STATE OF MICHIGAN

COURT OF APPEALS

MIKE WIPFLI, Personal Representative of the Estate of RICHARD MARK MUHA, Deceased,

Plaintiff-Appellant,

v

MUHA-PALMITER TRUST and ARLEEN D. PALMITER,

Defendants-Appellees.

UNPUBLISHED
September 17, 2009

No. 285699
Schoolcraft Circuit Court
LC No. 07-003962-CK

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

This case involves a disputed claim of entitlement to real estate raised by plaintiff Mike Wipfli to satisfy medical bills incurred by the decedent, Richard Mark Muha. Plaintiff appeals as of right a circuit court order granting defendants summary disposition pursuant to MCR 2.116(C)(8). We reverse and remand for further proceedings.

The decedent initially received an interest in the Hiawatha Township real property at issue via warranty deed in October 1995. The decedent and defendant Arleen Palmiter resided on the property together. On October 28, 2003, the decedent quitclaimed to Palmiter an ownership interest in the Hiawatha Township property "as tenants in common, . . . reserving a life estate to both." On September 9, 2005, the decedent and Palmiter transferred ownership of the Hiawatha Township property to defendant Muha-Palmiter Trust.

In September 2007, plaintiff filed suit seeking to set aside the September 2005 conveyance from the decedent and Palmiter to the Muha-Palmiter Trust. According to the complaint, the decedent incurred significant medical bills in February 2005, which rendered the September 2005 conveyance fraudulent under the uniform fraudulent transfer act (UFTA), MCL 566.31 *et seq*. Defendants moved for summary disposition under MCR 2.116(C)(8) and (10), insisting that no evidence proved that the decedent and Palmiter fraudulently transferred the Hiawatha Township property to the Muha-Palmiter Trust. Defendants submitted an affidavit in which Palmiter averred that (1) the decedent had made the October 2003 conveyance to her "in exchange for the . . . $100,000.00 plus that I contributed to improving the real estate over the length of our relationship," not "with the intent to hinder, delay, or defraud any creditor of Richard Muha"; and (2) the decedent and Palmiter made the September 2005 property

conveyance to the trust "so that the parties' investment in the property could be protected from their children."

Plaintiff responded that both the September 2005 transfer from the decedent and Palmiter to the Muha-Palmiter Trust and the October 2003 conveyance from the decedent to himself and Palmiter qualified as fraudulent. Plaintiff characterized the September 2005 conveyance as "obviously fraudulent because [the decedent] owed [Marquette General Hospital] money at the time of the transfer," and because the decedent "received nothing for the transfer and the transfer probably rendered him insolvent as a result." In plaintiff's estimation, the October 2003 conveyance "may also have been fraudulent" because it went to Palmiter, an "insider" given her relationship with the decedent, "the transfer was of all of Mr. Muha's assets, he received nothing in exchange for the quit claim deed and the transfer rendered him insolvent." At the summary disposition hearing, plaintiff submitted to the court a "July 2002 . . . judgment entered against" the decedent "for medical services" supplied by Marquette General Hospital, which the decedent satisfied in August 2004.

The circuit court ruled as follows that it would grant defendants' motion:

> In this matter the Court considers the arguments of counsel and the briefs which have been filed. Subject to possible interest[s] of other third parties, the Court would be of a mind to set aside the transfer into the Trust, in which case there may be questions of fact which would go to defeat the C(10) . . . motion. But this, assuming the Court would set aside the Trust, this would take us back to the quit claim deed wherein there must be some indicia of actual intent to defraud, [if] the Court reads the statute correctly.
>
> There is none. More than maybe must be shown, and—and that is what is contained in the briefs and—and really the pleadings. And you have to have more than may be be shown to disturb a conveyance such as we have here where the defendant is not the debtor and where the Court would find that the . . . case should be dismissed under a (C)(8) provision.
>
> And you can see, and unless there would be some more, the conveyance for purposes of . . . showing actual interest of the parties for conveyance for protecting heirs . . . without some more substance than has been presented would be constantly in flux. And from that policy standpoint, that should be considered.

Plaintiff now challenges the circuit court's summary disposition ruling.[1] We review de novo a circuit court's summary disposition rulings. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). To the extent that the summary disposition ruling in this case involved

[1] We decline to specifically address plaintiff's first question presented, "Does the UFTA permit an action against the first transferee of an asset, even if the transferee has no other legal liability for the transferor's debts?," because the circuit court did not rule on this issue and defendants do not contest this proposition on appeal.

issues of statutory construction, we also consider these legal questions de novo. *Shaw v City of Ecorse*, 283 Mich App 1, 7; NW2d (2009). In the circuit court's bench ruling, the court repeatedly referenced its consideration of the pleadings and the parties' briefs. Because defendants attached documentary evidence to their brief, which the circuit court considered in ruling on the motion, we review the court's grant of summary disposition as pursuant to MCR 2.116(C)(10), not MCR 2.116(C)(8). MCR 2.116(G)(5). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App 621.

The UFTA section governing the setting aside of fraudulent conveyances, MCL 566.34, states in relevant part as follows:

> (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, *if the debtor made the transfer or incurred the obligation in either of the following*:
>
> (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.
>
> (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor . . . :
>
> * * *
>
> (ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.
>
> (2) *In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether 1 or more of the following occurred*:
>
> (a) The transfer or obligation was to an insider.
>
> (b) The debtor retained possession or control of the property transferred after the transfer.
>
> (c) The transfer or obligation was disclosed or concealed.
>
> (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
>
> (e) The transfer was of substantially all of the debtor's assets.
>
> * * *

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred. [Emphasis added.]

Concerning the September 2005 real property conveyance to the Muha-Palmiter Trust, the circuit court correctly observed that defendants had not demonstrated their entitlement to summary disposition under MCR 2.116(C)(10). Defendants presented no evidence to substantiate that the Muha-Palmiter Trust gave "reasonably equivalent value in exchange for the transfer" of the Hiawatha Township property. MCL 566.34(1)(b). Furthermore, at the time of the September 2005 transfer, the decedent undisputedly had incurred approximately $18,000 in outstanding medical bills, for services rendered in February 2005. And because none of the parties submitted evidence regarding the financial status of the decedent and Palmiter around the time of the September 2005 transfer, at a minimum a genuine issue of fact existed with respect to whether the decedent and Palmiter "[i]ntended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond [their] ability to pay as they became due." MCL 566.34(1)(b)(ii).

With regard to the October 2003 conveyance from the decedent to himself and Palmiter as tenants in common, the circuit court misinterpreted the plain governing statutory language when it opined that plaintiff had to present some evidence of the decedent's "actual intent to hinder, delay, or defraud any creditor . . . ." MCL 566.34(1)(a).[2] Subsection 4(2) of the UFTA clearly and unambiguously envisions that in ascertaining a debtor's "actual intent," several specific criteria have relevance. Given the sparse state of the record at the time of the summary disposition hearing concerning the relevant factors identified in subsection 4(2), the evidence did not prove defendants' entitlement to summary disposition as a matter of law. For example, (1) under subsection 4(2)(a), it seems at least reasonably arguable that Palmiter constituted an "insider" when the decedent conveyed her an interest in the Hiawatha Township real property, in light of their extended cohabitation[3]; (2) consistent with Palmiter's acknowledgment in her

---

[2] This Court "give[s] the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed . . . ." *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002).

[3] However, it is not clear as a matter of law that Palmiter fell within the category of "insider" specifically defined in the UFTA. Pursuant to MCL 566.31(g),

(continued…)

affidavit that she and the decedent "lived together on real estate that is the subject matter of this lawsuit," the evidence rationally tends to establish that the decedent "retained possession or control of the property transferred after the [October 2003] transfer," MCL 566.34(2)(b); (3) the decedent and Palmiter "disclosed" the October 2003 conveyance by recording their deed in October 2003, MCL 566.34(2)(c); (4) the evidence submitted to the circuit court left unclear whether the October 2003 conveyance transferred "substantially all of the debtor's assets," MCL 566.34(2)(e); (5) regarding MCL 566.34(2)(h), whether "[t]he value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred," Palmiter maintained that the decedent "received equivalent value in exchange for the property transfer, that . . . being the $100,000.00 plus that I contributed

---

(…continued)

> (g) "Insider" includes all of the following:
>
> (i) If the debtor is an individual, all of the following:
>
> (A) A *relative* of the debtor or of a general partner of the debtor.
>
> (B) A partnership in which the debtor is a general partner.
>
> (C) A general partner in a partnership described in sub-subparagraph (B).
>
> (D) A corporation of which the debtor is a director, officer, or person in control.
>
> * * *
>
> (iv) An *affiliate*, or an insider of an affiliate as if the affiliate were the debtor. [Emphasis added.]

Palmiter, who never married the decedent, does not indisputably come within the statutory definition of "relative," as "an individual related by consanguinity within the third degree as determined by the common law, *a spouse*, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree." MCL 566.31(k) (emphasis added). The UFTA does not further define "spouse." The dearth of evidence presented in this case also fails to establish whether Palmiter met the following relevant portions of the statutory definition of "affiliate":

> (a) "Affiliate" means 1 or more of the following:
>
> (iii) A person whose business is operated by the debtor under a lease or other agreement, *or a person substantially all of whose assets are controlled by the debtor*.
>
> (iv) *A person who* operates the debtor's business under a lease or other agreement or *controls substantially all of the debtor's assets*. [Emphasis added.]

to improving the real estate over the length of our relationship," although she did not clarify the timing of her contributions; and (6) further factual development had to occur before the circuit court could address the important considerations in MCL 566.34(2)(i) ("The debtor was insolvent or became insolvent shortly after the transfer was incurred.") and (j) ("The transfer occurred shortly before or shortly after a substantial debt was incurred.").[4] "These badges of fraud are not conclusive evidence, but may be strong or weak depending upon their nature and number occurring in the same case." *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 659-660; 513 NW2d 441 (1994) (interpreting the former Uniform Fraudulent Conveyance Act, MCL 566.11 *et seq*.).

In summary, because the circuit court granted defendants summary disposition on the basis of an erroneous interpretation of MCL 566.34, and because the record regarding the factors set forth in MCL 566.34(2) do not permit us to rule as a matter of law with respect to the allegedly fraudulent nature of the instant conveyances, we remand for further proceedings.

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

/s/ William C. Whitbeck
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher

[4] According to the representation by plaintiff's counsel at the summary disposition hearing, in July 2002 Marquette General Hospital had obtained a judgment against the decedent for medical services, which remained outstanding through August 2004. Although plaintiff's counsel submitted a copy of the 2002 judgment to the circuit court, no copies appear in the circuit court record provided to this Court. Assuming the existence of a July 2002 judgment against the decedent, this had relevance to MCL 566.34(2)(d) ("Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.").