STATE OF MICHIGAN

COURT OF APPEALS

SALVATORE PIZZO and FRANCESCA PIZZO, Petitioners-Appellants,	UNPUBLISHED September 13, 2012
v	No. 305033 Michigan Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellee.	LC No. 00-383760

Before: SERVITTO, P.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

Salvatore and Francesca Pizzo ("the Pizzos") appeal as of right the Michigan Tax Tribunal's ("MTT") orders denying the Pizzos' motion for summary disposition ("MSD"), and granting summary disposition favor of the Department of Treasury ("DOT") in this action involving the revocation of the Pizzos' principal residence exemption ("PRE"), a.k.a. homestead exemption. We affirm.

"The standard of review of [MTT] cases is multifaceted."[1] The MTT's decision is reviewed for "misapplication of the law or adoption of a wrong principle," absent a claim of fraud.[2] The factual findings of the MTT are deemed "conclusive if they are supported by 'competent, material, and substantial evidence on the whole record.'"[3] On appeal, the MTT's statutory interpretation and decision to grant or deny a motion for summary disposition are reviewed de novo.[4] In reviewing the MTT's decision regarding a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court "view[s] the affidavits, pleadings, and other documentary evidence [submitted] in the light most favorable to" the nonmoving party to determine whether the nonmoving party has raised a "genuine issue of material fact."[5]

[1] *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 141; 783 NW2d 133 (2010).

Summary disposition is proper "where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."[6] "The trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law."[7]

The Pizzos argue that the MTT erred when, after considering the recordation of the March 20, 2008 quitclaim deed ("correcting deed"), it found that Francesca was not the owner of the property located in Clinton Township ("the Property") and upheld the revocation of the Pizzos' PRE. We disagree.

Former MCL 211.7cc states in pertinent part:

> (1) A principal residence is exempt from the tax levied by a local school district for school operating purposes . . . if an owner of that principal residence claims an exemption as provided in this section. Notwithstanding the tax day provided in section 2, the status of property as a principal residence shall be determined on the date an affidavit claiming an exemption is filed under subsection (2).
>
> (2) An owner of property may claim an exemption under this section by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located. The affidavit shall state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed.

During the relevant time period, an owner included "[a] person who owns property or who is purchasing property under a land contract," "[a] person who is a partial owner of property," or "[a] person holding a life lease in property previously sold or transferred to another."[8]

It is undisputed that from 2004 to 2007, Francesca occupied the Property as her principal residence and Salvatore did not reside on the Property. It is also undisputed that the August 14, 2003 quitclaim deed ("original deed"), conveyed Francesca's entire interest in the Property to Salvatore. As such, at the time that Salvatore was sent the delinquent tax notice on December 13, 2007, he, as the owner of the Property, was not entitled to the PRE because the Property was not his principal residence. Francesca was also not entitled to the PRE at that time because it was not documented that she owned the Property.

---

[6] *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 698-699; 714 NW2d 392 (2006).

[7] *Policemen and Firemen Retirement Sys v City of Detroit*, 270 Mich App 74, 77-78; 714 NW2d 658 (2006) (citation and quotation omitted).

[8] Former MCL 211.7dd(a)(*i*), (*ii*), (*v*).

The Pizzos claim that the correcting deed, which purportedly conveyed the Property to Francesca and Salvatore as joint tenants with rights of survivorship and was recorded on March 31, 2008, should have retroactive effect because it appropriately expressed Francesca's intent at the time the original deed was executed. The Pizzos assert that they are not requesting that the MTT reform the original deed, but rather that the MTT reverse its revocation of the PRE because the correcting deed had the legal effect of reforming the original deed. The Pizzos' argument, however, is not legally sound. Reformation is a court-ordered equitable remedy to correct "a written instrument to cause it to reflect the true intentions of the parties."[9] It does not simply exist by virtue of the parties' behavior. The Pizzos have failed to cite any case law to support their contention that deed reformation automatically results from a party's actions, and review of the record reveals that the cases cited by the Pizzos support the contrary argument.

To provide the Pizzos with the requested relief of retroactive reinstatement of the PRE, it would be necessary for the MTT to determine that Francesca is entitled to reformation of the original deed, and then reform the original deed. While the Pizzos are correct that reformation of a deed by a correcting deed may be proper "if, by reason of fraud, mistake, or accident or surprise, an instrument does not express the true intent and meaning of the parties," it is well-settled that "courts of law have no jurisdiction to reform written agreements."[10] "This jurisdiction is exclusively vested in courts of equity."[11] The parties agree that the MTT is unable to provide equitable relief. Therefore, because MTT's powers "are limited to those authorized by statute, and the MTT 'does not have powers of equity,'" relief is not warranted.[12] Moreover, this Court declines to provide the Pizzos with the equitable relief sought on its own authority.[13]

Next, the Pizzos assert that the MTT erred when it found that Francesca was not the owner of the Property because she did not have a life lease and thus was not entitled to the PRE. We disagree.

Pursuant to the statute of frauds:

---

[9] Black's Law Dictionary (6th ed).

[10] *Scott v Grow*, 301 Mich 226, 238-239; 3 NW2d 254 (1942), quoting *Bush v Merriman*, 87 Mich 260, 268; 49 NW 567 (1891).

[11] *Scott*, 301 Mich at 238-239.

[12] *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 634; 752 NW2d 479 (2008) (citation omitted).

[13] MCR 7.216(A)(7).

Because the MTT lacks the power to reform the original deed and thus provide the requested relief, we find it unnecessary to address whether correcting deeds are permitted to reform original deeds when there are no ambiguities, inconsistencies, or legal impossibilities contained on the face of the deed.

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.[14]
>
> Every contract for the leasing for a longer period than 1 year, or 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 . . .[15]

Here, the original deed failed to indicate that Francesca continued to have a life lease on the Property after her ownership ceased. In support of their assertion that a life lease existed, the Pizzos provided the affidavit of attorney James P. Maher, who drafted the original deed. Maher's affidavit states that when he met with the parties when the original deed was executed, the parties indicated that after the execution of the original deed, Francesca would "continue to reside at the Property as her principle residence pursuant to a life lease." The affidavit further indicates that the parties' agreement is set forth in Maher's handwritten notes regarding the meeting. "[P]arol evidence of . . . prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous."[16] Because the agreement contained in Maher's affidavit occurred contemporaneous with the execution of the original deed and would have varied its terms, this Court will not consider the information contained in Maher's affidavit. As such, because Francesca's life lease was not in writing as required, she is not an owner of the Property, and thus is not entitled to the PRE.[17]

The Pizzos also argue that the life lease was not subject to the writing requirement of the statute of frauds because it was partially performed. The Pizzos are correct in their assertion that "partial performance of an oral contract to convey an interest in land may remove that contract from the operation of the statute of frauds."[18] The doctrine of part performance, however, does not apply to remove contracts from the statute of frauds that cannot be performed within one

---

[14] MCL 566.106.

[15] MCL 566.108.

[16] *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998) (citation and quotation omitted).

[17] Former MCL 211.7dd(a)(*v*).

[18] *Zaborski v Kutyla*, 29 Mich App 604, 607; 185 NW2d 586 (1971).

year.[19] Because Francesca's alleged life lease cannot be performed within one year, the Pizzos' argument must fail.

The Pizzos further contend that because the oral life lease was ratified, it was not required to be in writing. The cases cited by the Pizzos in support of this assertion involve situations in which purported agents entered into real estate contracts on behalf of principals, and analyze whether the contracts were ratified by the principals, thus making them valid under the statute of frauds.[20] The facts of the instant case are clearly distinguishable. Accordingly, the Pizzos' reliance on these cases is misplaced.

Finally, the Pizzos assert that the trial court erred when it granted summary disposition in favor of the DOT.[21] We disagree. Summary disposition pursuant to MCR 2.116(I)(2) is proper if the MTT determines that the party opposing summary disposition "is entitled to judgment as a matter of law."[22] The Pizzos correctly contend that because the DOT did not respond to their motion, there was no genuine issue of material fact raised.[23] The above conclusions, however, were made after applying facts as asserted by the Pizzos, to the applicable law. As such, the trial court did not err when it found that the DOT was entitled to judgment as a matter of law and granted summary disposition in its favor.[24]

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

---

[19] *Zander v Ogihara Corp*, 213 Mich App 438, 445; 540 NW2d 702 (1995).

[20] See *Fine Arts Corp v Kuchins Furniture Mfg Co*, 269 Mich 277, 281-282; 257 NW 822 (1934); *Forge v Smith*, 458 Mich 198, 208-209; 580 NW2d 876 (1998).

[21] MCR 2.116(I)(2).

[22] *Policemen and Firemen Retirement Sys*, 270 Mich App at 77-78.

[23] *Paris Meadows, LLC,* 287 Mich App at 141.

[24] MCR 2.116(I)(2).