

STATE OF MICHIGAN
COURT OF APPEALS

JUDY LOUIS and JOYCE REDMAN, trustees of
the SAMUEL T. LOUIS TRUST,

UNPUBLISHED
June 20, 2006

Plaintiffs-Appellants,

and

WILLIAM LOUIS, SAMUEL R. LOUIS, and
ROGER LOUIS,

Plaintiffs,

v

EDWARD H. LOUIS, JOSEPHINE LOUIS,
EDWARD J. LOUIS, SUZANNE LOUIS, and
SAM P. LOUIS,

No. 258299
Van Buren Circuit Court
LC No. 03-051661-CH

Defendants-Appellees.

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiffs-appellants (“plaintiffs”) appeal as of right from the trial court’s order granting defendants’ motion for summary disposition. We affirm.

This appeal concerns two parcels of land in Paw Paw Township. Antonette Louis conveyed Parcel A to her sons Edward H. Louis, Robert Louis, and Samuel T. Louis in August 1980. That deed lists the Louis sons as “joint tenants with rights of survivorship.” A Michigan form deed was used for the conveyance, but all parties to the deed lived in Illinois at the time. The attorney that prepared the 1980 deed was licensed in Illinois. Robert Louis died in August 1992.

Parcel B was part of Antonette Louis’s estate at the time of her death in 1994. On December 5, 1995, the Van Buren Probate Court assigned Parcel B to Edward H. Louis, who was also named as the executor of Antonette Louis’s estate. That same day, Edward H. Louis and his wife, Josephine Louis, then conveyed Parcel B to Edward H. Louis and Samuel T. Louis by way of a quitclaim deed. On December 12, 1995, the probate court recorded its December 5 assignment to Edward H. Louis. The quitclaim deed was recorded on March 12, 1996.

On January 6, 1996, Edward H. Louis and his wife Josephine Louis executed a quitclaim deed conveying both Parcels A and B (“the property”) from themselves to Edward H. Louis, Josephine Louis, and their sons Sam P. Louis and Edward J. Louis as joint tenants with rights of survivorship. The 1996 deed purported to destroy a joint tenancy and create a tenancy in common that included Samuel T. Louis.

On March 27, 2003, Samuel T. Louis died. His heirs brought this action, complaining that Edward H. Louis and his family improperly excluded them from the property. They argued that they in fact were title holders to the property based on (a) the 1980 deed which created a joint tenancy in Parcel A with survivorship rights that were destroyed by the 1996 deed; and (b) the 1995 deed, which conveyed a one-half interest in Parcel B even though the assignment to Edward H. Louis was not recorded until one week later.

Plaintiffs argue on appeal that the 1980 deed pertaining to Parcel A “...created the peculiar Michigan-type of ‘joint tenancy with rights of survivorship.’”

In Michigan, “survivorship” language in a deed creates a life estate with dual contingent remainders (that is, indestructible survivorship rights). *Albro v Allen*, 434 Mich 271, 275-276; 454 NW2d 85 (1990). In Illinois, only a joint tenancy with destructible survivorship rights may be created, apparently even if “survivorship” terms are used. See, e.g. *Jackson v O’Connell*, 23 Ill2d 52, 55-56; 177 NE2d 194, 195 (1961), and *Dolley v Powers*, 404 Ill 510, 513-514; 89 NE2d 412, 414 (1949). If the 1980 Michigan deed created a joint tenancy with indestructible survivorship rights, then the 1996 deed had no effect on Edward H. Louis’s survivorship rights, and Samuel T. Louis’s interest in Parcel A was extinguished and reverted to Edward upon Samuel’s death. If the 1980 deed created a joint tenancy with destructible survivorship rights, then the 1996 deed destroyed Edward H. Louis’s survivorship rights and Samuel T. Louis’s interest in Parcel A passed to plaintiffs, Samuel T. Louis’s heirs.

With regard to Parcel A, the trial court held that even if the parties intended to create a joint tenancy with destructible survivorship rights by way of the 1980 deed, such an interest would not be recognized in Michigan because “survivorship” language in a deed necessarily creates indestructible survivorship rights. But, in fact, Michigan recognizes two forms of joint tenancy: the joint tenancy “with rights of survivorship,” which creates in each grantee a life estate with indestructible alternative contingent remainders; *and*, the less commonly seen joint tenancy with destructible rights of survivorship that may be destroyed by an act of one joint tenant. See *Albro, supra* at 275-276, and *Townsend v Chase Manhattan Mtg Corp*, 254 Mich App 133, 136; 657 NW2d 741 (2002). A joint tenancy with indestructible survivorship rights is created when *express* words of survivorship are used in a particular conveyance and is the more common type of joint tenancy in Michigan. *Albro, supra* at 275, 277.

Here, however, the 1980 deed at issue clearly involves property located in the State of Michigan and specifically provides that the “[i]ndenture is between Antonette Lewis . . . and Sam T. Louis, Edward H. Louis and Robert Louis . . . as joint tenants with rights of survivorship.” (Emphasis added). In a suit involving land, a conveyance of land depends on the law of the state where it is situated unless there is some ambiguity as to the interest of the grantor, parties and the attorney who prepared the deed. *Taylor v Taylor* 310 Mich 541, 548 (1945). Because the 1980 deed expressly states that the joint tenancy is with rights of survivorship and there is no indication of any ambiguity, each of the grantees received

remainders that may not be destroyed by any act of the other. *Albro, supra* at 287. Moreover, in his opinion, the trial court addressed the factual scenario pertaining to intent and specifically held that,

I don't find that there is any question that there was an intention to create not a tenancy in common, but a joint tenancy with rights of survivorship and I think that's evidenced by the behavior and actions of the parties thereafter as to how they understood it. . . . But my conclusion is that these facts tell me there was a joint tenancy with full rights of survivorship.

Thus, the trial judge reached the correct conclusion and unequivocally determined that no genuine issue of material fact existed that the grantees to parcel A were joint tenants with rights of survivorship. Consequently, he properly granted summary disposition as to parcel A, notwithstanding his comment indicating his incorrect understanding that Michigan no longer recognized the other type of joint tenancy.

With regard to Parcel B, the trial court properly granted summary disposition to defendants. Plaintiffs assert that the December 5, 1995, quitclaim deed conveyed a one-half interest in Parcel B to Samuel T. Louis even though Edward H. Louis's interest in Parcel B was not recorded until one week later. We disagree. A quitclaim deed conveys a grantor's complete interest in real property but neither warrants nor professes that the title is valid. *DNR v Carmody-Lahti*, 472 Mich 359, 377-378; 699 NW2d 272 (2005). The grantee in a quitclaim deed receives only that title then held by the grantor and not any after-acquired title. *Doelle v Read*, 329 Mich 655, 657; 46 NW2d 422 (1951). Consequently, if a grantor has no interest in the property at the time of conveyance, title does not pass to the grantee. *Id.*; *Brownell Realty Inc v Kelly*, 103 Mich App 690, 695-696; 303 NW2d 871 (1981).

Because Edward H. Louis did not have title in Parcel B until December 12, 1995, he had no interest to convey by way of a quitclaim deed on December 5, 1995. Contrary to plaintiffs' contentions, neither the doctrine of equitable estoppel nor equitable title changes this long-settled tenet of property law in Michigan.

Further, in response to plaintiffs' additional argument, we note that Edward H. Louis's 1995 conveyance was not made by the estate of Antonette Louis. Edward did not convey Parcel B to Samuel T. Louis on behalf of Antonette Louis's estate or in his capacity as executor of the estate. Rather, he conveyed Parcel B to Samuel T. Louis naming "Edward H. Louis and Josephine Louis, husband and wife," as grantors. The deed therefore conveyed the interest Edward H. Louis and Josephine Louis held, not the interest the Antonette Louis estate held. The trial court's grant of summary disposition with regard to Parcel B is affirmed.

We affirm.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey