

STATE OF MICHIGAN
COURT OF APPEALS

In re JAMES R. & MARJORIE V. LEMCOOL
TRUST.

DENNIS M. LEMCOOL as trustee of the JAMES
R. & MARJORIE V. LEMCOOL TRUST,

UNPUBLISHED
October 18, 2012

Plaintiff/Counter-Defendant-
Appellee,

v

No. 306620
Roscommon Probate Court
LC No. 11-053950-TV

LINDA GORDON GEDDIS, individually and as
personal representative of the ESTATE OF
JAMES R. LEMCOOL, JR.,

Defendant/Counter-Plaintiff-
Appellant.

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Defendant Linda Gordon Geddis (Geddis¹) appeals by right an order granting plaintiff Dennis M. Lemcool (Dennis) a termination of Geddis's tenancy in certain family real estate. This matter originated in the 83rd District Court as a landlord/tenant eviction action, but Geddis counterclaimed, contending that she had a legal or equitable ownership interest in the property; the matter was transferred to the probate court (hereinafter, the trial court) because of the relevance of an estate trust. Geddis moved into the property from a good, well-paying job in Iowa and invested substantial resources into repairing and maintaining the property on the understanding that she would receive a one-half ownership interest therein. Geddis disclaimed any remedy other than an "all or nothing" claim for that one-half ownership interest. Unfortunately, the trial court found that Geddis was simply unable to establish a prima facie showing that Dennis, who undisputedly had sole legal interest in the property, had ever made an

¹ Because many of the parties involved in this matter have the same first or last names, we will refer to them by the most unique name possible to avoid confusion.

explicit promise or agreement with Geddis to that effect. The trial court consequently denied Geddis's counterclaim and granted Dennis the eviction. We affirm.

On May 13, 1999, James R. Lemcool (James) and Marjorie V. Lemcool (Marjorie) created The James R. Lemcool and Marjorie V. Lemcool Trust (hereinafter, "the Trust"). They conveyed the property to the Trust. Dennis was specified as the successor trustee and the sole recipient of any eventual proceeds or assets from the Trust. James and Marjorie "intentionally made no provisions for" two of their other children, one of whom, James R. Lemcool, Jr. (James Jr.), is Geddis's father. The Trust was, by its terms, to be irrevocable and unmodifiable after the death of either James or Marjorie. Marjorie executed several purported amendments to the Trust after James died later in 1999, one of which specified that Dennis and James Jr. were both to receive equal shares of the proceeds and assets of the Trust, but it is undisputed that those amendments had no legal effect. Dennis contended that he had no knowledge of the purported amendments until after Marjorie's death in 2006.

In the time between James's death and Marjorie's death, Marjorie's health was poor. The lawyer who drafted the Trust and the purported amendments explained that Marjorie had lost her ability to sign her name clearly and was always accompanied by "a housekeeper or aid," but that "even though the body was frail, the mind still was in good working order." Dennis apparently disagreed with that. Geddis testified that between 2004 and 2006, she received some telephone calls from Dennis asking her to come to Michigan from Iowa, where she was living, to take care of Marjorie, possibly because Marjorie's caregiver was overmedicating and/or stealing from Marjorie. Geddis, who had a good, well-paying job as a courier at the time, could not move to Michigan. Dennis confirmed that by 2003, he was concerned that Marjorie's caregiver was overmedicating and taking things from her. Dennis testified that he and James Jr. consulted a lawyer in that time period, and the lawyer examined the trust and advised both of them that it was irrevocable and could not be amended.

At some point, Dennis and James Jr. had a discussion about the possible sale of the house from Dennis to James Jr. According to Dennis, James Jr. was "exceptionally liquored up" and essentially badgered him into naming a sum of money he would accept for the house; Dennis initially stated that \$90,000 would be reasonable but eventually conceded that he needed \$70,000 to cover his bills. Dennis stated that Geddis was not present, but that James Jr. apparently subsequently told Geddis. Dennis testified that he subsequently told Geddis's husband, or possibly only fiancée at the time, David Russell Geddis (David), that Dennis might possibly sell the house to a family member if the family member agreed to keep the house in the family, but that he had no desire to sell it at all. Dennis testified that he had never advised Geddis that she or James Jr. owned or would own half of the house.

According to Geddis, the discussion took place in her presence, and Dennis announced that James Jr. wanted to sell the house, which James Jr. denied; she determined that the problem was purely financial, and she attempted to get her cousins to join in some kind of "three-way deal." When that failed, she, Dennis, and James Jr. concluded that if Geddis and David moved into the house and took care of the expenses, the house would not be sold; eventually that agreement became that she and David would inherit the house. She explained that in her recollection, James Jr. offered to buy Dennis's half of the house; Dennis initially stated \$90,000, which James Jr. regarded as "crazy," and Dennis reduced the figure to \$70,000. Geddis

understood that she would inherit James Jr.'s half of the house, but she conceded that that understanding was never reduced to writing.

James Jr. died in 2009. Geddis stated that thereafter, Dennis explicitly told her, "Will or no will, trust or no trust, as far as I'm concerned, you own your dad's half. Pay the taxes, pay the insurance, do the maintenance and the utilities and the Association dues." Dennis stated that what he actually told Geddis was "will or no will, trust or no trust, I will abide by the decision that you made with your father which was pay the insurance, pay the taxes, pay the—do the maintenance, and pay the Association dues . . . I did not say anything about her getting half of the property because her father knew in 2003 that he was not going to get any of the property."

Dennis's view of the overall situation was generally that Geddis had an agreement with James Jr., not with him, and that he had never in any way assented to Geddis ever acquiring an ownership interest in the house. Rather, he assented to permit Geddis to continue living in the house as long as she carried out her obligations to pay taxes, insurance, homeowners association dues, and maintenance. In his view, Geddis simply failed to carry out her obligations, even after repeated reminders of what those obligations were and that she was not carrying them out. He concluded that he was voiding Geddis's agreement with James Jr. Dennis regarded Geddis's obligations under the agreement as rent.

It is not seriously disputed that Geddis and David made substantial improvements to the house, which was in a dilapidated state when Geddis and David moved in. It is also not seriously disputed that Geddis and David left good jobs in Iowa to come to Michigan to live in the house. Unfortunately, Geddis's testimony was that while she had an "understanding that upon [James Jr.'s] death [she] would inherit half the property," she could not recall any specific conversation during which plaintiff actually told her that; rather "it was always just in general" and indeed she "wouldn't call it an agreement." She explained that she made reference to inheriting her father's interest in the property in conversations with Dennis, and he never contradicted her, but she stated that "[i]t was implied." She conceded that Dennis never affirmed that she would receive half of the house, either, and she had only assumed—concededly incorrectly—that James Jr. did own half of the property. David's testimony was only that Dennis offered to let them live in the house because Dennis wanted it to stay in the family; he, however, also only assumed that doing so would eventually lead to inheriting or purchasing the house. He testified that "Dennis always made it sound like he owned half; his brother owned half," so logically, defendant would eventually inherit half, but he could not identify ever being promised half, but rather it was only "alluded to or general."

"When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008). "We review the trial court's findings of fact in a bench trial for clear error and conduct a review de novo of the court's conclusions of law." *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001).

Geddis argues that this case essentially turns on MCL 566.110, under which "the court of chancery [may] compel the specific performance of agreements, in cases of part performance of such agreements," notwithstanding whether the agreement complies with the "statute of frauds,"

MCL 566.106, MCL 566.108, MCL 566.132. Contrary to defendant's argument, the trial court correctly recognized that "there are exceptions to the Statute of Frauds in equity" and it therefore was empowered to enforce agreements even if "it's not in proper form, does not meet the Statute of Frauds requirements." Furthermore, significantly, the trial court correctly recognized that in order for it to do so, there must have been an actual agreement to enforce. See *Lyle v Munson*, 213 Mich 250, 259-260; 181 NW 1002 (1921); *Needham v Hurand*, 328 Mich 483, 486-487; 44 NW2d 17 (1950). The statute of frauds dictates the *form* of a contract, but general contract principles dictate the essential *substance* thereof. See *Zurcher v Herveat*, 238 Mich App 267, 276-291; 605 NW2d 329 (1999).

Consequently, there must have been a "meeting of the minds" between plaintiff and defendant as to "(1) the property, (2) the parties, and (3) the consideration." *Zurcher*, 238 Mich App at 291. Identifying two of those three elements is obvious and undisputed: the house at issue, and plaintiff and defendant. The third is more troubling, because even if all conceivable inferences are drawn in favor of defendant, the best evidence she could provide is that if she paid for taxes and fees and maintenance, she would eventually receive half of the property. A lack of an agreement as to the time for performance is not ordinarily fatal to a contract for the sale of land. *Zurcher*, 238 Mich App at 295. However, here, that renders it impossible to determine the amount of consideration. Additionally, as discussed at length *supra*, Geddis simply could not articulate an actual agreement being entered into.

We have a difficult time believing that Dennis did nothing to foster Geddis's belief that she would receive an ownership interest in the house, but defendant failed to establish any evidence from which an actual agreement, as opposed to unilateral assumptions, no matter how reasonable, could be found. The result in this case therefore strikes us as unfair but inescapable. Affirmed.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan