# STATE OF MICHIGAN

# COURT OF APPEALS

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In re Estate of MARY HELEN GREEN OLSON, Deceased.

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KAREN ASTRID HOAD, Personal Representative of the Estate of MARY HELEN GREEN OLSON,

Petitioner-Appellee,

v

UNITY MORTGAGE CORPORATION, d/b/a REVERSE MORTGAGE COMPANY,

Respondent-Appellant.

UNPUBLISHED
September 29, 2009

No. 283818
Van Buren Probate Court
LC No. 2005-000002-CZ

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

PER CURIAM.

Respondent Unity Mortgage Corporation (UMC) appeals by right the trial court's order granting petitioner's motion for reconsideration and to quiet title of the estate to thirty acres of a 40-acre parcel that Mary Helen Green Olson mortgaged to UMC in 1995. We affirm.

Respondent UMC argues on appeal that the trial court abused its discretion because it improperly relied on MCR 2.119(F) and MCR 2.612 when issuing its order following petitioner's motion for reconsideration. Respondent contends the petitioner did not present any new arguments or evidence that the trial court had not already considered in its original opinion and order dismissing petitioner's action to quiet title and permitting UMC to foreclose on the entire 40-acre parcel. UMC also argues that the trial court failed to specify either the substantive or procedural basis for its decision to reverse or change its original opinion and order.

We review for an abuse of discretion a trial court's decision regarding both a motion for reconsideration under MCR 2.119(F) and motion for relief from judgment under MCR 2.612(C)(1). *Peterson v Auto-Owners Ins Co*, 274 Mich App 407, 412; 733 NW2d 413 (2007); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

The Interpretation and application of the court rules, however, presents a question of law we review de novo. *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 598; 552 NW2d 523 (1996). When interpreting the meaning of a court rule, we apply principles of statutory construction to enforce the ordinary meaning of the words used in light of the purpose to be accomplished. *Meece v Meece*, 223 Mich App 344, 346-347; 566 NW2d 310 (1997).

The plain language of MCR 2.119(F) provides that it applies when a party requests rehearing or reconsideration of a trial court's decision on a motion. MCR 2.119(F)(1) states the time within which "a motion for rehearing or reconsideration of the *decision on a motion* must be served and filed . . . ." (Emphasis added). Further, MCR 2.119(F)(3) provides, generally, "[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that *a different disposition of the motion* must result from correction of the error." (Emphasis added). Our reading of MCR 2.119(F) is supported by this Court's decisions in *Smith v Sinai Hospital of Detroit*, 152 Mich App 716, 723; 394 NW2d 82 (1986), holding MCR 2.119(F) affords trial courts the discretion to afford a "second chance" on a previously denied *motion*, and *In re Estate of Moukalled*, 269 Mich App 708, 714; 714 NW2d 400 (2006), holding the court rule grants trial courts considerable discretion to reconsider a decision on a *motion*, even if on the same arguments previously presented and decided.

Here, petitioner did not request rehearing or reconsideration of a decision on a motion; instead petitioner sought rehearing of the trial court's findings of fact and conclusions of law after a bench trial. From the plain language of MCR 2.119(F) it is patent it was not the appropriate court rule with which to analyze petitioner's motion. But in rendering its decision, the trial court did not indicate that it was doing so under the authority of MCR 2.119(F), only that petitioner had brought her motion pursuant to MCR 2.119(F) and MCR 2.612. We conclude that petitioner's motion was properly brought and decided under MCR 2.612. In sum, while petitioner's motion was not appropriate under MCR 2.119(F), the trial court did not abuse its discretion, and its decision should not be reversed simply because the trial court noted that petitioner brought her motion under both MCR 2.119(F) and MCR 2.612.

In the trial court's order following the motion for reconsideration, the court stated that petitioner requested clarification of the court's original ruling regarding the number of acres that Olson mortgaged as security. Specifically, petitioner asked whether Olson's 1995 mortgage to UMC included: (a) the house plus three acres, (b) the house plus ten acres, or (c) the house plus the entire 40 acres. The trial court noted that "[w]hile this Court has previously ruled that the mortgage is valid and that Unity Mortgage may foreclose on the mortgage the Court's opinion and the record are unclear as to how much of the land is subject to the foreclosure." Our review of the record convinces us that the trial court did not clearly err by concluding, "there was a multitude of evidence that anything above the house plus three acres was 'excess land' and would not qualify for a HUD approved loan . . . ." Nevertheless, rather than focus on the amount of land that the parties intended to act as security for funds advanced by UMC, the trial court in its original opinion and order focused on whether a mortgage in violation of the United States Department of Housing and Urban Development (HUD) guidelines for federal insurance could be enforceable. The trial court on this issue originally determined that a "violation of HUD

guidelines does not give the mortgagor an independent cause of action to void the mortgage." This finding ended the trial court's analysis of the issues presented during the bench trial. It was not until petitioner moved for reconsideration that the trial court appeared to realize that it did not take its analysis an additional step. Specifically, the trial court failed to determine whether UMC could foreclose on the home and all 40 acres when, in fact, the 1995 mortgage as drafted included excess acreage as defined in HUD guidelines,[1] and UMC sought to receive the "double benefit of having their loan insured by the federal government while also having the mortgage protected by excess land." We conclude, contrary to UMC's argument on appeal, that the trial court did not consider and dispose of this issue in its original opinion and order.

MCR 2.612(C)(1)(a) governs motions for relief from judgment and provides that "[o]n motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding" on the basis of "[m]istake, inadvertence, surprise, or excusable neglect." "Mistake" for purposes of MCR 2.612(C)(1)(a), may be that of the trial court. *Fisher v Belcher*, 269 Mich App 247, 262; 713 NW2d 6 (2005), citing *Altman v Nelson*, 197 Mich App 467, 477; 495 NW2d 826 (1992). This Court has also held that relief from a judgment will generally only be granted in extraordinary circumstances and where the failure to grant the relief would result in a substantial injustice. *Gillispie v Bd of Tenant Affairs of the Detroit Housing Comm*, 145 Mich App 424, 427-428; 377 NW2d 864 (1985). In the end, the trial court "must balance the public interest in achieving finality in litigation versus the private interest of remedying an injustice." *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 203; 446 NW2d 648 (1989).

In *Fisher*, *supra*, this Court found that the trial court readily admitted that it had inadvertently reached the merits regarding its jurisdiction by granting custody administratively. Hence, the trial court inadvertently made a mistake. "The [trial] court also noted that defendant had contested jurisdiction from the onset of the proceedings." *Id*. at 263. Therefore, this Court concluded that the trial court had not abused its discretion in setting aside its order because the issue of jurisdiction had not been properly examined. *Id*. Similarly, in this case, the trial court readily admitted that its original opinion and order was unclear as to the number of acres that were intend to serve as security for the money UMC loaned Olson, and thus, how much of the estate's property was subject to foreclosure under the 1995 mortgage. Consequently, just as the *Fisher* Court concluded that the trial court in that case did not abuse its discretion setting aside

[1] This and other evidence suggests the parties intended the 1995 mortgage to cover only the house and three acres. Other evidence included the fact that before the execution of the 1995 mortgage, UMC commissioned an amended survey that carved from Olson's 40-acre parcel a three-acre parcel immediately surrounding her home. Further, the legal description of this three-acre parcel governed the parties' subsequent actions, including Olson's conveying the three-acre parcel and the 37-acre parcel by separate description into trust in 1997. And in 2003, UMC took a second mortgage from Olson on only the three-acre parcel. UMC conceded at trial that the 2003 mortgage was unenforceable. Despite this evidence, the trial court seized on a statement in an appraiser's letter written one month before the revised survey was completed that "anything above the Estate house plus ten acres would be considered 'excess land.'" Petitioner has not cross appealed the trial court's determination that the 1995 mortgage be limited to the house plus ten acres, as opposed to the house plus three acres.

its order because the issue of jurisdiction inadvertently had not been properly examined, we conclude that the trial court did not abuse its discretion by further clarifying or completing its ruling on an issue it had inadvertently overlooked, i.e., that the 1995 mortgage pertained only to the home plus ten acres, and that the remaining 30 acres were held in fee simple by Olson's estate. The trial court's determination regarding the number of acres that secured the mortgage, and thus how much of the land was subject to foreclosure, was pivotal to the case. Moreover, the trial court's decision on that issue, "balanc[ing] the public interest in achieving finality in litigation versus the private interest of remedying an injustice," *Mikedis*, *supra* at 203, was within the range of principled of outcomes, *Woodard*, *supra* at 557. In sum, MCR 2.612(C)(1)(a) provided the procedural basis for the trial court to grant petitioner's motion, and the trial court did not abuse its discretion in doing so.

We find that UMC's remaining arguments have no merit. In its original opinion and order, the trial court did not conclude that there was no excess land or that there was insufficient evidence to find that HUD guidelines were violated, but rather it merely speculated on these issues but never reached a conclusion. The only clear ruling the trial court reached was that a "violation of HUD guidelines does not give the mortgagor an independent cause of action to void the mortgage." In addition, as set forth above, the trial court, based on its own admission and the analysis in its original opinion and order, failed to initially analyze or reach a conclusion as to how much of the land was subject to foreclosure despite the fact that it granted UMC judgment of its counter-complaint.

We also reject UMC's argument that the trial court's discussion of *Manufacturers Hanover Mortgage Corp v Snell*, 142 Mich App 548, 554-556; 370 NW2d 401 (1985) in its original opinion and order somehow renders the court's subsequent decision improper. In its original opinion and order, the trial court relied on *Hanover* for the proposition that a violation of HUD guidelines does not give a mortgagor an independent cause of action to void the mortgage. This finding was not contrary to the trial court's subsequent equitable ruling that UMC is not entitled to the double benefit of having its loan insured by the Federal Housing Administration while also retaining the ability to foreclose on excess land. Stated otherwise, a violation of HUD guidelines does not void a mortgage, but neither does it prevent the grant of equitable relief when the facts warrant it.[2]

UMC also argues that the trial court failed to adequately specify the basis, either substantively or procedurally, for its decision to reverse or change its original opinion and order. Specifically, UMC argues that the trial court in its order following the motion for reconsideration failed to specify what mistake allowed the invocation of MCR 2.612. UMC does not cite any authority to support its argument, nor does it devote attention to it. An appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims;

[2] Michigan courts have long exercised equitable jurisdiction to reform conveyances that while absolute in form were intended by the parties to serve only as security for a debt. See, e.g., *Sheets v Huben*, 354 Mich 536, 540; 93 NW2d 168 (1958), holding "[t]he intent of the parties is the determining factor and no form of words employed in the written instrument is conclusive of that intent." The same principle would apply regarding the amount of property encumbered.

nor may it give issues cursory treatment with little or no citation to supporting authority. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). For this reason, and for the reasons already discussed, UMC's argument lacks merit.

We affirm. As the prevailing party, petitioner may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Jane E. Markey