

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL EDWARD BIERI,

Plaintiff-Appellant,

v

JON BOZEK,

Defendant-Appellee.

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UNPUBLISHED

July 9, 2002

No. 229684

Ottawa Circuit Court

LC No. 00-036404-CZ

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and request for costs and sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On June 19, 1997, plaintiff and his wife Rosalind Bieri conveyed certain real property by quitclaim deed to defendant, who is Rosalind Bieri's son. The transfer was made in order to protect the property from judgments in potential civil suits arising out of plaintiff's criminal conduct. Plaintiff and Rosalind Bieri were divorced in 1999.

In March 2000 plaintiff filed a suit seeking an order requiring defendant to reconvey the property to him. Plaintiff alleged that the property was transferred to protect it from judgments in potential civil suits, that defendant held the property in constructive trust, and that defendant had agreed to reconvey the property to him. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). He denied that he had agreed to reconvey the property, and argued that plaintiff's claim was barred because the alleged contract for the reconveyance of the property was not in writing as required by the statute of frauds. Defendant requested costs and sanctions.

The trial court granted defendant's motion for summary disposition and request for costs and sanctions. The court observed that Michigan recognizes an equitable cause of action for the imposition of a constructive trust. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993). However, the court also noted both that a mere verbal promise to reconvey property to another does not create a constructive trust, *Stephenson v Golden*, 279 Mich 710, 733; 276 NW 849 (1937), and that a person who conveys property to another to avoid anticipated claims cannot invoke the assistance of a court of equity to aid in the reconveyance of that property. *Poppe v Poppe*, 114 Mich 649, 651; 72 NW 612 (1897). The

court granted defendant's request for costs and sanctions, concluding that plaintiff's complaint: (1) was not warranted by existing law and did not make a good faith effort for the extension, modification, or reversal of existing law; and (2) was frivolous in that it was completely devoid of arguable legal merit. MCR 2.114(D)(2), (E), and (F); MCR 2.625(A)(2); MCL 600.2591(3)(a)(iii). The trial court awarded defendant a total of \$2,701.96 in costs and sanctions.

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition and his request for costs and sanctions. We disagree and affirm. The statute of frauds requires that a contract for the sale of land be in writing and be signed by the seller. MCL 566.106; MCL 566.108; *Zurcher v Herveat*, 238 Mich App 267, 277; 605 NW2d 329 (1999). It is undisputed that defendant did not sign any document agreeing to reconvey the property to plaintiff. A constructive trust may be imposed if such a trust is necessary for equity purposes or to prevent unjust enrichment. A constructive trust may be imposed if property has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of a weakness, or other similar circumstances that would render it unconscionable for the holder of legal title to retain the property. *Kammer, supra*.

Plaintiff has not established that defendant obtained title to the property through fraud, misrepresentation, etc. Plaintiff freely admits that he and his former wife conveyed the property to defendant to protect it from judgments in potential civil suits. This case is distinguishable from cases such as *Chapman v Chapman*, 31 Mich App 576, 579-581; 188 NW2d 21 (1971), in which a constructive trust was imposed and an oral promise to reconvey property was enforced because the property transfer was not done with unclean hands, and *Arndt v Vos*, 83 Mich App 484, 487-488; 268 NW2d 693 (1978), in which the existence of an oral agreement to reconvey the property was undisputed. Here, the agreement to reconvey the property, if it existed, violated the statute of frauds, and was made with unclean hands. The trial court correctly granted defendant's motion for summary disposition on the ground that a constructive trust was not warranted under the circumstances. *Stephenson, supra*; *Poppe, supra*.

The trial court did not clearly err by awarding defendant costs and sanctions. Plaintiff's claim for reconveyance of the property was barred by the statute of frauds. MCL 566.106; MCL 566.108. Plaintiff freely admitted that he and his former wife conveyed the property to defendant to protect it against judgments from potential civil suits; nevertheless, plaintiff sought assistance from a court of equity to reclaim the property. His claim was not well grounded in existing law, and he did not make a good faith argument for modification or reversal of existing law. The claim was frivolous in that it was devoid of arguable legal merit. The trial court did not clearly err by granting defendant's request for costs and sanctions. MCR 2.114(D)(2) and (E); MCR 2.625(A)(2); MCL 600.2591(3)(a)(iii).

We reject defendant's request that we assess damages against plaintiff on the ground that the instant appeal is vexatious. MCR 7.216(C)(1). At a minimum, plaintiff legitimately sought

review of the trial court's decision to impose costs and sanctions.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Martin M. Doctoroff