STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of MARK E. MOON.

KRISTINA MOON, Personal Representative,

Appellant,

v

MERLIN MOON,

Appellee.

UNPUBLISHED
August 14, 2014

No. 315698
Eaton Probate Court
LC No. 08-045647-DE

Before: SAAD, P.J., and OWENS and K.F. KELLY, JJ.

PER CURIAM.

Appellant, as personal representative of the estate of Mark E. Moon, appeals as of right the probate court's order that denied her motion for summary disposition, which requested that the probate court determine that the estate has a 50 percent partnership interest in real property titled in appellee's name. We affirm.

As a preliminary matter, appellee claims that this Court does not have jurisdiction because not all interested parties appear to have been served with the claim of appeal. However, under MCR 7.204(B), this Court is vested with jurisdiction in an appeal of right by the timely filing of the claim of appeal and the entry fee. Therefore, any alleged failure to serve all interested parties with the claim of appeal does not divest this Court of jurisdiction.

I. FACTS AND PROCEDURAL HISTORY

This case involves a prolonged dispute between appellant and appellee regarding whether certain property belongs in decedent's estate. Decedent and his father, appellee, ran a dairy farm together. During the course of these proceedings, it was determined that the two of them created a partnership. See *In re Mark E. Moon Estate*, unpublished opinion per curiam of the Court of Appeals, issued January 27, 2011 (Docket No. 294176) (affirming the probate court's determination that a partnership to run the dairy farm operation existed between decedent and appellee). Consequently, appellant submitted discovery requests to appellee in an attempt to reevaluate the estate inventory, particularly to include additional real and personal property that may have belonged to the partnership. After a serious of discovery requests and responses,

appellant moved for summary disposition pursuant to MCR 2.116(C)(10), requesting that the probate court determine that the estate has a 50 percent partnership interest in four parcels of real property titled in appellee's name and to require appellee to deliver the proceeds of those properties.

Appellee argued that he owned the property before the farming operation began and it was never his intent for it become partnership property. Appellee argued that the use of the property for the farming operation did not make it partnership property. He further argued that there is a presumption that where property is titled, the named owner is the beneficial owner. Appellant, however, argued that real property does not have to be titled in the names of both partners or in the name of the partnership to be considered partnership property. Rather, appellant argued that the use of the property for the farming operation makes it partnership property.

The probate court denied appellant's motion, finding that the property in question was not partnership property, but was the sole property of appellee. Specifically, the probate court found that the property was titled solely to appellee and was never conveyed to the partnership or anyone else. The probate court also found that there was no evidence that decedent considered the property to be his or that of the partnership. The probate court further found that even though the partnership used the land to farm, the land was also used for other purposes, and the parties treated it very differently than the personal property of the partnership.

Following the probate court's denial of her motion for reconsideration, appellant filed this claim of appeal, arguing that the probate court erred by determining that the property in question was not partnership property.

II. STANDARDS OF REVIEW

"The standard of review on appeal in cases where a probate court sits without a jury is whether the court's findings are clearly erroneous." *In re Estate of Bennett*, 255 Mich App 545, 549; 662 NW2d 772 (2003). "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.*

Additionally, this Court reviews de novo a probate court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 119. In reviewing the motion, this Court considers "the pleadings, admissions, and other evidence submitted by the parties in a light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is properly granted "if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Finally, we review questions of statutory interpretation de novo, and discern the legislative intent by focusing on the plain language of the statute. *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 60; 718 NW2d 784 (2006).

III. ANALYSIS

Section 8 of the Uniform Partnership Act (UPA) defines partnership property as,

> (1) All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property;
>
> (2) Unless the contrary intention appears, property acquired with partnership funds is partnership property;
>
> (3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name;
>
> (4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. [MCL 449.8.]

In this case, the property in question does not fall under this definition of partnership property, as appellee owned the property before the partnership was created, he did not acquire it with partnership funds, and he did not convey it to the partnership.

Whereas here, land is taken in the name of one of the partners, to determine whether that land is in fact partnership property "always depends upon the intent of the parties and the understanding and design under which they acted." *Johnson v Hogan*, 158 Mich 635, 648-649; 123 NW 891 (1909). An express agreement is not necessary to show intent. *Id.* at 649. An agreement may be implied, which is determined by examining the general purpose of the parties, the nature of the partnership business, and the manner in which the parties dealt with the property in question. *Id.* Our Supreme Court reaffirmed these legal principles in *McCormick v McCormick*, 342 Mich 525, 530; 70 NW2d 706 (1955), which appellant relies on to argue that real property does not have to be in the name of both partners to be considered partnership property. While it is "not essential that the record title should stand in the names of all partners," *id.*, contrary to what appellant asserts that fact alone does not determine whether property is in fact partnership property. Rather, the focus is on the intent of the parties. *Id.* In *McCormick*, the Court determined that the fact that the legal title to the property in question stood in the names of various parties at different times did not deprive it of its character as a partnership asset, because the parties treated the property as belonging to all of them. *Id.* at 530-531; see also *Mathews v Wosek*, 44 Mich App 706, 714 n 7; 205 NW2d 813 (1973) (noting that although "there is a presumption of some vigor that the named owner is the beneficial owner," the intent of the parties remains the focus because "title is often taken in individual names when ownership by the firm is intended").

Unlike in *McCormick*, in this case, the record shows that appellee and decedent did not treat the real property as if it belonged to both of them. It is undisputed that the property in

question was titled solely in the name of appellee, but was used for the dairy farm operation by both appellee and decedent. Appellee, however, testified that he owned the property in question well before decedent began using it for the dairy farm operation. Although appellee acknowledged that he supplied the real estate for decedent to use and that the "use of it was for the benefit of the partnership," he also testified that he never intended for the land to become partnership assets. Most significantly, appellee charged decedent rent to use the land, and not only did appellant admit that decedent paid rent to appellee, but also appellee's 2004 through 2007 income tax returns show that he received such rent. Further, the property tax bills were addressed to appellee and there is no evidence that those bills were paid by decedent or the partnership. With the other partnership property, it is clear from the record that the parties shared the costs and maintenance associated with the property, such as making improvements to the buildings and maintaining the equipment. With the property in question, however, there is no evidence that decedent shared in the costs and maintenance associated with the property. Rather, it appears appellee bore that burden. Based on the record there is no indication that the parties treated the property in question as belonging to all the partners, and therefore, we are not left with a definite and firm conviction that the probate court erred by concluding that the property was not partnership property.[1]

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly

[1] Appellant also argues that the probate court erred by interpreting section 25 of the UPA, which refers to "specific partnership property." Although it appears that the probate court's interpretation of the phrase "specific partnership property" was erroneous, we decline to address this issue because it has been determined that the property in question was not partnership property, thus rendering this argument moot, as section 25 clearly address a partner's rights in "specific *partnership* property." MCL 449.25 (emphasis added).