STATE OF MICHIGAN

COURT OF APPEALS

SAUL SARETSKY and MARCIA SARETSKY,

Plaintiffs-Appellees,

v

DOROTHY M. GREEN,

Defendant-Appellant.

UNPUBLISHED
February 24, 1998

No. 198953
Alpena Circuit Court
LC No. 96-001829-CH

Before: Markey, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying her motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) and granting summary disposition in favor of plaintiffs pursuant to MCR 2.116(I). Plaintiffs sought to have a deed set aside pursuant to MCL 600.6131; MSA 27A.6131. The trial court, pursuant to MCR 2.116(I), granted summary disposition in favor of plaintiffs finding that it would be impossible for defendant to meet her statutory burden of establishing that the conveyance from plaintiffs' judgment debtor, Theresa Conger, to defendant, Conger's mother, was bona fide. After conducting a de novo review of the record, *Husted v Auto-Owners Ins Co,* 213 Mich App 547, 551; 540 NW2d 743 (1995), we disagree and reverse.

Defendant argues that the trial court erred in setting aside the deed conveying Conger's property to defendant because defendant acquired it pursuant to a bona fide transaction in accordance with MCL 600.6131; MSA 27A.6131 and met her statutory burden of rebutting the presumption of fraud by introducing evidence that: (1) she paid full consideration for the property; (2) the title to the property was recorded solely in her name; (3) Conger signed promissory notes to defendant regarding the debt between them long before plaintiffs became Conger's judgment creditors; and (4) Conger, the grantor, had no use or beneficial interest in the property. We agree that genuine issues of material fact still exist with regard to the integrity of this conveyance.

The trial court found that plaintiffs had established their prima facie case as required by MCL 600.6131; MSA 27A.6131 by showing that: (1) defendant's daughter was a judgment debtor of

plaintiffs pursuant to an April 24, 1995 judgment; (2) defendant's daughter had conveyed the real property to defendant after plaintiffs became Conger's judgment creditors; and (3) the conveyance occurred within one year before plaintiffs obtained the civil judgment against defendant's daughter. The burden of proof then shifted to defendant as the person claiming through the judgment debtor to show that the transaction was in all respects bona fide or that she was not holding the property as a trustee for her daughter. *Corbett v Williams*, 248 Mich 541, 543; 227 NW 545 (1929);. MCL 600.6131; MSA 27A.6131. In rebutting this presumption, defendants have merely been required to present evidence of good faith. *Corbett v Williams*, 248 Mich 541, 543-544; 227 NW 545 (1929); *Bankers Trust Co v Humber*, 263 Mich 426, 428; 248 NW 858 (1933). Our Supreme Court has opined:

> The mere fact that a conveyance may incidentally delay or hinder creditors is not sufficient to make it void, as undoubtedly every conveyance of a debtor's property may in some degree have that effect. One in debt may sell his property, although the effect of the sale is to hinder creditors, if the sale is not made for that purpose, and a debtor, although in failing circumstances or insolvent, may dispose of his property in good faith to obtain money to meet his obligations, although such sale may in fact hinder and delay his creditors. Furthermore, a conveyance executed for the purpose of preferring one or more creditors is in most jurisdictions a valid exercise of the grantor's power to dispose of his own property, although the necessary effect of the conveyance would be to hinder and delay other creditors in the collections of their debts. The statute only refers to an improper illegal hindrance or delay. [*Bankers Trust, supra* at 428.]

Moreover, a debtor has the right prefer family member creditors in securing their indebtedness to them as long as there is proper consideration and lack of fraud. *Sachse v Sauer*, 293 Mich 26, 29-30; 291 NW 209 (1940).

Defendant presented promissory notes that were executed by her daughter in favor of defendant between the dates of January 18, 1989 and June 1, 1993. Plaintiffs commenced an action against defendant's daughter on December 30, 1994, almost six years after the initial promissory note was executed. Defendant also presented documentation showing that the borrowed funds were deposited into a corporate account and that $9,918 of the borrowed funds were used to satisfy the debt Conger owed to plaintiffs. The fact that defendant and her daughter formalized their financial relationship with written promissory notes executed up to six years before litigation commenced between Conger and plaintiffs tends to show that Conger was indebted to defendant. Moreover, there was no evidence on the record to establish that the daughter had knowledge of impending litigation when the promissory notes were executed. Moreover, an inference could reasonably be drawn from defendant's and her daughter's affidavits that the conveyance was made in partial satisfaction of this indebtedness, although defendant did not aver that she had applied the value of the property conveyed against Conger's debt.[1] In light of this evidence, we believe that defendant presented sufficient evidence of good faith to create genuine issues of material fact regarding the integrity of this transaction, thereby rendering the trial court's grant of summary disposition inappropriate.

Given this disposition, we need not address the remaining issues defendant raises.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Stephen J. Markman

[1] Conger's affidavit stated that "I paid back $6,614.70 to Dorothy Green and owed her $24,807.28 less the $14,000 value of the land or some $10,807.28 depending on the value of the land if and when it is sold." Moreover, Conger averred that "[t]he 40 acres is worth some $14,000 and is not suitable for year round living or improvement."