S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

SYLVESTER MURRAY and DARLENE MURRAY, a/k/a DARLENE DAVIS,

Plaintiffs/Counterdefendants,

v

VIKING FINANCIAL SERVICES and RAYMOND L. SHAW,

Defendants/Counterplaintiffs/Cross Defendants-Appellees,

and

ESTHER FRIES,

Defendant/Counterplaintiff,

and

INTERVENING DEFENDANTS FLAGSTAR BANK, THEODIS CAMP, JR. and MYRA CAMP,

Intervening defendants / Counterplaintiffs/Cross Plaintiffs-Appellants.

UNPUBLISHED
November 16, 2001

No. 220501
Oakland Circuit Court
LC No. 97-539696-CH

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In this quiet title action, intervening defendants Theodis Camp, Jr., Myra Camp, and Flagstar Bank, appeal as of right from a judgment granting defendants Raymond Shaw and Viking Financial Services[1] an equitable mortgage in the property. We affirm.

[1] Viking Financial Services is an assumed name for Shaw's business and not a legal entity; thus, (continued…)

I. Facts and Proceedings

In July 1996, Shaw, while incarcerated in a federal prison located in Milan, met Sylvester Murray.[2] As a result, Murray and Shaw quickly developed a working relationship and within a very short period of time, Murray asked Shaw for a loan in order to pay off his National Bank of Detroit (NBD) mortgage, which had gone into default. After initially rebuffing Murray's request, Shaw eventually agreed to loan him $10,000. According to Shaw, he agreed to loan the money to Murray because Murray, who was the local "jailhouse attorney," was helping Shaw with his appeal and because he felt bad that his wife and children might be without a place to stay. Therefore, in order to provide the money to Murray, Shaw first called his secretary, Marthel Taylor, and asked her to write a $5,000 check, drawn on Viking's business account, payable to Murray's wife, Darlene. Shaw then called his wife and asked her to obtain a $5,000 cashier's check also payable to Murray's wife.[3] These checks, both of which were admitted into evidence, were dated July 18, 1996. As collateral for the loan, Shaw testified that Viking received a quitclaim deed (original deed) for real property located at 19131 Nadol in Southfield. In addition, Shaw testified that the Murrays agreed to provide him with $400 as interest for the loan.[4] Further, Shaw testified that the loan was supposed to be repaid in two or three months time, after Murray received money he claimed was owed to him by his aunt or "someone." Shaw also testified that both the loan and interest payment were "gentlemen's agreements" and that therefore there were no promissory notes or other documentation indicating how or when the loan was to be repaid or what amount of interest Shaw was to receive for making the loan.

A. The Initial Lawsuit

As of December 1996, the loan was yet to be repaid and Murray, who was released from prison that same month, informed Shaw that he would repay the money. However, instead of repaying the money, the Murrays brought a quiet title action against Shaw, Viking, and Esther Fries, an employee of Viking's, alleging that they had filed a fraudulent quitclaim deed to the Nadol property. In response, Shaw, Viking, and Fries, maintained that in exchange for the $10,000 loan, the quitclaim deed provided Shaw with an interest in the property and also maintained that the quitclaim deed was signed by Darlene and therefore not fraudulent.[5] In an

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Shaw and Viking are, for legal purposes, one in the same. Therefore, for ease of reference, we will refer to both defendants simply as Shaw.

[2] Sylvester Murray was the original plaintiff in the underlying action that brought forth intervening defendants' intervening cross-complaint; however, because Murray is not a party to this appeal, for sake of clarity, we will not refer to him as plaintiff.

[3] At trial, Shaw denied that the $10,000 was provided in two separate checks in an effort to avoid being tracked by the government; rather, he testified that the money came from two separate sources, his business account and personal account.

[4] This "interest" was supposed to be paid to Shaw through rental income the Murray's received on two other parcels of land; however, it was later discovered that the Murray's did not even own the purported rental properties.

[5] Shaw, Viking, and Fries also filed a counterclaim for malicious prosecution; however, that

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effort to assist Shaw with his defense and counterclaim, Shaw went to the Oakland County Register of Deeds,[6] where he was informed that another deed (second deed), dated September 25, 1996, transferring the property from Viking back to Darlene, had been recorded on April 21, 1997. However, after reviewing the deed, Shaw realized that both his signature and that of the notary had been forged. Accordingly, Shaw moved the court to set aside the second deed on the basis that it was fraudulent.

B. Intervening Defendants' Counter and Cross-Claim

Intervening defendants then moved to intervene in the pending suit between the Murrays and Shaw, alleging they had paid Darlene good and valuable consideration for 19131 Nadol in exchange for a warranty deed on May 23, 1997. Apparently, intervening defendants relied on the fraudulent second deed and believed that Darlene held the property free and clear. The trial court granted the motion. Intervening defendants then filed a counterclaim for fraud, conspiracy, breach of warranty and to quiet title in 19131 Nadol against the Murrays and a cross-claim to quiet title in the property against Shaw. In their cross-complaint, intervening defendants argued that the quitclaim deed from Darlene to Viking was not an absolute conveyance, but, at most, simply an equitable mortgage. They also argued that the $10,000 loan was not really a loan, but rather part of an illegal money laundering scheme and that therefore an equitable mortgage should not be recognized by the court. Accordingly, they asked the court to extinguish any claim that plaintiff's or Shaw may have against the property. As a result, the trial court eventually dismissed plaintiff's claims in their entirety, declaring that plaintiffs had no rights or interest in the property. However, with regard to Shaw, the trial court first ruled that the conveyance of the property to Shaw was intended as an equitable mortgage and not an absolute conveyance of the property to Shaw.

The case then proceeded to trial on intervening defendants' request to quiet title to the property and extinguishing Shaw's equitable mortgage. As previously noted, intervening defendants claimed that the evidence would show that Shaw's interest in the property arose out of a highly questionable and probably illegal transaction and therefore the court should refuse to find that an equitable mortgage existed. In contrast, Shaw requested that the court recognize his equitable mortgage interest in the property and that that mortgage was precedential to the rights of intervening defendants.

At trial, Shaw called Rita Jones-Hudson who testified that she notarized the original deed transferring interest in the property from Darlene to Shaw and also testified that she witnessed Darlene sign the deed. In addition, Taylor testified that she had prepared the original deed and also observed Darlene execute the deed. To further collaborate this testimony, a handwriting analyst testified that Darlene's signature on the original deed was "with a high degree of forensic probability the true signature of Darlene Murrray." Intervening defendants offered no testimony or evidence to refute the validity of the original deed. Further, as previously indicated, Shaw

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issue is not relevant to the case before us.

[6] Shaw was released from prison in April 1997.

testified that the original deed was signed over to Viking in order to provide collateral for the $10,000 loan Shaw had given to Murray.

With regard to the second deed, Jones-Hudson testified that she never signed the deed and therefore the signature on it was not authentic. Shaw also testified that his signature on the second deed was a forgery. Similarly, the handwriting analyst testified that both Jones-Hudson's and Shaw's signatures on the second deed were forgeries. Again, intervening defendants did not offer any testimony or evidence that refuted the testimony of Shaw and his witnesses. Instead, at the close of proofs, intervening defendants argued that Shaw's theory of the case was nonsensical and that it was unlikely Shaw would have loaned money to a convicted drug dealer who he had just met in prison.[7] Intervening defendants also testified that because the loan came from two different sources, the transaction was suspicious and most likely conducted in that matter in order to prevent tracking from the federal government. Further, intervening defendants' counsel maintained that since Shaw was experienced in the real estate business, he would not have secured a loan without a promissory note.

Following closing arguments, the trial court ruled in favor of Shaw. In so ruling, the trial court made the following findings of fact: (1) the original deed of August 2, 1996 was valid and the second deed of September 25, 1996 was forged;[8] (2) that Shaw did indeed loan $10,000 to Murray in order to keep NBD from foreclosing on Murray's mortgage; (3) that Shaw agreed to make the loan for $400 interest; (4) that Shaw was unaware of a government lien or the second deed until after the loan had been made; and (5) that "it's only speculation as to whether Mr. Shaw engaged in devious behavior." Accordingly, the trial court found that Shaw had an equitable mortgage on the property that took precedence to Flagstar's mortgage and that Shaw was "entitled to $50,000 for malicious prosecution from the Murrays."

II. Standard of Review

Actions to quiet title are equitable in nature, and as such, this Court's review of the trial court's conclusions is de novo. *Sackett v Ateyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). Nonetheless, with regard to the trial court's factual findings, our review is limited to clear error. See *id*. and *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 171; 530 NW2d 772 (1995). A finding of fact is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made. *Id*. In addition, in quiet title actions, we give great weight to the findings of fact made by the trial court and will not disturb those findings unless convinced that we would have reached a different result. *Dep't of Civil Rights v Silver Dollar Cafe*, 441 Mich 110, 122 n 16; 490 NW2d 343 (1992), citing Powell & McAlpine, *Standards of review in Michigan*, 70 Mich B J 28, 29 (1991), quoting *Connelly v Buckingham*, 136 Mich App 462, 467; 357 NW2d 70 (1984); see also *Davis v Davis*, 179 Mich App 72, 81; 445 NW2d 464 (1989).

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[7] Murray was apparently in prison for convictions related to drug dealing.

[8] The trial court actually stated that the second deed had been dated September, 22, 1996; however, a review of the deed in question indicates that it was dated September 25, 1996.

III. Analysis

Intervening defendants first argue that the trial court erred when it credited Shaw's trial testimony only because it was unrebutted by other testimony at trial. They further argue that the trial court improperly imposed a burden on them to produce direct evidence to support their theory of the case. We find these arguments to be without merit.

The trial court found that the testimony did not prove that Shaw engaged in "devious behavior," i.e., an improper or illegal loan transaction with Murray. Intervening defendants admit that they did not present any direct testimony on this assertion, but instead rely on what they believe are reasonable inferences to be drawn from the evidence. Contrary to intervening defendants' argument, the trial court's finding demonstrates not that Shaw's position was found credible only because it was unopposed by direct testimony or evidence, but instead, that the testimony of the hand writing analyst, Shaw's secretary, and the notary public, all of whom indicated that Darlene signed the original deed, was more credible. Because the trial court was in a superior position to judge the credibility of these witnesses, we are unable to find the factual findings to be clearly erroneous. Cf *Henry v City of Detroit*, 234 Mich App 405, 415; 594 NW2d 107 (1999) and *People v Canter*, 197 Mich App 550, 562; 496 NW2d 336 (1993).

In addition, because intervening defendants claimed that the loan from Shaw to Murray was fraudulent they held the burden of proving fraud by clear and convincing evidence. *Goldberg v Goldberg*, 295 Mich 380, 384; 295 NW2d 194 (1940); *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996). Thus, the trial court's statement that intervening defendants' claims were based on speculation reflects the trial court's conclusion that intervening defendants' position was not supported by clear and convincing evidence. *Id*. The trial court, as the trier of fact, was entitled to make that determination. See *Triple E Produce Corp*, *supra* at 176-177. Accordingly, we are unable to find clear error in the trial court's determination that intervening defendants failed to establish that the $10,000 loan was improper or illicit.

Intervening defendants also argue that, because of the implausibilities and inconsistencies in Shaw's testimony, the trial court's findings, which credited Shaw's testimony, should be deemed erroneous. We disagree. Because the trial court was in a superior position to determine Shaw's credibility, we find no reason to disturb the trial court's findings. Cf. *Henry, supra, Sackett, supra* and *Canter, supra*.

Further, intervening defendants allege that even if Shaw's testimony was credible, because he took advantage of the Murrays by taking the deed to their property to secure the loan and by charging a usurious rate of interest he had unclean hands with regard to the transaction, and therefore should not be permitted to obtain an equity judgment. This argument was not raised below for decision by the trial court, or raised in the statement of questions presented; thus, this issue was not preserved for appellate review. *Hilliard v Schmidt*, 231 Mich App 316, 318; 586 NW2d 263 (1998); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). In addition, because intervening defendants fail to cite any authority in support of this argument, the issue has been abandoned. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655 n

1; 358 NW2d 856 (1984); see also *Manning v City of East Tawas*, 234 Mich App 244, 247 n 2; 593 NW2d 692 (1999), citing *Goolsby*, *supra*.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Henry William Saad
/s/ Kurtis T. Wilder