STATE OF MICHIGAN

COURT OF APPEALS

LEROY BOBOLTZ and RUTH BOBOLTZ,

Plaintiffs-Appellees,

v

BARBARA J. WHITE and
LINDA S. WEST-RIEHN,

Defendants-Appellants,

and

HOWARD G. WHITE, TAMARA WHITE,
STEPHEN D. WHITE, ERIC M. WEST, and
ANGELA L. STEINHELPER,

Defendants.

UNPUBLISHED
November 6, 2001

No. 223504
Montmorency Circuit Court
LC No. 97-003487-NZ

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

In this quiet title action, defendants Barbara J. White and Linda S. West-Riehn appeal as of right from the trial court's order that granted summary disposition to plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We must determine whether plaintiffs carried their burden of proving mutual mistake so as to support the trial court's equitable reformation of the 1985 warranty deed between Hamer Dale West and plaintiffs. An action to quiet title is equitable and, therefore, is reviewed de novo on appeal. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

Generally, the legal effect of a deed cannot be contradicted by the parties or their privies by parol evidence. *Tepsich v Howe Const Co*, 373 Mich 404, 407; 129 NW2d 398 (1964), on reh 377 Mich 18; 138 NW2d 376 (1965). However, a parol agreement pursuant to which the deed is executed may be admitted in equity for reformation of a deed where fraud or mutual mistake is shown. *Emery v Clark*, 303 Mich 461, 470-471; 6 NW2d 746 (1942); *Bennett v Eisen*, 64 Mich App 241, 244; 235 NW2d 749 (1975); *Rupe v Cingros*, 7 Mich App 146, 152; 151 NW2d 178 (1967). The burden of establishing mutual mistake is upon the party who seeks reformation; the evidence must be convincing and must clearly establish the right to reformation. *Burns v*

Caskey, 100 Mich 94, 100-101; 58 NW 642 (1894); *Youell v Allen*, 18 Mich 107, 109 (1869). In *Lee State Bank v McElheny*, 227 Mich 322, 327; 198 NW 928 (1924), the Court explained:

> Courts do not make contracts for parties, and this truism has given rise to the cautionary rule requiring clear and satisfactory evidence of a mutual mistake before reforming a written instrument. Back of nearly every written instrument lies a parol agreement, merged therein, but the writing controls unless a court of equity, on invocation of its power, finds the writing does not express what the minds of the parties met on, and intended, and supposed they had expressed, but which miscarried by mutual mistake.

Here, we agree with the trial court that plaintiffs sufficiently demonstrated mutual mistake on the part of themselves and Hamer Dale West to allow for examination of parol evidence outside the four-corners of the 1985 warranty deed. The question of whether a mutual mistake exists is "one entirely of fact," which generally depends on the trial court's assessment of credibility in cases where the issue is in dispute. *Goldberg v Cities Service Oil Co*, 275 Mich 199, 210; 266 NW 321 (1936). While it may have been better practice for the trial court to decide this issue after hearing the testimony of the parties and their witnesses, rather than on summary disposition, we do not believe that anything can be gained by remanding this matter for further proceedings. The critical fact to be determined was the intent of Hamer Dale West, who is deceased. Therefore, the trial court properly resorted to a review of the documentary evidence submitted by the parties.

Having thoroughly reviewed the documentary evidence submitted by the parties, we concur in the trial court's reasoning. The evidence persuasively points to an intent on the part of Hamer Dale West to grant his entire interest in the property to the Boboltzes and to the conclusion that the exception language in the deed was the result of a mutual mistake.

Notwithstanding the equities that favor defendants,[1] we are convinced that the trial court properly considered parol evidence and determined that a mutual mistake occurred, warranting reformation of the deed. The trial court's ruling fulfills the primary goal in interpreting deeds

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[1] It was plaintiffs' attorney who drafted the 1978 land contract and 1985 deed, and plaintiffs signed the documents without taking note of the conflicting exception language. The documents were recorded and have been part of the public record since 1978 and 1985, respectively. Indeed, defendants (as West's heirs) had a legitimate reason to believe that West had excepted the mineral and oil rights to the property, given the public record. MCL 565.25(4); *Savidge v Seager*, 175 Mich 47, 51-52; 140 NW 951 (1913) (noting that an important purpose of the recording statutes is to impart certainty so that parties can rely on the public record of outstanding property interests). We note that no evidence was submitted that defendants were aware of the conflicting (unrecorded) purchase agreement.

and other conveyance instruments, that is, to determine the intention of the parties to the instrument itself.

Affirmed.

/s/ William C. Whitbeck
/s/ Janet T. Neff
/s/ Joel P. Hoekstra