

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WESTERN SURETY COMPANY,

Plaintiff-Appellant,

v

EMIL SZKIPALA and IVETA SZKIPALA,

Defendants-Appellees.

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UNPUBLISHED

May 30, 2000

No. 212142

Macomb Probate Court

LC No. 97-153875-CZ

Before: Gribbs, P.J. and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff, Western Surety Company, appeals by right from a probate court order denying its motion for partial summary disposition under MCR 2.116(C)(10) and granting defendants' motion for summary disposition under MCR 2.116(I)(2). We affirm.

This case arises out of proceedings under the Revised Probate Code, MCL 700.1 *et seq.*; MSA 27.5001 *et seq.*,<sup>1</sup> relative to the estate of Verdine Brunner, deceased. Martin Pavlock was appointed personal representative of Verdine Brunner's estate, and plaintiff issued a fiduciary bond for the estate, naming Pavlock as the principal. Pavlock subsequently executed a deed of personal representative, conveying to defendants residential real property for a stated consideration of \$25,000. Pavlock was thereafter removed as personal representative because of various defalcations and failure to properly account for estate funds, and Robert Kirk was appointed successor personal representative. Kirk filed a petition to surcharge Pavlock. Plaintiff ultimately paid the estate \$50,000 and obtained an assignment from Kirk in his capacity as successor personal representative of all rights and causes of actions against Pavlock and all rights relating to property sold to defendants. The assignment included "all other rights, title and interest Plaintiff [Kirk] has to enforce such rights."

Plaintiff, acting in the stated capacity of assignee and equitable subrogee of the estate and heirs, then filed the instant action to set aside the deed to defendants for the subject residence and to have title vest in its favor on the basis that Pavlock's sale of the property to defendants was void under MCL 700.658; MSA 27.5658. Plaintiff subsequently moved for partial summary disposition under MCR 2.116(C)(10), while defendants sought summary disposition in their favor under MCR 2.116(I)(2). The probate court determined that the sale was voidable, rather than void. Further, in light of evidence that

defendants were bona fide purchasers of the property and determining that someone dealing with a person clothed with authority to conduct business should be protected, the probate court granted summary disposition in favor of defendants pursuant to MCR 2.116(I)(2).

On appeal, plaintiff argues that the probate court should have granted partial summary disposition in its favor because there is no genuine issue of material fact that Pavlock failed to comply with the statutory conditions for a valid sale of real property by a fiduciary. We disagree. We review a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* If it appears that the opposing party, rather than the movant, is entitled to judgment, a court may render judgment for the opposing party. MCR 2.116(I)(2).

Statutory interpretation also presents a question of law that we review de novo. *VandenBerg v VandenBerg*, 231 Mich App 497, 499; 586 NW2d 570 (1998). The primary rule of statutory construction is to determine and effectuate legislative intent through reasonable construction, considering the statute's purpose and the objective sought to be accomplished. *Id.* The starting point is the language in the statute itself. *Bio-Magnetic Resonance, Inc v Dep't of Public Health*, 234 Mich App 225, 229; 593 NW2d 641 (1999). Unless defined in the statute, every word or phrase should be given its plain and ordinary meaning, taking into account its context. *Id.*, quoting *People v Hack*, 219 Mich App 299, 305; 556 NW2d 187 (1996); see, also, MCL 8.3a; MSA 2.212(1). When statutory language is clear and unambiguous, judicial interpretation is not warranted. *Rowell v Security Steel Processing Co*, 445 Mich 347, 353; 518 NW2d 409 (1994). If statutory language is susceptible to more than one interpretation, however, judicial construction is justified. *Id.* Statutes relating to the same subject or sharing a common purpose are in pari materia and should be read together as one so as to produce, if possible, a harmonious whole. *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 416; 590 NW2d 293 (1999); *Travelers Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 279-280; 597 NW2d 235 (1999). The Legislature is presumed to have knowledge of existing laws on a subject when enacting a statute. *Lumley v Bd of Regents for the Univ of Michigan*, 215 Mich App 125, 129-130; 544 NW2d 692 (1996).

We agree that no genuine issue of material fact exists with regard to Pavlock's failure to comply with the requirements of MCL 700.634; MSA 27.5634 when he sold the subject real property to defendants. Subject to court confirmation, however, Pavlock, in his capacity as personal representative, had the authority to sell real estate pursuant to MCL 600.635(1); MSA 27.5635(1) in order to pay the debts of the deceased or charges of administering the estate. Nonetheless, we reject plaintiff's argument that MCL 700.658; MA 27.5658 required the probate court to declare the deed void on account of the procedural irregularity in the sale. MCL 700.658; MSA 27.5658 does not address the circumstances under which a sale may be voided. The statute merely provides for certainty of title when all stated conditions are present. Construing the language "sale shall not be voided . . . if all of the following occurred" to mean that a sale "shall be voided" if all of the following do not occur materially changes the statutory language.

In any event, the word "void" is not always used in its strictest sense. *Jackson Investment Corp v Pittsfield Products, Inc*, 162 Mich App 750, 755; 413 NW2d 99 (1987). "Void" is frequently used and construed more liberally as "voidable." *Id.* The distinction often focuses on whether a provision is intended for public purposes or to protect persons incapable of protecting themselves or, on the other hand, is intended to protect "determinate individuals who are *sui juris*." *Beecher v The Marquette & Pacific Rolling Mill Co*, 45 Mich 103, 108; 7 NW 695 (1881). In the latter situation, the protective purpose is sufficiently accomplished by giving the "liberty of avoiding it." *Id.* The statute in the case at bar serves a protective purpose for determinative persons. Thus, we construe MCL 700.658; MSA 27.5658 as meaning that a sale shall not be voided on account of an irregularity if all specified conditions exist.

Having concluded that the sale is voidable, we agree with defendants' view that equitable considerations, including evidence of their bona fide purchaser status, can properly be considered in determining whether to void the sale. See *Howard v Moore*, 2 Mich 226 (1851).<sup>2</sup> We caution, however, that there are other laws governing the validity of property conveyances and that equity has been applied in circumstances where a deed is prima facie valid. See, e.g., *Moran v Moran*, 106 Mich 8, 11; 63 NW 989 (1895).

In the case at bar, we note that Pavlock's deed was issued in accordance with the requirements for conveyances found in MCL 565.1 *et seq.*; MSA 26.521 *et seq.* Under MCL 565.1; MSA 26.521, a conveyance of lands may be made by deed, signed and sealed by "the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney . . . ." An agent's authority may be actual or apparent. *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995).

We note also that the concerns stated by the probate court with regard to someone dealing with a person clothed with authority to conduct business are relevant to both Pavlock's agency status for purposes of making a conveyance, under at least a theory of apparent authority, and defendants' bona fide purchaser status. See, generally, *Alar, supra* (apparent authority arises when acts and appearances lead a third person to reasonably believe that an agency relationship exists, but the apparent authority must be traceable to the principal); *Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995) (good-faith purchaser is one who purchases property without notice of a defect in title).<sup>3</sup>

Having considered the proofs submitted to the trial court and the parties' arguments, we conclude that plaintiff failed to demonstrate either a genuine issue of a material fact or any legal or equitable principle justifying relief. Pursuant to MCL 700.658; MSA 27.5658, the procedural irregularities in the subject conveyance here rendered it voidable, rather than void, and impacted on Pavlock's actual authority. Absent some other defect in title, which was not shown, we find that plaintiff's motion for partial summary disposition was properly denied and that defendants were properly granted summary disposition under MCR 2.116(I)(2).

In light of the foregoing, we find it unnecessary to address the alternative bases for affirmance that defendants presented.

We affirm.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

<sup>1</sup> The Revised Probate Code, MCL 700.1 *et seq.*; MSA 27.5001 *et seq.*, has been repealed by 1998 PA 386, effective April 1, 2000. After that date, estate matters will be governed by the Estates and Protected Individuals Code, MCL 700.1101 *et seq.*

<sup>2</sup> Although plaintiff did not file an action to quiet title in the circuit court pursuant to MCL 600.2932; MSA 27A.2932, we note that an action to quiet title is also equitable. See *Republic Bank v Modular One LCC*, 232 Mich App 444, 451; 591 NW2d 335 (1998).

<sup>3</sup> We note that the Estates and Protected Individuals Code, effective April 1, 2000, contains a protective provision in MCL 700.3714(1), which provides:

A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised a power. The fact that a person knowingly deals with a personal representation does not alone require the person to inquire into the existence of a power or the propriety of its exercise.