STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of SHIRLEY E. WEST.

BEVERLY LOREE, Personal Representative of the ESTATE OF SHIRLEY E. WEST,

Petitioner-Appellant,

v

MICHIGAN RESERVES, INC.,

Respondent-Appellee.

UNPUBLISHED
June 11, 2009

No. 284554
Gladwin Probate Court
LC No. 07-013315-CZ

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Petitioner challenges by delayed appeal the probate court's order dismissing petitioner's suit after a bench trial. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Proceedings

The facts in this land contract case are not in dispute. Shirley West and her son, Thomas West, together were co-purchasers of 80 acres of land owned by respondent. The contract identifies "Shirley West, a single woman; and Thomas E. West, a married man," as "Purchaser," and gives a single address. The land contract was recorded. Thomas made the contract payments, but eventually he fell into default. Respondent sought a judgment of possession after forfeiture in the district court, naming Thomas, only, as the defendant.[1] When Thomas failed to redeem the property, respondent obtained an October 18, 2005, consent judgment of possession after land contract forfeiture.

[1] Shirley West passed away in 2001, and no estate was opened until 2006 or 2007. Therefore, at the time of the district court proceedings, neither Ms. West nor her estate were available or amenable to suit.

Eventually, petitioner discovered the forfeiture and sued for specific performance, asserting that the estate was prepared to pay the accelerated contract price but that respondent refused to accept the tender and therefore would not provide to plaintiff the warranty deed to the entire 80 acres.[2] In her trial brief, petitioner argued that respondent's failure to provide notice, as required by the summary proceedings court rules, specifically MCR 4.202, rendered the district court proceedings null and void. Petitioner noted that a land contract vendor has only four possible options when a vendee defaults: do nothing; get the vendees to release their interest ("deed back"); accelerate the balance and pursue foreclosure in the circuit court (where a judicial sale, subject to redemption, will take place); or proceed to forfeiture, which essentially sets aside the contract. *Gruskin v Fisher*, 70 Mich App 117; 245 NW2d 427, rev'd on other grounds 405 Mich 51 (1979).

Respondent countered that it forfeited only Thomas's one-half, undivided interest in the property, and that Shirley's estate still retained its own one-half, undivided interest. Respondent asserted that because the estate only had a right to a shared title and Thomas was free to convey his interest to a third party, the estate could not receive sole title to the full interest and is stuck as a co-tenant with respondent.

The probate court agreed with respondent's analysis, concluding that the estate was required to pay whatever its share was, and respondent became the holder of the other half-interest on the land contract. The estate could, the court concluded, redeem its interest by paying one-half of the accelerated amount due under the contract. The probated court distinguished the case cited by the estate, *Sriro v Dunn*, 265 Mich 112; 251 NW 370 (1933), because that case involved a tenancy by the entireties, while this case involved a tenancy in common.[3]

II. Analysis

We review for clear error a trial court's factual findings made in a bench trial, and review de novo its conclusions of law. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). Petitioner posits three reasons why reversal is mandated: (1) "the efforts of Defendant/Appellee are inequitable", (2) defendant's obtaining the district court judgment was "in violation of the summary proceedings statutes and court rules" and (3) those two reasons combined to "ultimately deprive Plaintiff/Appellant of the contractual terms (including good title) promised by the land contract."

First, we hold that the probate court correctly concluded that it was without authority to reverse or otherwise revise the district court orders, not because of res judicata (since plaintiff had no opportunity to litigate her claims in the district court action), but because petitioner's arguments comprised an impermissible collateral attack on the final district court judgment. *In*

[2] Interestingly, the January 26, 2007, inventory filed by plaintiff in the estate case revealed that the estate held a one-half interest in the property.

[3] The probate court found that the district court's decision that respondent recaptured Thomas's half-interest had res judicata effect and could not be revisited.

re Hatcher, 443 Mich 426, 438-439; 505 NW2d 834 (1993). Although a judgment can be collaterally attacked for lack of subject matter or personal jurisdiction, *id.*, petitioner has not shown how the district court lacked personal jurisdiction over Thomas West. The argument that Shirley West's estate should have been made a party to the suit (which is factually baseless since the estate did not exist at the time) addresses the exercise of the court's jurisdiction, which cannot be collaterally attacked. *Id.*[4]

Second, the probate court also properly ruled that the relief petitioner was seeking–obtaining a warranty deed in the name of the estate and Thomas–was not legally appropriate. As both parties recognize, because Thomas and Shirley held the land as tenants in common, they each had "'a separate and distinct title to an undivided share of the whole . . . [and] every part thereof, subject to the same right in the other cotenants.'" *Kay Investment Co LLC v Brody Realty No 1 LLC*, 273 Mich App 432, 441; 731 NW2d 777 (2006), quoting *Quinlan Investment Co v Meehan Cos, Inc*, 171 Mich App 635, 639; 430 NW2d 805 (1988). As "[t]he interest of a tenant in common is fully alienable," *Albro v Allen*, 434 Mich 271, 282 n 3; 454 NW2d 85 (1990), a cotenant has the right to convey, lease, transfer or encumber his portion of the tenancy without the consent of the other cotenant, *Tkachik v Mandeville*, 282 Mich App 364, 370; 764 NW2d 318 (2009). When one of the cotenants does so, the new cotenant (the lessee, transferee, etc) steps into the shoes of the cotenant lessor, transferor, etc., and is entitled to use the premises subject to the same right as other cotenants. *Quinlan Investment Co*, *supra* at 639.

In the district court proceedings respondent only sought, and only obtained, a one-half interest in the tenancy. In other words, it obtained Thomas's interest, and petitioner continued to own the same cotenancy it held before the district court proceedings. See *Shell Oil Co v Estate of Kert*, 161 Mich App 409, 424; 411 NW2d 770 (1987) ("[I]n general, absent any agency, a lease or other disposal of real property by one cotenant can bind her share of the property only and is not binding on the remaining cotenants . . . .") And, apparently, petitioner will receive a deed reflecting that tenancy upon payment of its share of the remaining land contract balance. Hence, petitioner is in the same position it would have been had the land contract been paid, and no default and forfeiture been obtained against Thomas. The only difference is respondent has stepped into the shoes of Thomas, and that is consistent with Michigan law.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens

[4] The same holds true with respect to petitioner's argument that the contract required that the whole contract be forfeited upon default, not just a share. That argument is not related to the district court's jurisdiction, but the exercise of that jurisdiction. It was therefore outside the probate court's authority to consider.