STATE OF MICHIGAN

COURT OF APPEALS

JOAN B. JACKSON,

Plaintiff-Appellant/Cross-Appellee,

v

ESTATE OF RONALD B. GREEN,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
April 1, 2008

No. 269244
Charlevoix Circuit Court
LC No. 04-057520-CH

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

PER CURIAM.

Plaintiff appeals as of right from the March 2, 2006 judgment entered by the Charlevoix Circuit Court. The ultimate issue surrounding plaintiff's appeal is whether defendant's death has resulted in plaintiff becoming the sole owner of two parcels of property purchased in 1991, which were held by plaintiff and defendant as joint tenants. Defendant's estate cross-appeals from the trial court's order denying his motion for summary disposition as it related to plaintiff's claim that numerous cash payments from her to defendant were loans and thus subject to repayment. This latter issue proceeded to trial, where a jury found in favor of plaintiff. We hold that because of defendant's death, plaintiff is, as a matter of law, the only titleholder to the parcel covered by the September, 1991 deed. As explained below, we also hold that because the rights in the May, 1991 deed, were never partitioned, they reverted to plaintiff as well. Additionally, we hold that the trial court properly denied defendant's motion for summary disposition. We therefore affirm in part, vacate in part, and remand.

I. Facts and Proceedings

Plaintiff's business relationship with defendant began in 1989 when she hired his company, G & G Contracting, Inc., to remodel her house. After the completion of the remodeling project, the parties remained friends, and for the next several years defendant helped plaintiff with various chores and tasks on her cattle farm. Plaintiff testified that upon completion of a task, she would ask defendant what she owed him, and rather than cash, defendant requested various goods around the farm, including such things as a chain saw, wood for his wood-burning stove, and diesel fuel and motor oil for his farm equipment. Between 1991 and 1996, plaintiff also wrote defendant a number of checks for various amounts totaling over $50,000. Plaintiff

asserted that the checks were loans, whereas defendant argued they were either payment for his work on plaintiff's property, gifts between friends, or his share of the proceeds from the sale of plaintiff's cattle.[1]

Defendant claimed that he did not help plaintiff on the casual basis she attested to, but rather that he "worked hard to maintain her farm and residence" "throughout the 1990's." Defendant further testified that rather than set up a formal system of payment for all his work, plaintiff promised defendant that she would share half the proceeds from the sale of cattle each year, and also insisted that he be listed as a joint tenant, with rights of survivorship, on two warranty deeds. Furthermore, according to defendant, the checks that plaintiff wrote to him over the years were never considered loans, but rather were treated as part of a "mutually-beneficial friendship."

Plaintiff claimed that in 1991, while defendant's company was still remodeling her house, she told him that she was interested in purchasing 70 acres of real estate next to her property. Defendant then secured a purchase agreement for the property in his name, and made a $500 down payment. When plaintiff learned of defendant's actions, she agreed to purchase the property at the price the sellers were requesting. Plaintiff testified that she believed two names had to be on the deed because of a previous experience with the probate court following her husband's death. Plaintiff testified that she wanted her sisters to sign the deed instead of defendant, but they were unable to be present for the signing.

Although plaintiff admitted that she and defendant did not have an agreement that he would remove his name from the deeds when she asked him to do so, plaintiff believed this was their understanding. Defendant kept a barn that he removed from the 70-acre parcel, and plaintiff stated that she considered it to be in exchange for his $500 down payment. Because defendant no longer had any money invested in the property, plaintiff testified that she thought he would take his name off the deed. On May 31, 1991, both parties signed the deed, but plaintiff alone paid the remaining $64,000 balance due after defendant's $500 deposit. The deed provided that the parties were "joint tenants."

In August 1991, plaintiff decided to buy a 47-acre parcel of real estate located near her property. Plaintiff testified that she was still under the impression that two signatures were needed on the deed, and since her sisters again could not be present for the closing, plaintiff asked defendant to sign the deed, which he did. The September 25, 1991 deed provided that plaintiff and defendant held the property as "joint tenants with full rights of survivorship." Plaintiff further testified that with respect to this deed, as per her belief regarding the deed for the 70-acre parcel, she believed that defendant would remove his name from it when she asked him to do so.

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[1] Defendant claimed that plaintiff promised to share half of the proceeds of the sale of her cattle each year with him, but rather than just give him the money outright, told defendant to "just tell her whenever he needed the money."

According to defendant, plaintiff asked him to come to her residence one day during the summer of 2004, where he was asked by her attorney to sign documents that would indicate his agreement to remove his name from the deeds to the 70-acre and 47-acre properties. Defendant declined to sign the documents.

Plaintiff filed her amended complaint against defendant on March 2, 2005, alleging breach of contract for defendant's failure to repay the alleged loans, breach of fiduciary duty, undue influence, promissory estoppel, and requesting specific performance and reformation of the deeds. Defendant filed a motion for summary disposition, and the trial court dismissed the counts relating to the deeds, finding that plaintiff's belief regarding the number of signatures required on the deeds was not legally significant: "So assuming [plaintiff believed that the deed] required two names on it, for whatever purpose, I don't think that you can just simply set a deed aside that conveys an interest in real estate with full rights of survivorship at some later date, otherwise, deeds . . . wouldn't mean anything and there wouldn't be any certainty to conveyances of real estate." The court further stated,

> [Plaintiff] claims that because she was under the false assumption that [defendant] would simply deed his interest back to her when she asked [him] to do so, [and now that she has asked him to do so,] that can happen, it's just not the way the law works . . . . Certainly, a recorded deed . . . ought to have more finality and more certainty than to be able to be set aside at the whim of one of the grantors . . . so I don't see any legal basis to set aside this deed[.]

However, the court did find that on the issue of the distribution of money from plaintiff to defendant, there was a factual question as to whether the payments were gifts, compensation for services, or loans, and allowed the question to proceed to trial. Following a trial on this issue, a jury found in favor of plaintiff.

II. Analysis

A. Joint Tenants

During the pendency of this appeal, defense counsel filed with this Court a notice that defendant passed away, and moved to substitute his estate as a party. We granted the motion, but now hold that the fact of defendant's death requires a conclusion that plaintiff holds one parcel outright, and likely both parcels.

As noted in section I of this opinion, the May deed listed plaintiff and defendant as "joint tenants," while the September deed listed them as "joint tenants with full rights of survivorship." As we recently held in *Wengel v Wengel*, 270 Mich App 86, 94; 714 NW2d 371 (2006), "[t]he chief characteristic of such a joint tenancy is the right of survivorship, which means that upon the death of one of the joint tenants, the surviving tenant(s) takes or assumes ownership of the whole

estate."[2] This is an absolute rule when the deed contains express language, similar to that contained in the September deed, it states the tenants hold "with full rights of survivorship." See *Albro v Allen*, 434 Mich 271, 275-276; 454 NW2d 85 (1990). Thus, as a matter of law, upon the death of defendant, the tenancy held by defendant through the September deed automatically reverted to plaintiff as the sole remaining joint tenant. *Id.*

The May deed created a joint tenancy, but did not contain any specific language regarding survivorship. A "standard" form of joint tenancy like this one "may be severed by an act of the parties, by conveyance by either party, or by levy and sale on an execution against one of the parties." *Albro, supra* at 275. Here, however, there is no evidence that defendant conveyed or otherwise severed the joint tenancy before his death. Although an action to partition was filed and subsequently stayed, a court order is required to effectuate the partitioning, see MCL 600.3301 and *Albro, supra* at 284, and no order for partition was ever entered in that case. Consequently, because there was no such severance, any rights held by defendant under the May deed automatically transferred to plaintiff upon defendant's death. *Id.* See, also, *Wingel, supra* at 94-95.

B. The Payments

Defendant next argues that the trial court should have granted his motion for summary disposition because plaintiff failed to raise a genuine issue of material fact, and that defendant was thus entitled to summary disposition under MCR 2.116(C)(10). Defendant's argument was that the payments were not loans because he never promised to repay the money, plaintiff never claimed that she and defendant discussed repayment terms, and therefore plaintiff had no reason to expect that he would repay her.

This Court reviews motions for summary disposition under MCR 2.116(C)(7) and (C)(10) de novo. *Grimes v Dep't of Transportation*, 475 Mich 72, 76; 715 NW2d 275 (2006); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In the absence of disputed facts, this Court also reviews de novo whether a cause of action is barred by the applicable statute of limitations. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006).

Plaintiff asserted throughout her deposition that when defendant asked her for money he always used the word "borrow." Plaintiff argues that "borrow" is a legal term of art which was been defined by this Court in *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000). In *Washburn*, in the context of distinguishing a guarantor from a borrower, this Court wrote that "[a] borrower is a person or entity to whom money or something else is lent. To borrow means to receive money with the understanding or agreement that it must be repaid, usually with interest." *Id.* at 677 (citations and quotation marks omitted). Defendant does not

[2] A joint tenancy is also not inheritable. *In re Stroh Estate*, 151 Mich App 513, 519 n 2; 392 NW2d 192 (1986).

claim that he did not use the word "borrow" in requesting monies from plaintiff, nor does he cite authority for his assertion that where there is no explicit discussion of repayment terms, a loan is not formed. In the absence of such authority or contrary evidence presented to the trial court, it was not error for the trial court to deny defendant's motion for summary disposition on the basis that there were genuine issues of material fact as to whether the checks from plaintiff to defendant were loan payments.

Defendant also claims that the court erred in not holding that the applicable statute of limitations barred the case from proceeding with respect to the loan claims. Neither party contests that the applicable periods of limitations is six years as found in MCL 600.5807 and .5813. Plaintiff, however, argues that the limitations period did not begin to accrue until either defendant as the borrower was able to pay, or plaintiff as the lender demanded repayment. According to plaintiff, she did not ask defendant for repayment until 2004, the same year she filed suit. Further, plaintiff argues, defendant asked to borrow money from plaintiff as recently as 1999, so that even if the statute began to run following disbursement of the money as defendant contends, plaintiff's filing was still within the statutory period.

Our Supreme Court has held that a loan made with no fixed time of payment is payable on demand. *Colburn v First Baptist Church & Society of Monroe*, 60 Mich 198, 200; 26 NW 878 (1886). Interest does not run on a note payable on demand until payment is demanded. *Webber v Webber*, 146 Mich 31, 35; 109 NW 50 (1906), citing *In re Estate of King*, 94 Mich 411, 424-425; 54 NW 178 (1892). When no demand to pay a loan is made before the filing of a complaint, the filing of the complaint is considered the demand. *Brion v Kennedy*, 47 Mich 499, 499-500; 11 NW 288 (1882). Thus, if in fact the payments from plaintiff to defendant were a loan, there is precedent in Michigan law for repayment even when no terms have been discussed. Further, it is apparent that the statute of limitations would not begin to run on such a claim until a demand for repayment was made (either expressly or by filing a complaint), because prior to that point there would be no breach by the borrower. Without evidence offered by defendant to refute plaintiff's testimony regarding the circumstances of the disbursement, it was not error for the court to determine that the nature of the disbursements, and consequently whether plaintiff's claims regarding the alleged loans were barred by the applicable statute of limitations, was a question of fact that was properly decided by a jury.

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Christopher M. Murray