

STATE OF MICHIGAN
COURT OF APPEALS

In re VANCONETT ESTATE.

JOYCE ANN FLORIP, KAREN JEAN
PETERSON, and SANDRA LEE PARACHOS,

UNPUBLISHED
January 15, 2009

Appellants,

v

MARIANNE DURUSSEL,

No. 279889
Saginaw Probate Court
LC No. 01-111943-DE

Appellee.

Before: Murray, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Petitioners-appellants appeal as of right from an order denying their motion for summary disposition and granting summary disposition in favor of respondent-appellee. We affirm.

“This case involves the right of the decedent, Herbert Lee VanConett, to dispose of property following the death of his wife, Ila R. VanConett, under a mutual will made pursuant to a contract to make a will.” *In re VanConett Estate*, 262 Mich App 660, 662; 687 NW2d 167 (2004). Petitioners return to this Court following our remand to the probate court “to determine whether the presumption of revocation can be overcome” and, if there was a revocation, whether it breached the contract. *Id.* at 666.

In granting summary disposition in favor of respondent, the trial court concluded as follows:

The Court does not find that a revocation breached any contract that was entered into with Mrs. VanConett. The title to this property passed instantly at Ila's death, was not part of the estate and was not covered by the couples' contract to make a will.

The Court of Appeals indicating that this property passed outside the estate and would not be covered by the contract would also mean that there is nothing for the remainder men [sic] to seek as far as the real property is concerned.

The Court should also indicate that Plaintiff's [sic] utilization of Justice Markman's comments to control what the Court should do doesn't have any affect [sic] as leave was denied. The Court must act and rely on the Court of Appeals decision and it's [sic] instructions on remand on this particular issue.

The Court of Appeals was quite specific as to what was done and I think the Court has complied with what the Court of Appeals requested.

We review de novo a trial court's decisions on motions for summary disposition. *State Farm Fire & Cas Co v Corby Energy Services, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006).

Petitioners ask this Court to determine whether the real estate at issue is covered by the VanConetts' contract to make a will, whether that issue was properly before the probate court on remand, and whether this Court's previous decision gave the decedent the right to give away the real estate without breaching the contract. Because there was a previous appeal in this case, we must first determine to what extent the law of the case doctrine governs this appeal. The determination of whether the law of the case applies is a question of law that is also reviewed de novo. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 522; 730 NW2d 481 (2007).

Under the law of the case, a ruling by an appellate court on a particular issue binds both lower tribunals on remand and the appellate court on subsequent appeals on that issue. *Sinicropi v Mazurek (After Remand)*, 279 Mich App 455, 465; ___ NW2d ___ (2008). Petitioners argue that this Court determined that the real property passed outside Ila's will. They argue that this is a different question than whether it passed outside the contract to make a will, which was the question the probate court should have addressed. Petitioners have misread our prior opinion. This Court determined that "[b]ecause title [to the real estate] passed instantly at Ila's death, *it would not be covered by the couple's contract to make a will.*" *In re Estate of VanConett, supra* at 668 (emphasis added). The language in the opinion could not be clearer. This Court explicitly ruled that the real estate at issue is not covered by the VanConetts' contract to make a will. Accordingly, the law of the case applies and we cannot reconsider that decision in this post-remand appeal. *Sinicropi, supra* at 465. In light of that holding, we must also conclude that the question of whether the real estate was covered by the contract could not have been before the probate court on remand because the probate court was also bound by this Court's prior decision. *Id.*¹

Being bound by the determination that the real estate is not covered by the contract, we must conclude that decedent's transfer of that property cannot constitute a breach of the contract. Although petitioners correctly note that the opinion does not explicitly state that they, as contract

¹ We note that Justice Markman's concurring opinion in *In re Estate of VanConett*, 477 Mich 969, 970; 724 NW2d 477 (2006) (Markman, J., concurring), has no effect on our decision. By denying leave to appeal in this matter, our Supreme Court left this Court's determination that the contract did not cover the real estate unaffected, thereby making it the law of the case. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988).

beneficiaries, have no right to seek the return of the real property, such a conclusion is clearly implied. If the real estate was not covered by the couple's contract to make a will, then its transfer cannot constitute a breach of that contract. And, without a breach of contract, petitioners have no claim. We note that petitioners did not argue below that the transfer of the property constituted a revocation of the will which revocation might constitute a breach of the contract. Indeed, petitioners asserted multiple times that they did not believe any revocation occurred. Without a revocation, there was no breach and, again, without a breach, petitioners had no claim.

Accordingly, we must conclude that our prior holding requires the conclusion that Herbert could transfer the real estate without breaching the agreement. Thus, the law of the case doctrine is dispositive of all of petitioners' issues. Given that the probate court's grant of summary disposition to respondent was based on the binding conclusions in this Court's prior opinion, we find no error.

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Alton T. Davis