

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WALTER L. STEVENSON,

Plaintiff-Appellee,

v

ESTATE OF THEODORE JORDAN,

Defendant,

and

GWENDOLYN JORDAN,

Defendant-Appellant.

---

UNPUBLISHED

October 7, 2008

No. 278179

Wayne Circuit Court

LC No. 05-508010-CK

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant, Gwendolyn Jordan, appeals as of right the trial court's judgment and order for plaintiff. We affirm.

After experiencing financial difficulties and the possibility of foreclosure of his Detroit residence, plaintiff entered into an agreement with Theodore Jordan ("Theodore"), his then father-in-law, to convey plaintiff's real property to Theodore with reconveyance of the property back to plaintiff after his financial situation stabilized, estimated to be one year or later. In the interim, plaintiff was to make all payments necessary to maintain the property, including the mortgage, taxes, insurance, and utilities. After the agreement was executed, Theodore's health began to deteriorate, and he died one year after the agreement was executed. Initially, plaintiff and his wife decided not to broach the issue of the completion of the agreement with defendant, Theodore's wife and plaintiff's mother-in-law. Shortly after the death, plaintiff and his wife separated. Thereafter, plaintiff testified that defendant advised him that she was the owner of the home, sought to evict him in district court on two occasions, and requested an appraisal of the home. Consequently, plaintiff filed an action in circuit court against defendant and Theodore's estate raising claims for breach of contract, specific performance, bad faith, unjust enrichment, and fraud. After the complaint was filed, plaintiff and defendant entered into an agreement to allow plaintiff to purchase the property for \$144,000. Although the original agreement with Theodore would have allowed plaintiff credit for the mortgage payments made to the mortgage

company during the duration of the agreement, defendant refused to allow plaintiff credit for the mortgage payments.

Plaintiff testified that he arrived at the closing ready, willing, and able to complete the purchase agreement. However, defendant testified that she was not given sufficient notice of the closing and was not permitted to review the closing documents. Therefore, she refused to sign the closing documents, and the agreement was never executed. The closing agent for the title company contradicted defendant's testimony. Plaintiff was permitted to amend his complaint to raise a second claim for breach of contract arising from defendant's failure to complete the purchase agreement for the home.

Following a bench trial, the court ruled that there was a breach of contract for failing to complete the purchase agreement between plaintiff and defendant. The court further held that plaintiff was entitled to specific performance because he was the equitable owner of the home. The remedy of specific performance required the parties to discuss the issue of the amount of a mortgage that plaintiff would seek. The trial court ruled that plaintiff was entitled to a reduction for the mortgage payments made during his occupancy of the premises. After the trial court ruled, defense counsel argued for the first time and without supporting authority that plaintiff was a tenant or renter and was not entitled to any reduction in the mortgage amount. The trial court noted that defendant was raising new issues after its decision had been rendered. Defendant continued to assert that plaintiff was receiving a windfall of approximately \$10,000 because he lived in the property rent-free. The trial court concluded that plaintiff was entitled to the property and refused to hold that plaintiff was required to pay rent when he paid all expenses related to the home during his occupancy. Thus, plaintiff was not required to pay both the mortgage and all related expenses and simultaneously pay rent to defendant. The trial court also concluded that plaintiff was entitled to any tax deductions during the relevant time period. Finally, the trial court refused to allow plaintiff to recover any requested attorney fees. Defendant appeals as of right.

Defendant first argues on appeal that the trial court erred in ruling in favor of plaintiff because the agreement with Theodore was rendered void for impossibility upon his death. As an initial matter, we note that this issue was not raised, addressed, or decided in the trial court.<sup>1</sup> Therefore, this issue was not preserved for appeal and is reviewed for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Defendant's argument is unavailing because, regardless of whether the original agreement had any validity beyond the time of Theodore's death, the court's remedy to plaintiff was also predicated upon other facts. The court found that defendant had breached her own agreement with plaintiff, and held that she must specifically perform the agreement and sell the property to plaintiff. Nothing in the court's remedy relies on whether the original agreement was void at Theodore's death. A reviewing court "does not reach moot questions or declare principles or rules of law that have no practical effect" on the case before it. *Federated*

---

<sup>1</sup> Defendant never moved for summary disposition by challenging the validity of any agreement in light of Theodore's death.

*Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002). Moreover, we note that plaintiff also sued Theodore's estate and raised an equitable claim of specific performance. The trial court held that, under the circumstances of the case, plaintiff was the equitable owner of the home. Equity jurisdiction is invoked when there is an inadequate and incomplete remedy at law. *Basinger v Provident Life & Accident Ins Co*, 67 Mich App 1, 8 n 21; 239 NW2d 785 (1976). The trial court's judgment was entered against both defendant and the estate. On appeal, the brief filed by defendant does not distinguish between the two defendants and the court's ruling. Therefore, this claim of error is without merit.<sup>2</sup>

Defendant next argues that plaintiff or his attorney is attempting to perpetrate a fraud upon this Court by submitting a false copy of the property agreement between Theodore and plaintiff. This issue is not presented in defendant's statement of questions presented. "An issue not contained in the statement of questions presented is waived on appeal." *English v Blue Cross Blue Shield*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Further, defendant is attempting to impermissibly expand the record on appeal by presenting a purported fraudulent document that was never introduced in the lower court. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). Therefore, we decline to address this issue.<sup>3</sup>

Defendant next argues that the trial court erred in concluding that she breached the property agreement because she refused to sign the closing documents on the date of closing. We disagree. Findings of fact underlying the trial court's decisions are reviewed for clear error, but questions of law are reviewed de novo. See *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005); MCR 2.517(A)(7).

---

<sup>2</sup> After the trial court ruled that plaintiff was the equitable owner of the home and was entitled to specific performance, the issue of damages was raised because plaintiff argued that specific performance of the agreement between plaintiff and defendant would result in a "windfall" to defendant. To the contrary, defendant contended that plaintiff would receive a windfall if the amount of the mortgage fell below \$144,000 because he was a "renter" of the premises. At the trial level and on appeal, defendant failed to brief the issue of plaintiff's status during the period of the various agreements. Rather, defendant's sole defense at trial was that there could be no breach of contract by defendant because of various counteroffers that were raised and never accepted. Defendant failed to contest the equitable claims raised against the estate defendant at trial, and we note that a valid contract is binding upon a party's personal representative. *Ballard v Southwest Detroit Hosp*, 119 Mich App 814, 817; 327 NW2d 370 (1982). Moreover, it was undisputed that plaintiff made all necessary payments on the property since the time of the original agreement with Theodore. If the amount of the mortgage remained at \$144,000, plaintiff would essentially be required to make double payments on the property.

<sup>3</sup> At trial, defense counsel was allowed to voir dire plaintiff regarding any documents prior to admission. When plaintiff's counsel moved to admit the *dated* property agreement between plaintiff and Theodore, counsel for defendant did not object. On appeal, defendant submits a similar, but undated, property agreement and blanketly asserts that this document demonstrates a fraud. However, plaintiff testified that the dated document was the agreement reached by the parties. The fact that a prior document may have been replaced by a later document does not demonstrate a fraud upon the court.

The accounts of the closing encounter differed between defendant, plaintiff, and the closing agent. This Court must defer to the trial court's opportunity and ability to judge the credibility of the witnesses at trial. *Sparling Plastic Industries v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998). The court found, and the plaintiff and the closing agent's testimony supported, that plaintiff was ready and available to consummate the sale at the time of closing and that the only reason the sale was not completed was that defendant refused to sign. The court then highlighted the fact that defendant did not attempt to reschedule the closing, even though it was her actions which prevented the successful closing in the first place.

Defendant does not dispute these facts; instead she argues that she was justified in refusing to sign the documents because she needed time to review them. The trial court, however, did not find defendant to be in breach simply because she refused to sign. Rather, the court held that *because* she refused to sign, for whatever reason, it was her responsibility to schedule another time for closing. Thus, even if defendant could be excused from the original breach, she took no further steps to complete the contract at a later time; a failing that she admits. Because defendant does not accurately address the factual underpinnings of the court's ruling, she has not presented any reason to conclude that the trial court clearly erred in its findings of fact in support of its conclusions of law. *Reed, supra* at 164.

Defendant next argues that the court's remedy of specific performance was either improperly tied to the date of the original agreement, between plaintiff and Theodore, or erroneously awarded plaintiff credit for payments made prior to the date of the agreement to be specifically performed. We disagree. Questions regarding the nature, scope and elements of a remedy are questions of law reviewed de novo. *Auto-Owners Ins Co v Amoco*, 468 Mich 53, 57; 658 NW2d 460 (2003). Underlying findings of fact are reviewed for clear error. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

Review of the judgment reveals that it was entered against both defendant and Theodore's estate. Moreover, the trial court held that, irrespective of the name of the title holder on any deed, plaintiff was always the equitable owner of the home. Defendant does not brief or contest this ruling. To effectuate the court's equitable ruling, a determination had to be made regarding the mortgage amount that plaintiff would have to acquire to transfer legal title. There was no inconsistency between the two components of the court's remedy.

Once again, defendant contends that the payments made by plaintiff were not mortgage payments, but rental payments. However, this issue was not briefed by defendant and is contrary to the trial court's holding that plaintiff always held equitable title to the property. Again, defendant failed to address the propriety of the trial court's ruling regarding legal and equitable

title. Accordingly, this contention is without merit.<sup>4</sup>

Affirmed.

/s/ Stephen L. Borrello  
/s/ Christopher M. Murray  
/s/ Karen M. Fort Hood

---

<sup>4</sup> Within the discussion section of this issue, defendant submits that the trial court's judgment was far reaching in that it allowed plaintiff access to defendant's personal bank account and orders defendant to turn over all escrow amounts. Review of the judgment reveals that it does not allow plaintiff access to defendant's bank accounts. Moreover, the order merely requires that any amounts held in escrow be released. Defendant was not required to pay any amounts into escrow. Therefore, the assertions of overreaching are not supported by the record.