

STATE OF MICHIGAN  
COURT OF APPEALS

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CHAD K. KOETJE, JEFFERY A. KOETJE, and  
BRIAN L. KOETJE,

UNPUBLISHED  
March 30, 2001

Plaintiffs-Appellees,

v

No. 227486  
Kent Circuit Court  
LC No. 00-003118-CZ

DONNA MAE KOETJE,

Defendant-Appellant.

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Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals by leave granted an order granting a preliminary injunction freezing her one-half share of proceeds from the sale of a condominium owned jointly by defendant and plaintiffs' decedent, who was plaintiffs' father and defendant's husband. We affirm.

We will not reverse the trial court's findings pertaining to a preliminary injunction unless they are clearly erroneous. *International Union, UAW v Michigan*, 231 Mich App 549, 551; 587 NW2d 821 (1998); *VanDeventer v Michigan Nat Bank*, 172 Mich App 456, 461; 432 NW2d 338 (1988); The grant or denial of a preliminary injunction is within the sound discretion of the trial court, and will not be reversed absent an abuse of discretion. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 9; 596 NW2d 620 (1999); *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449; 528 NW2d 778 (1995).

Plaintiffs contend that defendant should not be able to spend her \$44,000 share of the condominium proceeds because she has been charged in the murder of the decedent and has already spent approximately \$80,000 of the decedent's money since his death. Their claim is based on the current version of Michigan's "slayer statute," which states that "[t]he felonious and intentional killing of the decedent ... [s]evers the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common." MCL 700.2803(2)(b); MSA 27.12803(2)(b).

In *Ponke v Ponke*, 222 Mich App 276, 281; 564 NW2d 101 (1997), this Court considered an earlier version of the slayer statute:

A joint tenant who feloniously and intentionally kills or aids and abets the killing of another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his or her own property and that joint tenant does not have rights by survivorship. This subsection applies to joint tenancies and tenancies by the entirety in property .... [MCL 700.251(2); MSA 27.5251(2), repealed 4/1/2000.]

This Court interpreted the above language to hold that a murdering joint tenant forfeits any rights to the deceased joint tenant's share because Michigan's public policy seeks to prevent wrongdoers from profiting from their misdeeds<sup>1</sup>. *Id.* at 282. However, a murdering joint tenant does not forfeit *his own* interest in the joint tenancy. *Id.* at 283. Rather, the joint tenancy is severed and becomes a tenancy in common and the murdering joint tenant is entitled to his own share of the joint tenancy. *Id.*

The parties agree that under *Ponke*, defendant would be entitled to her share of the condominium proceeds even if she was culpable in the murder of her husband. However, plaintiffs argued that defendant already spent from decedent's assets almost twice the amount she would receive in condominium proceeds, a significant difference from *Ponke*, where the defendant had not spent more than the amount to which he was entitled.

Defendant's spending and her decision to delay a civil trial to determine her proper legal entitlement left the trial court with no other choice than to issue the injunction impounding her share of the condominium proceeds until a civil trial could be held. Plaintiffs are correct that the facts in the instant case go beyond *Ponke*, and that the trial court did not err by expanding on that holding to justify its decision.

Finally, defendant claims that the trial court improperly evaluated the relevant factors in granting a preliminary injunction. The party seeking a preliminary injunction has the burden of establishing that it should be issued. MCR 3.310(A)(4). Before issuing it, a trial court should primarily consider: (1) the likelihood that the party seeking the injunction will prevail on the merits; (2) the danger that the party seeking the injunction will suffer irreparable injury if the injunction is not issued; (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the grant of such relief; and (4) the harm to the public interest if the injunction is issued. *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984); *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998).

Plaintiffs' likelihood of success was high, based on the findings of probable cause made at defendant's preliminary examination. Additionally, plaintiffs will likely suffer irreparable harm without the preliminary injunction, specifically the loss of any potential recovery. Defendant even admitted the strong possibility that any judgment obtained by plaintiffs would

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<sup>1</sup> See also MCL 700.2803(5); MSA 27.12803(5), which reads "[a] killer's wrongful acquisition of property or interest not covered by this section shall be treated in accordance with the principle that a killer cannot profit from his or her wrong."

probably not be collectible if she is convicted of murdering her husband. Plaintiffs' risk of not having an adequate remedy is much more severe than the harm defendant suffers by not being able to spend the impounded money. Finally, Michigan's well-established public policy is to prevent wrongdoers from profiting from their misdeeds. Without the injunction, defendant could spend the condominium proceeds leaving plaintiffs without a remedy if she is ultimately convicted. Therefore, we find that plaintiffs successfully carried their burden to merit a preliminary injunction.

Under the unique circumstances of this case, we hold that the trial court did not commit clear error by finding that a preliminary injunction was necessary to prevent defendant from spending the condominium proceeds, and that the court did not abuse its discretion in issuing the injunction.

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Jane E. Markey