

STATE OF MICHIGAN
COURT OF APPEALS

In re CARINI ESTATE.

MATTHEW CARINI,

Plaintiff-Appellant,

v

ESTATE of SUSAN A. CARINI, by WEST
MICHIGAN COMMUNITY BANK, Personal
Representative, CURTIS CARINI, and
VICTORIA L. CARINI,

Defendants-Appellees.

UNPUBLISHED

June 21, 2012

No. 302849

Ottawa Probate Court

LC No. 10-057467-CZ

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

In this action for partition and to quiet title, plaintiff Matthew Carini appeals an order granting summary disposition to defendants Curtis Carini and Victoria Carini. We affirm.

Susan Carini and her sister Marguerite Weippert owned a 40-acre parcel of land, commonly referred to as "Parcel G." In 1984, Susan's son Robert Carini and his wife Janet arranged to have a mobile home placed on Parcel G. Robert and Janet entered into an agreement, a lease with option to purchase, with Marguerite. The agreement provided that Marguerite owned or intended to own a mobile home and that Robert and Janet agreed to rent it. Marguerite purchased a mobile home for \$12,450 in April 1984. Robert made rental payments to Marguerite until 1993 when he paid her a purchase price of \$18,000. Robert did not obtain from Marguerite a certificate of title to the mobile home.

In 1994, Susan and Marguerite transferred Parcel G to Susan and her other son and his wife, Curtis and Victoria Carini. Thereafter, Curtis and Victoria, as cotenants in common with Susan, owned a one-half interest in Parcel G. Robert and Janet divorced in 1999. They sold the mobile home to Susan for \$7,200. Susan wrote Janet a check for \$3,600.

The mobile home became in need of serious repair. It was uninhabitable. Susan made an agreement with Matthew Carini, her grandson and the son of Robert. According to Matthew,

Susan intended to give all of her grandchildren two or three acres of land and she agreed to give him the mobile home and two or three acres of Parcel G if he repaired the home. The agreement was never put into writing. Matthew made many improvements to the mobile home. Since then, the mobile home has been his home. Matthew never paid rent to Susan, nor has he paid any property taxes.

Susan died suddenly in 2005. Before she died, Susan never conveyed any portion of Parcel G by deed to Matthew. During the administration of the Trust, it was discovered that title to the mobile home remained in the name of Marguerite. Subsequently, Marguerite signed a duplicate certificate of title and transferred title to the mobile home to Victoria. In June 2010, Matthew requested the probate court to partition Parcel G and to award him the mobile home and the two acres surrounding the home that had been conveyed to him by Susan. He also requested that title to the two acres be quieted in his name. The probate court granted summary disposition under MCR 2.116(C)(10) to Curtis and Victoria, and Matthew now appeals.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). The probate court granted summary disposition under MCR 2.116(C)(10). Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009).

On appeal, Matthew argues that the mobile home became a fixture to Parcel G when it was placed on the parcel in 1984 and that the probate court erred in holding that, pursuant to the Mobile Home Commission Act (MHCA), MCL 125.2301 *et seq.*, the mobile home could only be conveyed by a transfer of a certificate of title.

The MHCA was enacted in 1978 to provide, in part, for the titling of mobile homes. *Mortgage Electronic Registration Sys, Inc v Pickrell*, 271 Mich App 119, 122; 721 NW2d 276 (2006). After December 31, 1978, every mobile home located in the state of Michigan and owned by an individual, rather than a dealer or manufacturer, is subject to the certificate of title provisions of the MHCA. MCL 125.2330(1). Accordingly, "a mobile home shall not be sold or transferred except by transfer of the certificate of title for the mobile home." MCL 125.2330(3). To transfer title or assign an interest in a mobile home, the owner must indorse an assignment of the mobile home and, upon payment of a fee by the purchaser, a new certificate of title will be issued. MCL 125.2330c(1), (3), and (4).

Matthew does not dispute that Marguerite never transferred the certificate of title to the mobile home until she transferred title to Victoria in 2010. However, he claims that the mobile home became a fixture to Parcel G in 1984 and that title to the mobile home merged with that of Parcel G. A fixture is an item of personal property which, by annexation, is assimilated into real property. *Fane v Detroit Library Comm*, 465 Mich 68, 78; 631 NW2d 678 (2001); see also 9 Michigan Civil Jurisprudence, Fixtures, § 1, p 697, citing *Wood Hydraulic Hoist & Body Co v Norton*, 269 Mich 341; 257 NW 836 (1934) ("A 'fixture' is a thing that, though originally a movable good, is, by reason of its annexation to land, regarded as a part of the land and

belonging, in the ordinary case at least, to the person or persons owning the land.”). An item is a fixture if (1) the item is annexed to real property, (2) its adaption to the real property is appropriate, and (3) there was an intention to make the item a permanent accession to the real property. *Wayne Co v Britton Trust*, 454 Mich 608, 615; 563 NW2d 674 (1997). “The focus is on the intention of the annexor as manifested by the objective, visible facts, rather than the annexor’s subjective intent. Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation.” *Ottaco, Inc v Guaze*, 226 Mich App 646, 651; 574 NW2d 393 (1997).

Under MCL 125.2330i(1) and (5), if a mobile home “is affixed to real property in which the owner of the mobile home has the ownership interest, the owner may deliver” an “affidavit of affixture” to the department of commerce and, upon receipt of the affidavit, the mobile home “is considered to be part of the real property.” “[A]ny security interest in the mobile home is terminated, [and] a lienholder must perfect and enforce a new security interest or lien on the mobile home only in the manner provided by law for perfecting and enforcing a lien on real property, and the owner may convey the mobile home only as part of the real property to which it is affixed.” MCL 125.2330i(5). A mobile home is “affixed” to real property if its “wheels, towing hitches, and running gear are removed” and it “is attached to a foundation or other support system.” MCL 125.2330i(11).

In this case, the probate court failed to determine whether there was an intention by Marguerite, the annexor, to make the mobile home a permanent accession to Parcel G. See *Ottaco*, 226 Mich App at 651. It is not the subjective intent of the annexor that governs. *Ottaco*, 226 Mich App at 651. Rather, the intention of the annexor must be determined by the objective, visible facts. *Id.* The objective, visible facts were that the mobile home was placed on a permanent foundation and had a driveway to the nearest road. The record contains no other facts about the mobile home when it was placed on Parcel G. However, because Matthew testified that he installed new plumbing fixtures, placed a new pump in the well, and replaced electrical outlets and switches, an inference can be made that the mobile home in 1984 was connected to a well and to electrical lines. Under these circumstances, the probate court erred in holding that the mobile home was not a fixture. When the objective, visible facts are viewed in the light most favorable to the nonmoving party, there is a genuine issue of material fact whether Marguerite, the annexor, intended for the mobile home to be permanently affixed to Parcel G.

Nonetheless, the probate court correctly concluded that Susan did not have an ownership interest in the mobile home. The MHCA provides that a “mobile home shall not be sold or transferred except by transfer of the certificate of title.” MCL 125.2330(3). The word “shall” indicates a mandatory requirement. *Burise v City of Pontiac*, 282 Mich App 646, 655; 766 NW2d 311 (2009). Additionally, the owner of the mobile home who has an ownership interest in the real property has another option; the owner “may deliver” an affidavit of affixture to the department of commerce so that the mobile home is considered a part of the real property. MCL 125.2330i(1), (5). Because Marguerite never transferred the certificate of title to the mobile home before 2010 or, pursuant to MCL 125.2330i(1), (5), took any steps to cancel the certificate of title, the mobile home did not as a matter of law become a part of Parcel G regardless whether it was affixed to the real property. Therefore, the probate court properly concluded that no questions of fact existed with respect to whether Susan ever owned the mobile home and because she never held an ownership interest, she could not convey an interest. *Von Meding v Strahl*, 319 Mich 598, 608; 30 NW2d 363 (1948); *Richards v Tibaldi*, 272 Mich App 522, 540; 726 NW2d

770 (2006). There is no dispute that the certificate of title to the mobile home was not conveyed to Susan, and no steps were taken to cancel the certificate of title. Thus, Susan never owned the mobile home and could not convey it.

Next, with respect to the real property at issue, Matthew argues that the probate court erred in holding that Susan did not have the present intent to make a gift. We disagree.

Whether Susan had the requisite donative intent is not at issue here, where we conclude that this case clearly falls within the statute of frauds. The statute of frauds prevents an oral gift of an interest in real property. *Id.* at 408. The statute of frauds, MCL 566.108, provides:

Every contract . . . for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing

There is no dispute that there was no writing for Susan's conveyance of the two or three acres of Parcel G to Matthew.

However, Matthew also argues that his partial performance of the agreement with Susan removed the agreement from the statute of frauds and that the probate court erred in holding otherwise. Partial performance of an oral agreement may remove the agreement from the statute of frauds. *Giordano v Markovitz*, 209 Mich App 676, 679; 531 NW2d 815 (1995). Here, there is no factual dispute concerning Matthew's performance. Matthew made many improvements to the mobile home, which included replacing the subfloor and drywall, installing new plumbing fixtures, repairing the ceiling, and painting. Once Matthew finished the repairs in 2003, he moved into the mobile home and has lived there ever since.

Partial performance to remove an agreement from the statute of frauds, however, must be prejudicial to the performing party. *White v Lenawee Co Savings Bank*, 299 Mich 109, 114; 299 NW 827 (1941); see also *Dabanian v Rothman*, 291 Mich 31, 35; 288 NW 324 (1939) ("The general principal is that the act or acts, constituting such part performance, must be such as would not have been done but on account of the agreement; that they be done with a view to perform it, and that they be prejudicial to the performing party.") (quotation omitted). We conclude that the performance by Matthew—his improvements to the mobile home and his possession of it—was not prejudicial to him. Matthew paid no money to live in the mobile home; he paid no money to Susan and did not pay property taxes. Matthew did pay for the expenses that were incurred in the rehabilitation of the home. But, he was unable to state how much he had spent on the repairs, only stating that he believed he had spent more than \$500 in repairs. There is, however, a standard for monetary damages that is definite and certain. *White*, 299 Mich at 114. Moreover, the repairs to the mobile home allowed Matthew to live in the home; thus, the repairs were beneficial to him. In addition, there is no evidence in the record to indicate that Matthew's free occupation of the mobile home from 2003 to the present was not more than enough to compensate Matthew for the money spent in the rehabilitation of the home. Because there is no factual dispute regarding Matthew's performance, the trial court properly determined that Matthew's performance was not sufficient to remove the oral agreement from the statute of frauds. The agreement, therefore, is void. MCL 566.108.

Finally, Matthew argues that the probate court erred in failing to use its equitable powers to protect his interests. We disagree.

According to Matthew, the probate court seized on the general rule that a cotenant may not convey a piece of the common holding to a third party, but failed to recognize that such a conveyance creates equities in the grantee that should be protected. Matthew claims that, by a partition, his rights in Parcel G can be protected without injury to Curtis and Victoria.

Susan was a cotenant in Parcel G with Curtis and Victoria. “A tenancy in common is a legal estate, MCL 554.43, with each tenant having a separate and distinct title to an undivided share of the whole. Each is entitled to possession of the whole and every part thereof, subject to the same right in the other cotenants.” *Quinlan Investment Co v Meehan Cos, Inc*, 171 Mich App 635, 639; 430 NW2d 805 (1988). In *Pellow v Arctic Iron Co*, 164 Mich 87, 92-93; 128 NW 918 (1910), our Supreme Court stated:

A cotenant may sell and convey the whole or any aliquot part of his undivided interest in the whole property, but he cannot without the consent of the other, convey an undivided interest in any specific parcel of the common holding, nor can he, without such consent or subsequent ratification by his cotenant, convey by metes and bounds a specific parcel of the common estate and thus sever it so as to bind the nongranting cotenant. But where one cotenant assumes to convey in fee, by metes and bounds, a parcel of the common estate, as Harvey did in the case at bar, his deed is not void, but it creates equities in his grantee which will be protected and enforced so far as is possible without injury to the nongranting cotenant. [Internal citations omitted.]

Here, Susan, as a cotenant in Parcel G with Curtis and Victoria and absent their consent, was without the authority to convey any portion of Parcel G to Matthew. *Pellow*, 164 Mich at 92. But, Susan attempted to convey two or three acres of Parcel G to Matthew. Therefore, the relevant inquiry was whether Susan’s conveyance to Matthew could be enforced against Curtis and Victoria, her cotenants.

In his complaint, Matthew included two claims: a claim for partition and a claim to quiet title. Both are actions in equity. See *In re Temple Marital Trust*, 278 Mich App 122, 141; 748 NW2d 265 (2008); *Hall v Hanson*, 255 Mich App 271, 277; 664 NW2d 796 (2003). A court, in an equitable action, “looks at the entire matter and grants or denies relief as dictated by good conscience.” *In re Moukalled Estate*, 269 Mich App 708, 719; 714 NW2d 400 (2006).

Regarding partition, the Supreme Court in *Pellow* stated that when a nongranting cotenant is “dissatisfied with the act of his cotenant,” the right of the nongranting cotenant “is clear”: the nongranting cotenant “can at once commence proceedings in partition, making the individual grantees of his cotenant parties thereto.” *Pellow*, 164 Mich at 96. However, the Supreme Court stated the right of the grantee to demand partition was “doubtful.” *Id.*

The right to partition is limited to joint tenants and tenants in common. MCL 600.3304; *In re Temple Marital Trust*, 278 Mich App at 143. MCL 600.3304 provides: “All persons holding lands as joint tenants or as tenants in common may have those lands partitioned.” See

also MCL 600.3308, which states that “[a]ny person who has an estate in possession in the lands of which partition is sought may maintain a claim for partition of those lands, but a person who has only an estate in reversion or remainder in the lands may not maintain a claim for their partition.” Here, Matthew’s claim for partition of Parcel G rests in the oral agreement with Susan. However, the agreement between Susan and Matthew is void because there is no writing of the agreement and because Matthew’s performance, which was not prejudicial to him, did not remove the agreement from the statute of frauds. Accordingly, Matthew does not have an estate in possession of Parcel G and he is not a tenant in common in the parcel. He, therefore, has no right to a partition of Parcel G. *In re Temple Marital Trust*, 278 Mich App at 143.

Regarding Matthew’s claim to quiet title, MCL 600.2932 provides:

Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

“[T]he purpose of an action to quiet title is to determine the existing title to property by removing any cloud therefrom.” *Ingle v Musgrave*, 159 Mich App 356, 365; 406 NW2d 492 (1987); see also *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999) (stating that, in a quiet title action, the plaintiff has the burden of proof and must establish a prima facie case of title and, if the plaintiff does so, the defendant has the burden to prove superior right or title).

Matthew’s claim to quiet title is based on his oral agreement with Susan. But, as previously discussed, the agreement between Susan and Matthew is void. Accordingly, Matthew has failed to establish a prima facie claim of title to any portion of Parcel G. *Beulah Hoagland Appleton Qualified Personal Residence Trust*, 236 Mich App 546 at 550. He, therefore, is not entitled to have title to any portion of Parcel G be quieted in his name.

Affirmed. Defendants, having prevailed in this matter, are entitled to costs. MCR 7.219.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens