SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0348-21

DAISY G. CHAVEZ,

Plaintiff-Respondent,

v.

CARLOS CHAVEZ and
MARIA CHAVEZ,

Defendants-Appellants.

Submitted October 26, 2022 – Decided December 1, 2022

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. DC-010789-20.

Bastarrika, Soto, Gonzalez & Somohano, LLP, attorneys for appellants (Franklin G. Soto, on the brief).

The Law Offices of Geoffrey T. Mott, PC, attorneys for respondent (Steven J. Zweig and Christopher D. Ginelli, on the brief).

PER CURIAM

In this ejectment action arising from an intrafamily dispute, defendants, Carlos and Maria Chavez, appeal from a September 17, 2021 Law Division order ejecting them from a residential property. The September 17 order was entered following a bench trial that resulted in the trial judge finding that plaintiff, Daisy Chavez, held title to the property free and clear of any claim by defendants. We affirm.

We glean these facts from the record. Maria is the mother of Carlos and Daisy.[1] Maria and Carlos resided at property owned by Daisy located on Washington Avenue in Elmwood Park (the property). On September 25, 2020, Daisy's attorney sent a certified letter to Maria and Carlos directing them to vacate the property immediately and warning that if they failed to do so, an order for ejectment would be sought in the Superior Court pursuant to N.J.S.A. 2A:35-1 and Rule 4:67-1(a), permitting the filing of summary actions. On October 5, 2020, after Maria and Carlos failed to vacate the property, Daisy filed a verified

[1] Given the common surname, we refer to the parties by their first names to avoid confusion and intend no disrespect.

complaint for ejectment in the Special Civil Part. On November 30, 2020, defendants filed a contesting answer and counterclaim.[2]

On September 17, 2021, Daisy and Carlos both testified in a plenary hearing conducted on the matter. According to Daisy's testimony, in June 1987, her mother and father, along with Carlos and her sister Sylvia, purchased the property. Daisy further recounted how, in 2009, she purchased her brother's share of the property because he "was having financial difficulties" and had "asked [her] to help him out" by "tak[ing] over the . . . mortgage and the ownership of the house." At the time, her father had passed away, her mother was no longer on the deed, and the property was owned by Carlos and a different sister, Edelweiss Chavez. Daisy acquired Carlos's interest by giving him "[a] dollar" as "part of [her] consideration for the purchase of the property" and obtaining "[her] own mortgage" to cover "the amount that was still . . . owed for the property." The title transfer was memorialized in a January 27, 2009 deed

[2] Rule 6:1-2(a)(4) expressly provides that "[s]ummary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1 et seq., where the defendant has no colorable claim of title or possession" are "cognizable in the Special Civil Part." Rule 4:3-1(a)(4)(F) similarly provides that where an "ownership interest . . . pertaining to an ejectment is the only relief sought" in an action, it may be "filed . . . in the Law Division, Civil Part, the Law Division, Special Civil Part, or the Chancery Division."

that was recorded in the Bergen County Clerk's Office and listed the deed holders as Daisy and her sister Edelweiss.

According to Daisy, in 2013, when Edelweiss and her husband wanted to "purchase their own house," they asked Daisy to "remove [Edelweiss's] name from the title and any other documentation[]." The transfer of ownership between Edelweiss and Daisy was executed by a "warranty deed" dated June 8, 2013, between Daisy, Edelweiss, and Edelweiss's husband, granting Daisy the house in "fee simple" "for and in consideration of the sum of $2." Daisy testified that "in executing th[e] document," it was their "intent . . . to transfer sole ownership of the . . . property to [her] alone." After the transfer, Maria and Carlos continued to reside at the property notwithstanding the family's strained relationship. Daisy explained that when she decided to sell the property in 2020, her attorney sent a letter at her direction "command[ing] Carlos . . . and Maria . . . to move out of the property." However, Carlos and Maria refused to leave.

Carlos's account was consistent with Daisy's. Carlos testified that in 1987, he, his sister Sylvia, and his parents purchased the property for $169,900. He conceded that in 2009, he "transfer[red] all right, title and interest [he] had in the property to [Daisy]" for one dollar and that Daisy "assumed a substantial

mortgage on the property." He explained that at the time of the transfer, he owed "probably between [$]300[,000] and [$]400,000" on the property. He acknowledged that his parents also "came off [the] title" in 2009. Carlos further conceded that "in terms of whose name [was] . . . on the deed," Daisy was "the sole owner of the property." He also confirmed that he and his mother were currently living at the property.

In an oral opinion, the judge detailed the governing legal principles and made factual findings based on the consistent testimony of Daisy and Carlos as well as the June 8, 2013 deed that was moved into evidence. The judge first determined that the home was "initially purchased sometime in 1987" by the family and that Carlos "conveyed all of his interest to [Daisy] . . . around 2009." The judge then found that in 2009, "[t]he parents also conveyed their interest to Daisy," and between 2009 and 2013, Daisy and her sister Edelweiss were the only record owners of the property.

The judge determined that the June 8, 2013 deed, executed by Daisy, Edelweiss, and Edelweiss's husband, was a "quitclaim deed" through which Edelweiss and her husband "transferred their interest to Daisy." According to the judge, the deed was duly "recorded in the Bergen County Clerk's Office" on August 6, 2013. Given that defendants had not produced any "contrary

document[s]" to refute the validity of Daisy's chain of title, the judge concluded that Daisy was a "bona fide owner of the property" who took "100[%] ownership" as of June 8, 2013. The judge explained that "as sole owner of the property," Daisy had "a legal right[] to decide to sell or keep the property" and "to determine who stays on the property and who does not." Therefore, the judge found that Maria and Carlos, who still resided at the property, were "not entitled to possession of the property."

Following the hearing, the judge entered an order dated September 17, 2021, which declared that Daisy "own[ed] title" to the property "free and clear of any claim of . . . [d]efendants," "ejected" defendants from the property, and required defendants to provide Daisy "immediate and exclusive possession" of the property within thirty days. A writ of possession was issued on September 24, 2021, and this appeal followed.

On appeal, defendant raises the following points for our consideration:

> POINT ONE
>
> THE COURT ABUSED ITS DISCRETION IN DETERMINING THAT [DAISY] WAS IN THE POSITION OF A BON[A] FIDE PURCHASER BECAUSE SHE NEVER ACTUALLY PAID [MARIA OR CARLOS] OR ANYONE VALUABLE CONSIDERATION FOR THE PROPERTY.

POINT TWO

THE COURT ERRED IN GRANTING [DAISY'S] APPLICATION SEEKING TO EJECT [MARIA AND CARLOS] FROM THE PROPERTY BECAUSE NO EVIDENCE WAS EVER PRESENTED TO THE COURT THAT . . . MARIA . . . EVER DEEDED HER INTEREST IN THE PROPERTY TO ANYONE.

A trial judge's factual findings made following a bench trial are accorded deference and will be left undisturbed so long as they are supported by substantial credible evidence. Reilly v. Weiss, 406 N.J. Super. 71, 77 (App. Div. 2009) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 483-84 (1974)); see also Mountain Hill, L.L.C. v. Township of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (noting appellate courts "do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence" (quoting State v. Barone, 147 N.J. 599, 615 (1997))). On the other hand, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Pursuant to N.J.S.A. 2A:35-1, "[a]ny person claiming the right of possession of real property in the possession of another, or claiming title to such real property, shall be entitled to have his rights determined in an action in the

Superior Court." In Marder v. Realty Construction Co., 84 N.J. Super. 313, 320 (App. Div. 1964) (emphasis omitted), we observed there was "no doubt" that N.J.S.A. 2A:35-1 was "intended to allow a remedy to one who claims title to property in the possession of another." Thus, we concluded that "[t]he statute replace[d] the common law action of ejectment." Ibid.

"In an action in ejectment the plaintiff has the burden of establishing his title, and if he fails to establish a good paper title the judgment must go against him." Perlstein v. Pearce, 12 N.J. 198, 204 (1953). "[T]he plaintiff must recover upon the strength of his own title, and . . . cannot rely upon the weakness of that of his adversary." Phoenix Pinelands Corp. v. Davidoff, 467 N.J. Super. 532, 615 (App. Div.) (alterations in original) (quoting Troth v. Smith, 68 N.J.L. 36, 37 (Sup. Ct. 1902)), certif. denied, 249 N.J. 95 (2021). "If the plaintiff 'fails to support his own title, the defendant will retain possession until he is ousted by someone who has a superior title.'" Ibid. (quoting Troth, 68 N.J.L. at 37).

Here, there is substantial, credible evidence that Daisy was the sole owner of the property — both the 2013 deed and the parties' consistent testimony support that conclusion. The record clearly established that by 2009, the only persons on the deed were Daisy and Edelweiss, and the June 8, 2013 quitclaim deed from Edelweiss to Daisy transferred 100% of the ownership interests in the

property to Daisy. Defendants argue that the judge erred in granting Daisy's application for ejectment because no evidence demonstrated that Maria "had ever formally or legally transferred her ownership interest in the property" to Daisy. However, there is nothing in the 2009 conveyance reserving any interest in the property to Maria.

N.J.S.A. 46:5-3 provides:

> Any conveyance or instrument executed and delivered after July [4], [1931], which shall purport to remise, release or quitclaim to the grantee therein any claim to or estate or interest in the lands described therein, there being nothing in such conveyance or instrument which indicates an intent on the part of the grantor therein to reserve to himself any part of his claim to or estate or interest therein, shall be effectual to pass all the estate which the grantor could lawfully convey by deed of bargain and sale, and the grantee in such conveyance or instrument shall be presumed to be a bona fide purchaser to the same extent as would be the grantee in a deed of bargain and sale.

Under N.J.S.A. 46:5-3, "a quitclaim deed passes the same estate to the grantee as a deed of bargain and sale, provided the instrument contains nothing which would indicate an intent on the part of the grantor to reserve to himself any part of his claim to or estate or interest therein." Tunney v. Champion, 91 N.J. Super. 27, 31 (Ch. Div. 1966). Thus, the 2009 conveyance of the property to Edelweiss and Daisy made them bona fide purchasers under the statute, and

when Edelweiss conveyed her interest to Daisy in 2013, Daisy became the sole owner of the property in fee simple. We are satisfied that Daisy met her burden of establishing a good paper title and we agree with the judge that Daisy "own[ed] title" to the property in fee simple. Because the judge's findings are wholly consistent with and supported by competent, relevant, and reasonably credible evidence, we discern no basis to intervene.

Defendants also argue that the judge should have granted their request to transfer the matter to the Chancery Division because "there was an equitable challenge being made against the premises."

Rule 4:3-1(b) provides in pertinent part:

> A motion to transfer an action from one trial division of the Superior Court or part thereof to another, . . . shall be made within [ten] days after expiration of the time prescribed by R[ule] 4:6-1 for the service of the last permissible responsive pleading or, if the action is brought pursuant to R[ule] 4:67 (summary actions), on or before the return date if the action is pending in the Law Division. Unless so made, objections to the trial of the action in the division specified in the complaint are waived, but the court on its own motion may thereafter order such a transfer.

Defendants filed "a partition action" in the Chancery Division the week prior to the return date on the ejectment action but did not move for a transfer. When defendants appeared for the hearing on the ejectment action, they advised

the judge about the newly filed partition action and acknowledged that they had neither served plaintiff nor moved for a transfer. The judge admonished defense counsel for failing to file a timely motion, pointed out that the summary ejectment action had been pending for nearly one year, and informed defendants that their claim of having an equitable interest in the property "should be part of [the] defense in this case."

We agree with the judge. "[I]f in the course of the proceedings it is determined by the trial judge that there are any ancillary issues in equity, the Law Division judge has the authority to exercise jurisdiction over those matters." Ward v. Merrimack Mut. Fire Ins. Co., 312 N.J. Super. 162, 169 (App. Div. 1998). "[T]he rule granting a Chancery Division judge ancillary jurisdiction over legal matters is equally applicable to a Law Division judge to adjudicate ancillary equity matters." Id. at 169-70. Here, the judge afforded defendants the opportunity to raise their equitable claim as a defense to the ejectment action. However, because the incontrovertible evidence established plaintiff's sole ownership of the property in fee simple, defendants' claim of having an equitable interest in the property failed.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION