STATE OF MICHIGAN

COURT OF APPEALS

LULA MAE JONES, as Personal Representative of the Estate of RUTHIE MOORER, Deceased,

Plaintiff-Appellant,

v

VALERIE V. WEATHERLY, d/b/a VAL-VIL ENTERPRISES,

Defendant-Appellee/Third-Party Plaintiff,

and

LULA MAE JONES, Individually and as Co-Guardian and Conservator of SHAYNA MOORER and SHARON NUNLEE, and as Personal Representative of the Estate of MARY RUTH NUNLEE and THERESA MEYERS,

Third-Party Defendants-Appellants.

UNPUBLISHED
April 13, 2004

No. 246051
Wayne Circuit Court
LC No. 01-124941-CH

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiff,[1] Lula Mae Jones, appeals as of right a trial court judgment awarding defendant[2] $45,000 in this real property action. Plaintiff argues the trial court erred when it determined defendant increased the value of the subject property by $55,000 in home improvements and

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[1] Though Lula Mae Jones is both plaintiff and third-party defendant, in the interests of efficiency and convenience, we will refer to her as "plaintiff."

[2] Though defendant is both defendant and third-party plaintiff, we will refer to her as "defendant" in the interests of efficiency and convenience.

awarded defendant $45,000.[3] Because the record does not support plaintiff's claims on appeal, we affirm.

"Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo." *Killips v Mannisto,* 244 Mich App 256, 258; 624 NW2d 224 (2001). "The factual findings of the trial court are reviewed for clear error." *Id.* "This Court reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000) citing *Gumma v D & T Constr Co,* 235 Mich App 210, 221; 597 NW2d 207 (1999); MCR 2.613(C).

Plaintiff argues defendant made improvements to the subject property in bad faith, and is therefore completely barred from recovering the value of the enhancements made to the property. MCR 3.411 addresses civil actions to determine interests in land. Specifically, MCR 3.411(F)(3) provides that "[t]he party claiming the value of the improvements may not recover their value if they were made in bad faith."

At issue is the meaning of the term "bad faith" in the context of MCR 3.411(F)(3). Plaintiff relies on a statement in *Hogerheide v Hickey*, 2 Mich App 580, 584; 141 NW2d 357 (1966), that bad faith means simply a lack of good faith for her contention that defendant exhibited bad faith. Plaintiff also points to *Malloy v Pearson*, unpublished opinion per curiam of Court of Appeals, issued December 18, 2001 (Docket No. 222597). We note that *Malloy* is not binding precedent, but in any event can easily distinguish it from the instant case because in *Malloy*, there was no question the defendants had notice of the plaintiff's claim to the property before making improvements in the face of the plaintiff's claim. *Id*. at slip op p 6-7.

Even if we adopt *Hogerheide*'s definition of bad faith as simply a lack of good faith, we do not find the trial court's holding, that defendant did not act in bad faith, clearly erroneous. Plaintiff's allegations of bad faith center on the service of process of the complaint for her action to obtain a default judgment quieting title in the subject property. Looking at the entire record, there is evidence that defendant's faulty service of process on Ruthie Moorer, the last owner of record of the subject property, resulted from her lack of familiarity with the court rules and from her efforts to save the expense of hiring an attorney. Defendant did her own legal research at the public library, sought out information at city departments, and inquired at the Michigan Department of Vital Records to determine if there was a death certificate for Ruthie Moorer.

Though defective, defendant's service came close to complying with MCR 2.105(A)(2), which provides that process may be served on a resident or nonresident individual by: "sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee." Someone unfamiliar with the court rules might be unaware of the significance of restricting delivery to the addressee. While it might have been

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[3] Plus interest from the escrow funds held in the action.

negligent to not inquire into this significance, negligence is not bad faith even under the standard plaintiff advocates. Reviewing the entire record, we are not left with the definite and firm conviction that the trial court committed error when it found that defendant did not exhibit bad faith in making the improvements to the subject property.

In the alternative, plaintiff argues that even if defendant did not make enhancements in bad faith, the trial court erred when it determined the amount the improvements increased the value of the subject property. Plaintiff contends the trial court erred in accepting defendant's witness' estimate of this value. Defendant's witness was a licensed real estate salesman since 1995. Plaintiff's witness was qualified as an expert in the field of real estate appraisals. In finding for defendant regarding the value of the property in February, 2001, prior to renovations, the trial judge found it to be:

> commanded virtually by the evidence. We have two people who made appraisals, both experienced to some degree, although [plaintiff's witness'] . . . technical qualifications are greater than those of [defendant's witness] . . . [plaintiff's witness] was valuing this house basically in the condition that he saw it. He was valuing the house as if it were an up to date house fully repaired. . . . he didn't see it when it was in the terrible disrepair that it was. And when those conditions were posited to him, he brushed them off as if it would make no difference. . . . [Defendant's witness], his advantage was that he saw it at the time just before the renovation. . . . I am, of course, going to accept [defendant's witness'] appraisal. He says it's fifteen to twenty thousand dollars. I'm going to give the estate the benefit of the doubt and say that the value is twenty thousand dollars.

On appeal, plaintiff emphasizes the fact that her witness' qualifications as an appraiser were superior to those of defendant's witness. However, we are not persuaded by this argument and hold that the trial court's conclusion was not clearly erroneous. As the trial court observed, it is self-evident that an appraisal is only as reliable as the knowledge on which it is based, and defendant's witness' knowledge of the condition of the subject property during the relevant time period was unquestionably superior to that of plaintiff's witness.

The weight of the evidence established the existence of numerous conditions that plaintiff's expert did not take into account in preparing his appraisal, and the expert acknowledged these conditions would have affected his appraisal. We are not left with a definite and firm conviction that the trial court made a mistake in basing its award on defendant's witness' value estimate. Therefore, the trial court did not err. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Finally, defendant contends she is entitled to the entire value of the enhancements she made to the property in the amount of $55,000 rather than the $45,000 she was awarded by the trial court. Because defendant is not merely urging an alternative ground for affirmance but is seeking to obtain a decision more favorable than that rendered by the trial court, we cannot

address this issue absent a cross-appeal. See *In re Estate of Herbach*, 230 Mich App 276, 284; 583 NW2d 541 (1998).

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Pat M. Donofrio