STATE OF MICHIGAN

COURT OF APPEALS

ZOFIA KOPEC,

Plaintiff-Appellant/Cross-Appellee,

v

STANLEY KOPEC,

Defendant/Cross-Plaintiff/Appellee/Cross-Appellant.

v

MARGARET KOPEC a/k/a MALGORZATA KOPEC,

Defendant/Cross-Defendant.

UNPUBLISHED
December 15, 2009

No. 287163
Menominee Circuit Court
LC No. 07-11952-CH

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

In this property interest case, plaintiff appeals by right the circuit court's order granting defendant's motion for summary disposition and ruling that plaintiff does not have a dower interest in the property of her deceased husband, Stanislaw Kopec (Kopec). Defendant cross-appeals the trial court's decision denying him costs. We reverse and remand for further proceedings.

Plaintiff and Stanislaw Kopec were married in Poland in 1967 and had two children together. Kopec apparently moved to the United States in 1972, alone. Plaintiff and the minor children remained in Poland. A few years after moving to the United States, Kopec fathered a child, Stanley Kopec (defendant), by a woman other than plaintiff. Kopec purchased a parcel of land on a land contract in 1978, and received title to the same in his name and defendant's name in 1982. The 1982 deed did not expressly declare the type of tenancy that was created. In 1987, Kopec requested a "corrected" deed to the property from one of the original land transferors. A revised deed was executed. Kopec attached an affidavit to the revised deed indicating, that despite requesting that defendant's name be included on the title to the property in 1982, he always intended, and continued to intend, that the property be conveyed to himself and his daughter, Margaret Kopec (Margaret), as joint tenants with full rights of survivorship. Kopec indicated that the reason for the revised deed was his belief that defendant, as a minor, was

"incompetent to hold or to convey title to said property". According to defendant, Kopec requested the change during a period of time when he was obligated to pay a large child support arrearage for defendant's care and defendant's mother was actively pursuing its collection. In 1996, believing that the child support was no longer an issue, Margaret and Kopec quitclaimed the property to themselves and defendant, as joint tenants with full rights of survivorship. When Kopec died in 2006, a dispute over proper title to the subject property arose, with plaintiff initiating an action to quiet title to the property based upon her dower rights, and defendant bringing a cross claim to quiet title to the property and for partition of the same.[1]

On defendant's motion, the trial court granted summary disposition in defendant's favor, finding that defendant owned an undivided one-half interest in the subject property, and that Margaret and defendant owned the other one-half interest jointly. The trial court also found that plaintiff held no interest, whatsoever, in the property. However, the trial court denied defendant's request for sanctions for defending what defendant labeled a frivolous claim.

We review both the grant of equitable relief and summary disposition de novo. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008); *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003).

On appeal, plaintiff contends that she is entitled to a dower interest in Kopec's ownership rights to the subject property, and that Kopec did not have the authority to alienate her dower rights. We agree.

Michigan law regarding dower is found in MCL 558.1:

> The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of ⅓ part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

"[D]ower is a longstanding historical right that preexisted even the formation of our nation and that has become embedded in Michigan statutory and common law." *In re Miltenberger Estate*, 482 Mich 901, 904; 753 NW2d 219 (2008). The Legislature affirmatively acted to maintain dower protection for widows through the 1963 Constitution by adopting the 1998 Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.* *Id.* at 906. Notably, although EPIC was modeled after the Uniform Probate Code, which expressly abolished dower, the Legislature specifically retained dower rights in EPIC. *Id.*

"No contract of sale or conveyance by a husband without his wife's signature will operate to divest her of her dower." *In re Stroh Estate*, 151 Mich App 513, 516; 392 NW2d 192 (1986), citing *Delaney v Manshum*, 146 Mich 525, 528, 691; 109 NW 1051 (1906), and *Gluc v Klein*,

[1] Margaret Kopec was named as a party in the lower court proceedings. It is unclear whether she participated in the lower court proceedings, but she is not a party to this appeal.

226 Mich 175, 177; 197 NW 1051 (1924). Moreover, where a husband conveys property to another in which his wife did not join, the wife is entitled to dower. *Id.* at 516.

Notably, the 1982 deed initially conveying the property listed Kopec as a single man, and was silent regarding the type of tenancy that it created. MCL 554.44 states, "All grants and devises of lands, made to 2 or more persons, except as provided in the following section[2], shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy." Because the conveyance did not expressly declare that a joint tenancy was created, Kopec and defendant held the property as tenants in common, a fact admitted by defendant. Defendant makes no specific claim that dower rights do not attach to property held by tenants in common, and cites no binding authority that would support such a claim. Dower rights would attach, then, to the conveyance of the property under the 1982 deed.

The 1987 deed and accompanying affidavit were signed by Kopec and filed with the Register of Deeds on November 20, 1987. Regina Harkonen, one of the original land transferors under the 1982 deed to Kopec and defendant, granted the 1987 deed to Kopec and Margaret. The deed stated:

> The purpose of this conveyance is to correct the names of the grantees as they appeared in the deed recorded in Liber 279 of Deeds, page 177 wherein one of the grantors, namely: Stanley Kopec, Jr., is and was a minor having been born on June 3, 1978 and is, therefore, incompetent to hold or convey title to said property; pursuant to the affidavit hereto attached.

Moreover, the affidavit attached to the 1987 deed, signed by Kopec, stated:

> STANISLAW KOPEC, being first duly sworn on oath deposes and says:
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> 1. That he is the father of [defendant].
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> 2. That his son was born on June 3, 1978.

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[2] MCL 554.45 provides, "(t)he preceding section [MCL 554.45] shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

> 3. That through an error said son was named as a grantee in the deed recorded in the Menominee County Register of Deed's office in Liber "279" of Deeds, page 177.
>
> 4. That it was his intention and he now intends that his daughter [cross-defendant] should be included as a joint tenant with him in said conveyance.
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> 5. That the purpose of this affidavit is to clarify title to said property and to put all persons on notice that said previous conveyance herein referred to is null, void, and of no effect.
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> Dated: November 20, 1987. [Exhibit 4.]

Defendant contends that this 1987 deed served to add Margaret as a joint tenant, along with Kopec, only as to Kopec's one-half share of the property. As set forth above, the trial court agreed with defendant and ruled that defendant owned an undivided one-half interest in the land, and that the other one-half interest was owned by defendant and Margaret, as joint tenants with full rights of survivorship. The trial court also found that the 1987 deed clarified the fact that the 1982 conveyance created a joint tenancy between Kopec and defendant.

"Michigan courts sitting in equity have long had the power to reform an instrument that does not express the true intent of the parties as a result of fraud, mistake, accident, or surprise." *Johnson Family Ltd P'ship v White Pine Wireless, LLC*, 281 Mich App 364, 371-372; 761 NW2d 353 (2008) (citations omitted). As our Supreme Court stated in *Clark v Johnson*, 214 Mich 577, 582; 182 NW 41 (1921) (citation and quotation marks omitted):

> Wherever an instrument is drawn with the intention of carrying into execution an agreement previously made, but which by mistake of the draftsman or scrivener, either as to law or fact, does not fulfill the intention, but violates it, there is ground to correct the mistake by reforming the instrument.

In order for the trial court to conclude that the original 1982 conveyance created a joint tenancy, it must have found that the 1987 deed was a corrective or reformation deed that carried out the true intent of the parties. A deed may be reformed based on a mutual mistake of the parties, or under certain circumstances, on the basis of a unilateral mistake. *Johnson Family Ltd P'ship, supra,* 281 Mich App at 379-380. The party seeking reformation of a deed must prove that the written instrument does not reflect the true intent of the parties. See *Id.* at 379.

It has long been established that courts should not liberally reform deeds. Our Supreme Court considered this issue in 1930 and stated:

> A high degree of care and caution should be exercised in reforming written instruments affecting title of lands. Sixty years ago this court, speaking through Justice CHRISTIANCY, said:
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> "[I]t would, we think, be exceedingly dangerous, and tend to weaken confidence in titles generally, if the effect of deeds of conveyance, leases or other

> written evidences of title could be thus changed by a verbal agreement, except in very clear cases, where the contract is proved to the entire satisfaction of the Court." [*Bock v Newkirk*, 251 Mich 447, 449-450; 232 NW 207 (1930), quoting *Case v Peters*, 20 Mich 298, 303 (1870)].

Defendant argues that the 1987 deed was corrective in nature, and that the 1987 deed could not extinguish his undivided one-half interest in the property. However, on the other hand, defendant argues that the revised deed was effective in changing Kopec's undivided one-half interest in the property into a divisible joint tenancy with full rights of survivorship, owned by Kopec, Margaret and defendant. Therefore, defendant surmises that the 1982 and 1987 recorded documents conveyed an undivided one-half interest to defendant, and the other one-half interest to Kopec, Margaret and defendant as joint tenants with full rights of survivorship.

The facts and law applicable to this case do not support this argument. There was no evidence of fraud, mistake, accident, or surprise that would warrant a reformation of the 1982 deed, and reformation approval from a court of law was not sought until the trial court considered the facts and evidence presented after Kopec's death. The parties to the original deed, without legal authority or court approval, attempted to reform the deed. There is nothing in the record to indicate that the 1982 deed did not reflect the true intent of the parties. The evidence presented demonstrated only that Kopec decided, after five years, to change the grantees to the deed, and the manner in which title was held. Kopec's affidavit clearly states that the purpose of the 1987 deed was to remove his minor son (defendant) and to add his daughter (Margaret) as a joint tenant. Whatever Kopec's motivation might have been, the evidence presented does not clearly prove that the 1987 deed was a reflection of the parties' original intent in creating the deed. Therefore, accepting the 1987 deed as a reformation deed that dictates property rights and that is legally enforceable is improper.

Moreover, legal title to real estate passes by the conveyance of title to another. See, e.g., *Coon v Dennis*, 111 Mich 450, 452; 69 NW 666 (1897). Once title to the property passed to Kopec and defendant on December 7, 1982, title was vested in them. Thus, when Regina Harkonen attempted to transfer the subject property to Kopec and Margaret in 1987, she did not hold or retain any rights to the property that could be transferred. Any transfer after the time that Kopec and defendant originally obtained title would had to have been accomplished by Kopec and defendant, or defendant's guardian or agent. Therefore, the 1987 deed is void and of no force or effect. Kopec and defendant held the property as tenants in common.

Kopec obtained the property during a time when he was married to plaintiff. At the time of the 1982 conveyance, Kopec held a one-half interest in the subject property as a tenant in common with defendant. Plaintiff had an inchoate dower interest in Kopec's portion of the property at that time. Provided that Kopec still held the property at the time of his death, plaintiff's inchoate dower interest became vested.[3] Plaintiff is not barred from claiming her

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[3] Defendant raised an issue in the trial court indicating that plaintiff's alien or nonresident status affected her dower interest. The trial court found no need to address the issue because of its
(continued…)

dower interest in Kopec's one-half interest in the subject property. Therefore, the trial court erred in concluding that plaintiff had no right to dower.

Because plaintiff did not raise a frivolous claim, we affirm the trial court's decision to not award reasonable costs and fees to defendant.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Costs to plaintiff pursuant to MCR 7.219.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto

(…continued)

initial ruling. However, if the trial court or this Court were to address this issue, we note that MCL 558.21 provides that the mere fact that a woman is an alien or nonresident of Michigan does not deprive her of her dower interest in any of her deceased husband's seized Michigan property.