended to make the mobile home a permanent accession to the realty. Accordingly, we conclude that the mobile home is a fixture of defendant's real property.

Plaintiff argues that regardless of its physical attachment to the land, the mobile home was not statutorily "affixed" to the land because defendant did not obtain an affidavit of affixture as required by MCL 125.2330i. Under MCL 125.2330i(5), when the department of commerce receives an affidavit of affixture, as defined under subsection (1), the mobile home is considered to be part of the real property. However, contrary to plaintiff's contentions, the affidavit of affixture is not statutorily mandated, and failure to file such an affidavit does not obviate a finding that the mobile home is indeed a fixture to the real property. By its own terms, § 30i states that "[i]f a mobile home is affixed to real property in which the owner of the mobile home has the ownership interest, the owner *may* deliver" an affidavit of affixture to the department.[24] This language evidences the permissive rather than mandatory nature of the filing of the affidavit.[25] Further, in *Mortgage Electronic Registration System v Pickrell*, this Court expressly explained that § 30i "created an *optional* procedure by which the owner of a mobile home affixed to real property could cancel the certificate of title and have the mobile home treated as part of the real property."[26] Indeed, in *Mortgage Electronic* this Court ultimately concluded that the mobile home in that case was a fixture subject to a mortgage that encumbered the real

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[21] *Id.* at 654, citing MCL 211.141.

[22] *Id.* at 654.

[23] MCL 125.2330i(11)(a).

[24] MCL 125.2330i(1).

[25] See *Moore v Buchko*, 379 Mich 624, 641; 154 NW2d 437 (1967) (stating that "may" is permissive).

[26] *Mortgage Electronic*, *supra* at 124 (emphasis added).

property together with all the improvements and fixtures, despite that no affidavit of affixture had been filed.[27]

Plaintiff also relies on a 1955 attorney general opinion to support his assertion that he may retain his interest in the mobile home even though he does not have an interest in the underlying land.[28] However, attorney general opinions are not binding on the courts of this state.[29] Further, the opinion is not directly on point with the issue in this case. In the opinion, the attorney general opined on whether a "trailer coach" owned by one individual could be included in the property taxes of another individual who owned the underlying real estate. The attorney general determined that the owner of real property could be taxed for the presence of trailer coaches used as "habitations" regardless of whether the trailer was affixed to the soil or whether the trailer was owned by another individual.[30] Thus, while the attorney general opinion corroborates that the ownership of a mobile home (akin to a trailer coach) can be different than the ownership of the real estate, it is not dispositive on the issue whether an affixed mobile home becomes part of the real estate.

Additionally, we note that our decision here today does not adversely affect the rights of mobile home owners who place their home in mobile home parks.[31] We take judicial notice that, under those circumstances, the homeowner and the park owner customarily enter a written lease agreement by which mobile home owners lease the site on which the home sits while expressly retaining their ownership interest in the home.[32]

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[27] *Id.* at 127-128.

[28] OAG, 1955, No. 1,931, p 93 (March 4, 1955).

[29] *Frey v Dep't of Mgt & Budget*, 429 Mich 315, 338; 414 NW2d 873 (1987).

[30] We note that the Legislature has since adopted the attorney general's opinion on this tax issue by enacting MCL 211.2a(1), which states: "[A] mobile home which is not covered by . . . section 125.1041 of the Michigan Compiled Laws, and while located on land otherwise assessable as real property under this act, and whether or not permanently affixed to the soil, shall be considered real property and shall be assessed as part of the real property upon which the mobile home is located."

[31] MCL 125.2302(i) defines "mobile home park" as: "a parcel or tract of land under the control of a person upon which 3 or more mobile homes are located on a continual, nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home."

[32] Indeed, MCL 125.2328(1)(f) prohibits an owner or operator of a mobile home park from "[r]enting or leasing a mobile home or site in a mobile home park . . . without offering a written lease."

III. Plaintiff's Ownership Interest

A. Standard Of Review

Plaintiff argues that the trial court lacked authority to extinguish his ownership interest in the mobile home. We review de novo a trial court's equitable decisions.[33]

B. Improvement To Another's Land

Under general common law, fixtures placed on real estate belonging to another become part of the land and are subject to forfeiture to the owner of the land.[34] However, Michigan law provides "avenues for a person who improves the property of another to seek recompense for the loss of improvements that simply pass to the owner of the land."[35] In *Hardy v Burroughs*, the Michigan Supreme Court established that a person who improves another's property through innocent mistake might recover the amount by which the improvement enhanced the value of the property.[36] The Court explained:

> If, upon the hearing, plaintiffs make a case for equitable relief, it will be proper to offer to defendants by decree the privilege of taking the improvements at the fair value found by the court, or to release to plaintiffs upon their paying the fair value of the lot found by the court, and this within a reasonable time limited by decree. If defendants decline or neglect to comply therewith, conveyance to plaintiffs upon payment made may be decreed.[37]

In *Whitehead v Barker*, the Court further explained:

> "By good faith is meant an honest belief on the part of the occupant that he has secured a good title to the property in question and is the rightful owner thereof. And for this belief there must be some reasonable grounds such as would lead a man of ordinary prudence to entertain it. 16 Am & Eng Encyc Law (2d Ed), pp 85, 86."[38]

Here, the record reveals that plaintiff improved defendant's land by helping defendant affix the mobile home to the land with the good faith belief that he would retain his ownership

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[33] *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

[34] 1 Cameron, Michigan Real Property Law, § 4.18, p 147 (3d ed), citing *Robinson v Batzer*, 195 Mich 235; 161 NW 879 (1917); *Lemerand v Flint & Pere Marquette RR Co*, 117 Mich 309; 75 NW 763 (1898); *Morrison v Berry*, 42 Mich 389; 4 NW 731 (1880).

[35] *Cameron*, § 4.18.

[36] *Hardy v Burroughs*, 251 Mich 578, 580-581; 232 NW 200 (1930).

[37] *Id.* at 581, citing *McKelway v Armour*, 10 Stockton's Chan Rep (NJ) 115, 64 Am Dec 445.

[38] *Whitehead v Barker*, 288 Mich 19, 24-25; 284 NW 629 (1939), quoting *Bryan v Councilman*, 106 Md 380, 387-388; 67 A 279, 282 (1907) (emphasis original).

interest in the mobile home. Thus, we conclude that equity requires that plaintiff be recompensed accordingly.

C. Joint Ownership With Full Rights Of Survivorship

It is well established that a conveyance including "express words of survivorship" creates a "joint life estate with dual contingent remainders (i.e., a contingent remainder in fee to the survivor)."[39] Thus, where property is granted to "joint tenants with right of survivorship," "no act of a co-tenant can defeat the other co-tenant's right of survivorship."[40] This rule of property law has also been enacted into statute:

> No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger, or otherwise.[41]

Accordingly, plaintiff argues that, even assuming defendant could "defeat" plaintiff's immediate possessory interest in the mobile home, plaintiff's interest in the mobile home upon defendant's death must remain intact.[42] We disagree. Here, plaintiff forfeited any interest in the mobile home when, albeit on a mistaken good faith belief of continued ownership, he voluntarily allowed the mobile home to be affixed to land owned by another.

D. Allocating Damages

Here, the trial court extinguished plaintiff's interest in the mobile home, and, in doing so, the trial court also cancelled plaintiff's debt to defendant. The evidence supports the trial court's factual determination that plaintiff owed defendant over $20,000. Defendant testified that he agreed to loan plaintiff an unspecified amount of money to maintain the semi and trailer rigging used in plaintiff's trucking business. Defendant further testified that, over time, he paid $20,700 on plaintiff's behalf and that plaintiff repaid only $640. Defendant presented a promissory note written in his own handwriting, and allegedly signed by plaintiff, documenting this loan. Plaintiff's sister testified that the signature on the document matched plaintiff's handwriting. Plaintiff's brother-in-law testified that he witnessed plaintiff give defendant $20 on August 29, 2001, as a payment against his debt. He also testified that he heard plaintiff tell defendant that he could not repay him in full at that time. Plaintiff's other sister, who handles defendant's business affairs and paperwork, corroborated defendant's testimony that he loaned plaintiff money to

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[39] *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 136; 657 NW2d 741 (2002).

[40] *Id.* at 136.

[41] MCL 554.32.

[42] See *Wengel v Wengel*, 270 Mich App 86; 714 NW2d 371 (2006) (finding that one joint owner can divest another of his or her immediate possessory interest through adverse possession, but, when the parties have survivorship rights, the statutory period for adverse possession of the remainder interest does not begin until the possessing party's death).

maintain the trucking business. She testified that plaintiff never shared in the expenses of the household, only repaid defendant $40 toward the loan, and told defendant that he lacked the funds to repay him in full.

Plaintiff, on the other hand, repeatedly claimed that he contributed to the household expenses and stated that he gave defendant $20,700 to pay bills on his behalf. Plaintiff also denied signing the promissory note. It is the sole province of the trier of fact to make determinations regarding witness credibility.[43] The trial court accepted defendant's version of events in this regard, and we may not interfere with that finding.

The trial court also properly found that plaintiff was a joint owner in the mobile home and not merely a co-signor on defendant's indebtedness. Accordingly, the trial court found that plaintiff owned a half interest in the mobile home. But rather than ordering plaintiff to repay defendant for the loan and ordering defendant to compensate plaintiff for a half interest in the mobile home, the trial court ruled that the debts cancelled each other out and entered a judgment of no cause of action for both parties. "In an equitable action, a trial court looks at the entire matter and grants or denies relief as dictated by good conscience."[44] While such a diplomatic solution seems equitable in this case given the family relationships underlying this suit, equitable remedies are inappropriate when an adequate legal remedy exists.[45] Accepting the trial court's findings of fact, plaintiff owes defendant $20,060. In order to divest plaintiff of his interest in the mobile home, defendant would owe plaintiff one half of $59,193, or $29,596.50. The appropriate legal remedy is to order each party to pay the other the amount owing. Setting off the judgment for defendant against the judgment for plaintiff, the trial court should have ordered defendant to pay plaintiff $9,536.50. Accordingly, we reverse the trial court's judgment of no cause of action and remand to the trial court to enter a judgment reflecting the appropriate legal remedy in this case.

IV. Conversion

Plaintiff contends that the trial court improperly failed to consider his claim for conversion. We disagree. To establish the tort of conversion, a plaintiff must show a "distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein."[46] As concluded above, plaintiff forfeited his ownership interest in the mobile home when he allowed the mobile home to be affixed to land owned by another; therefore, defendant cannot be said to have wrongfully exerted dominion over the home after it was already affixed to his land.

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[43] *Kelly v Builders Square*, 465 Mich 29, 40; 632 NW2d 912 (2001).

[44] *In re Estate of Moukalled*, 269 Mich App 708, 719; 714 NW2d 400 (2006).

[45] *Everett v Nickola*, 234 Mich App 632, 637; 599 NW2d 732 (1999).

[46] *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

V. Conclusion

It is clear from the facts that defendant intended to make the mobile home a permanent accession to the realty; thus, we conclude that the mobile home is a fixture of defendant's real property. But because plaintiff improved defendant's land by helping defendant affix the mobile home to the land with the good faith belief that he would retain his ownership interest in the mobile home, we further conclude that equity requires that plaintiff be recompensed accordingly. Although the trial court properly concluded that the amount owed to plaintiff could be set off by plaintiff's debt to defendant, because there was approximately $9,500 difference between the debts owed, we conclude that the trial court erred by finding that the case was a "wash." On remand the trial court should enter a judgment in favor of plaintiff. We also direct the trial court to enter an order that plaintiff be relieved of his mortgage obligation on the mobile home and directing defendant to procure a new certificate of title on the mobile home in his name only.[47]

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra

[47] MCL 125.2330c.