

STATE OF MICHIGAN
COURT OF APPEALS

MARSHERI D.D. EVERSON,

Plaintiff-Appellant,

v

ANTOINETTE HEARD and ISANETTE
DILLARD,

Defendants-Appellees.

UNPUBLISHED

December 16, 2021

No. 352663

Wayne Circuit Court

LC No. 19-008409-CH

MARSHERI D.D. EVERSON,

Plaintiff-Appellant,

v

DELORES J. WILLIAMS,

Defendant-Appellee.

No. 352692

Wayne Circuit Court

LC No. 16-010607-CH

Before: CAVANAGH, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff Marsheri D. D. Everson filed two separate actions in the Wayne Circuit Court to quiet title to 20280 Kentfield, Detroit, Michigan (the Kentfield property). In the first case, filed in 2016 against defendant Delores Williams, the trial court granted Williams's motion for summary disposition on the grounds that plaintiff's action was barred by res judicata and the applicable statute of limitations, so it quieted title in favor of Williams. In a prior appeal, this Court reversed that decision and remanded for further proceedings. *Everson v Williams*, 328 Mich App 383, 398; 937 NW2d 697 (2019). Plaintiff then filed a second action in 2019 against defendants Antoinette Heard and Isanette Dillard, as alleged transferees of Williams's interest in the property. The trial court subsequently denied plaintiff's motion for summary disposition, granted Heard and Dillard's motion for summary disposition, and quieted title to the disputed property in favor of Heard.

Thereafter, the trial court determined that its decision in the case against Heard and Dillard was dispositive of the issues in the case against Williams, so it again dismissed plaintiff's action against Williams. In Docket No. 352692, plaintiff appeals as of right the order dismissing her claim against Williams, and in Docket No. 352663, she appeals as of right the order dismissing her claims against Heard and Dillard. We affirm in both cases.

I. BASIC FACTS

The relevant background facts were set forth as follows in *Everson*, 328 Mich App at 385-387:

A. THE KENTFIELD PROPERTY

This action involves the Kentfield property, which originally belonged to plaintiff's grandparents, Cedric D. Everson and Elizabeth A. Everson. While plaintiff was still a minor, her grandparents conveyed their interest in the Kentfield property to plaintiff, while retaining life estates in the property. The conveyance provided, in pertinent part, as follows:

With the filing of this Quit Claim Deed it is hereby noted that the Grantors Cedric and Elizabeth Everson Becomes [sic] Tenants of the subject property[.] [I]t is therefore a conditio[n] of this Conveyance that Cedric D. Everson and Elizabeth A. Everson enjoy Peaceful and Continual Occupan[c]y of said property for the remainder of their natural lives.

Cedric died on January 17, 1997. On April 2, 1997, plaintiff, 11 years old at the time, purportedly conveyed her interest in the Kentfield property to Elizabeth by way of a quitclaim deed. Following proceedings in the Wayne Probate Court that will be discussed in detail subsequently in this opinion, on August 26, 1999, Elizabeth executed a warranty deed for the Kentfield property to Rondalyn Everson for the sum of \$70,000. Rondalyn subsequently defaulted on her mortgage against the property, and a sheriff's deed on mortgage sale was entered on February 26, 2004. On March 12, 2004, Ameriquest Mortgage Company quitclaimed the property to WM Specialty Mortgage, LLC. WM Specialty Mortgage executed a covenant deed to Charles Smith for the Kentfield property on January 25, 2005. Finally, on February 24, 2010, Smith quitclaimed the Kentfield property to defendant. Elizabeth died on July 18, 2014.

B. THE PRESENT ACTION

On August 19, 2016, plaintiff filed the instant action seeking to quiet title to the Kentfield property. As pertinent to this appeal, defendant moved for summary disposition under MCR 2.116(C)(7) and (C)(10), claiming that plaintiff's action was (1) barred by the applicable statute of limitations and (2) precluded by the application of the doctrine of res judicata, and asserting that title to the Kentfield property should be quieted in favor of defendant. Plaintiff responded, arguing that (1) her claim was not time-barred because it did not accrue until Elizabeth's death

in July 2014 and (2) Elizabeth did not have legal authority to convey plaintiff's interest in the Kentfield property. Plaintiff also pointed out that she did not receive any proceeds from the sale of the Kentfield property or an interest in the property that Elizabeth purchased using the proceeds from the sale of the Kentfield property. Following a hearing on defendant's motion, the trial court granted summary disposition in favor of defendant and entered a concomitant order stating that plaintiff's interest in the Kentfield property was extinguished. Plaintiff now appeals as of right. [*Everson*, 328 Mich App at 385-387 (footnote omitted).]

The *Everson* Court held that plaintiff's quiet-title claim was not barred by res judicata or the statute of limitations, so it reversed and remanded for further proceedings. *Id.* at 398.

On June 14, 2019, plaintiff filed a claim against Heard and Dillard. She alleged that on October 7, 2016, Williams had transferred her nonexistent interest in the Kentfield property to Heard and Dillard, and she raised the same underlying claims as she had in the action against Williams. Plaintiff then moved for summary disposition under MCR 2.116(C)(9) and (10), and Heard and Dillard moved for summary disposition under MCR 2.116(C)(8) and (10). Following a hearing on the motions, the trial court denied plaintiff's motion and granted summary disposition in favor of Heard and Dillard. Subsequently, after concluding that its ruling in the case against Heard and Dillard was dispositive of the case against Williams, the trial court entered an order dismissing plaintiff's case against Williams. These consolidated appeals follow.

II. PLAINTIFF'S CLAIM AGAINST HEARD AND DILLARD

A. STANDARD OF REVIEW

Plaintiff argues that the trial court erred by denying her motion for summary disposition, granting defendants' motion for summary disposition, and quieting title to the Kentfield property in favor of Heard. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Because the trial court relied on evidence outside the pleadings in deciding the motions, we review the trial court's decision under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties, and view that evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists. *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). In addition, this Court reviews equitable actions de novo. *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). A court acting in equity "looks at the whole situation and grants or withholds relief as good conscience dictates." *Mich Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

B. ANALYSIS

Plaintiff argues that title to the Kentfield property should be quieted in her name. In an action to quiet title, the claimant must establish a prima facie case of title in the subject property. If a prima facie claim of title is made, the burden then shifts to the adverse party to prove a superior interest. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Prima facie evidence to support a claim requires that the plaintiff show that she acquired and now possesses some interest, legal or equitable, in the property. *Id.* Summary disposition in favor of the defendant is appropriate if the plaintiff fails to carry this burden. *Trademark Props of Mich, LLC v Fed Nat'l Mtg Ass'n*, 308 Mich App 132, 138; 863 NW2d 344 (2014).

Plaintiff relies on the 1991 deed from her grandparents to establish her title to the Kentfield property, and although she acknowledges that Elizabeth obtained approval from the probate court in 1997 to convey that interest and that Elizabeth later conveyed title to the property to Rondalyn, plaintiff argues that her interest was never effectively conveyed because Elizabeth failed to follow proper procedures for effectively divesting plaintiff of her interest. The basis for this claim is that Elizabeth failed to follow all the requirements set forth in former MCL 700.634 when she conveyed the Kentfield property to Rondalyn.

At the time of the 1999 conveyance, MCL 700.634 provided:

A fiduciary may sell real estate, an interest therein or easement at private or public sale if all the following occur:

- (a) He has the authority to sell under sections 634 to 638.
- (b) He reported the sale in writing to the court for confirmation and had a hearing thereon.
- (c) He gave notice of the hearing on the report of sale to all parties in interest as provided by supreme court rule.
- (d) He filed and had approved the bond required by the court as a condition of the sale.
- (e) He obtained an order from the court confirming the sale and directing the giving of a deed or other conveyance pursuant to the sale.

Additionally, MCL 700.658 provided:

(1) In an action relating to any real estate or interest therein,. . . , sold by a fiduciary,. . . in which the ward or any person claiming under him, contests the validity of the sale, the sale shall not be voided on account of an irregularity in the proceedings, if all of the following occurred:

- (a) The fiduciary was authorized by law to make the sale.

(b) The fiduciary gave a bond which was approved by the judge, if a bond was required.

(c) The fiduciary gave notice of the sale as prescribed by law or supreme court rule.

(d) The property was sold accordingly, the sale was confirmed by the court, and the property is held by a person who purchased it in good faith.

(2) Where a person, or those under whom he holds, was in actual possession of any lands or premises for at least 10 years, holding and claiming under, and by virtue of, a deed executed by a fiduciary, the deed shall be prima facie evidence of the regularity of all the proceedings from and including the application to sell the lands, or interest therein, or easement, to the date and execution of the deed.

Heard and Dillard do not dispute that all requirements of MCL 700.634 were not followed in this case. However, that does not require the conclusion that, more than 15 years later and after several transfers of the property, the trial court was required to void the 1999 deed and quiet title in the property in favor of plaintiff. The term “void” is frequently used and construed more liberally as “voidable.” *Jackson Investment Corp v Pittsfield Products, Inc*, 162 Mich App 750, 755; 413 NW2d 99 (1987). The distinction often focuses on whether a provision is intended for public purposes or to protect persons incapable of protecting themselves or, on the other hand, is intended to protect “determinate individuals who are sui juris.” *Beecher v The Marquette & Pacific Rolling Mill Co*, 45 Mich 103, 108; 7 NW 695 (1881). In the latter situation, the protective purpose is sufficiently accomplished by giving the “liberty of avoiding it.” *Id.* Because MCL 700.658 serves a protective purpose, it may be construed as meaning that a sale shall not be voided on account of an irregularity if all specified conditions exist. And, to the extent that Elizabeth’s 1999 conveyance was voidable, the trial court was permitted to consider equitable considerations—including evidence of Heard’s and Dillard’s status as bona fide purchasers—in determining whether to void the sale, particularly where the resulting deed to Rondalyn was prima facie valid. See *Moran v Moran*, 106 Mich 8, 11; 63 NW 989 (1895).

In this case, Elizabeth petitioned the probate court to convey plaintiff’s interest in the Kentfield property, and that the court approved the sale and appointed Elizabeth as plaintiff’s legal representative to convey the property. Plaintiff’s main argument is that Elizabeth never sought confirmation of the sale and, for that reason, her interest was never extinguished. However, we agree with the trial court that there was at least substantial compliance with the requirements of MCL 700.634 and that equity supports the trial court’s decision to grant judgment and quiet title in favor of defendants.

The record shows that, in 1997, Elizabeth filed a petition with the probate court for appointment as plaintiff’s conservator and a protective order. The petition asserted that Elizabeth and her husband had deeded the Kentfield property to plaintiff in 1991, intending for plaintiff to have the property in the event of their deaths. After Elizabeth’s husband died in 1996, Elizabeth wished to sell the Kentfield property and move to another domicile. Elizabeth intended to provide a similar benefit for plaintiff with the new domicile by assuming title of the new property as trustee for plaintiff so that the property would pass to plaintiff through a trust when plaintiff turned 21

years old. A guardian ad litem (GAL) who was appointed to represent plaintiff's interests approved the proposed sale and a protective order, and the probate court subsequently approved the petition in 1997 and issued a protective order with \$1,000 bond. Upon the sale of the property, the proceeds were to be placed in escrow until a trust was established, but Elizabeth never sought confirmation of the sale from the probate court after she conveyed the property to Rondalyn.

Plaintiff attained the age of majority in 2003. Thereafter, in 2015 and 2016, she filed petitions in probate court seeking to reopen the prior probate proceeding and for enforcement of the August 11, 1997 protective order. In those proceedings, plaintiff sought to enforce the protective order to obtain an interest in the condominium property that was purchased with the proceeds from the sale of the Kentfield property. Significantly, plaintiff did not assert any continued interest in the Kentfield property. The probate court denied plaintiff's petitions. In its opinion and order denying the second petition, the probate court recounted:

After Mr. Everson died in 1996, Mrs. Everson sought authority from the Court to sell the Kentfield home on June 19, 1997, for \$70,000 to Rondalyn Everson, with a promise to use the net proceeds to purchase a condominium at Town Center in Southfield ("condo"). Upon purchasing the condo, Mrs. Everson agreed to place title of the property in the Petitioner's name. The Last Will and Testament of Elizabeth Everson and the Elizabeth Everson Agreement of Trust, dated August 11, 1997, were prepared, intending to hold the condo for distribution to the Petitioner upon Mrs. Everson's death. The Will and Trust documents were mailed to the Court but Petitions to complete the transfer were not filed or heard by the Court. In 2005, Mrs. Everson, using her fee simple title to the condo, acquired a home equity conversion mortgage and a home equity second mortgage from the Respondent, Wells Fargo Bank, for an amount up to \$244,500. When she died on July 18, 2014, a balance of \$138,000 remained on the mortgage. Subsequently, the condo went into foreclosure.

It is apparent that the probate court approved Elizabeth's request to sell the Kentfield property. The terms of the protective order indicate that the court and the GAL approved of Elizabeth selling the Kentfield property for \$70,000 and using the proceeds to purchase the condominium. Elizabeth also took steps to prepare a will and trust to ensure that the condominium property would be left to plaintiff upon Elizabeth's death. However, there were outstanding mortgages on the condominium property that remained unpaid, and the condominium was foreclosed upon.

Plaintiff correctly asserts that the probate court never confirmed the sale of the Kentfield property to Rondalyn. However, the property sold for \$70,000, the amount approved by the GAL and specified in the protective order, and there is no evidence that this amount did not represent a fair market value for the property in 1999. The probate court judge who reviewed this matter in 2015 and 2016 was the same judge who presided over the 1997 proceeding. Although the probate court agreed that confirmation of the sale to Rondalyn never occurred, there is no indication that the terms of the sale differed from what the probate court had approved.

Based on the foregoing, the equities do not favor plaintiff's belated attempt to now argue that all subsequent transactions involving the Kentfield property are voidable because of any failure by Elizabeth to strictly comply with all requirements of MCL 700.634. This is especially so because the deed to Rondalyn was prima facie valid on its face and there is no evidence that Rondalyn or any other subsequent transferee of the property—including Heard and Dillard—had any reason to question to validity of the 1999 deed to Rondalyn. Accordingly, the trial court did not err by concluding that the equities favored Heard and Dillard, and thereby denying plaintiff's motion for summary disposition, granting summary disposition in favor of Heard and Dillard, and quieting title to the property in favor of Heard.¹

Plaintiff raises several other issues and legal theories that she claims support her claim of superior title to the Kentfield property. We disagree.

First, plaintiff's reliance on contract principles involving conditions precedent is misplaced. A condition precedent is a fact or event that the parties intended to have occurred before there is a right to performance under a contract. *Able Demolition, Inc v City of Pontiac*, 275 Mich App 577, 583; 739 NW2d 696 (2007). The failure to satisfy a condition precedent prevents that party from bringing a cause of action on the basis of the other party's failure to perform. *Id.* This case, however, does not involve a contract between the parties, or any attempt by plaintiff to avoid performance of any obligations under a contract. Instead, plaintiff characterizes the requirements of MCL 700.634 as a condition precedent to any valid conveyance of plaintiff's interest in the Kentfield property. However, because there is no evidence that the requirements of that statute were part of any contractual agreement to sell the Kentfield property to Rondalyn, plaintiff cannot prevail by using contract principles.

Second, plaintiff argues that a deed she executed in 1997, when she was a minor, was ineffective to transfer her interest in the Kentfield property. Although we agree that the 1997 deed was invalid, we disagree that plaintiff is entitled to relief as a result. When Elizabeth conveyed the Kentfield property to Rondalyn in 1999, she was not conveying any interest that she purportedly received pursuant to the invalid 1997 deed. Rather, Elizabeth petitioned the probate court for authority to act as plaintiff's fiduciary to be able to convey plaintiff's interest in the property on plaintiff's behalf. The probate court appointed Elizabeth as plaintiff's representative and approved the sale of the property. The warranty deed that Elizabeth executed expressly provides that Elizabeth conveyed the property in her capacity as "appointed representative for the estate of [plaintiff], a minor." Thus, the 1997 deed has no impact on the outcome of this case.

Third, plaintiff asserts that the foreclosure of Rondalyn's interest in the Kentfield property did not affect her interest in the property. Plaintiff contends that, at most, Rondalyn only acquired Elizabeth's life estate, not plaintiff's remainder interest, and therefore the foreclosure could not

¹ Plaintiff also argues that the trial court erred by failing to follow the law as set forth in *Everson*. We disagree. *Everson* did not address the merits of plaintiff's claim to quiet title; it only considered the applicability of the defenses of the statute of limitations and res judicata. Although this Court remanded that case for further proceedings, the trial court's ruling was not based on the defenses at issue in *Everson*, nor was it inconsistent with any of the dispositive rulings in *Everson*.

have extinguished plaintiff's remainder interest in the property. However, Elizabeth did not execute the 1999 deed to Rondalyn in Elizabeth's individual capacity. Instead, after the probate court appointed Elizabeth as plaintiff's legal representative, Elizabeth conveyed the Kentfield property to Rondalyn while she was acting in that representative capacity. That was sufficient to convey full title to Rondalyn. See *Kemp v Sutton*, 233 Mich 249, 261; 206 NW 366 (1925).²

Fourth, plaintiff argues that Heard and Dillard are not protected as bona fide purchasers under MCL 565.29 because the 1991 deed conveying the Kentfield property to plaintiff was recorded. Although we agree that MCL 565.29 does not apply to this case, that does not mean that Heard's and Dillard's status as bona fide purchasers is irrelevant or could not be considered for purposes of evaluating the equities and determining whether title to the Kentfield property should be quieted in their favor. In the end, the recording of the 1991 deed has no impact on the outcome of this case. No one disputed that plaintiff received a valid interest in the Kentfield property pursuant to the 1991 deed. The disposition of this case instead turns on the validity and effect of the several transactions that occurred after 1991.

Finally, plaintiff raises additional issues that are only directed at whether Dillard and Heard can establish alternative grounds for affirming the trial court's decision, such as by relying on a theory that plaintiff later ratified the 1999 conveyance to Rondalyn or can assert a defense based on the doctrine of laches. However, in light of our holding that the trial court properly granted defendants' motion for summary disposition and quieted title to the property in favor of defendants, it is unnecessary to consider these additional issues. Likewise, we do not consider whether plaintiff had standing to bring a claim against Heard and Dillard because that issue was not raised in the trial court. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (stating that by failing to raise an issue in the trial court, a party waives consideration of that issue on appeal).

III. PLAINTIFF'S CLAIM AGAINST WILLIAMS

A. STANDARD OF REVIEW

Plaintiff argues that the trial court erred by dismissing her action against Williams after issuing its decision in the case against Heard and Dillard. In particular, she argues that the court violated her right to due process by dismissing the action sua sponte, without any pending motion before the court. Whether a party has been afforded due process is a question of law, which we review de novo. *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009).

² Moreover, plaintiff's reliance on MCL 554.32 is misplaced. In *Everson*, 328 Mich App at 392-393, this Court discussed MCL 554.32 as authority for plaintiff's argument that her claim did not accrue until Elizabeth's life estate ended. MCL 554.32 provides that a destruction of the precedent estate does not defeat the rights of those holding a remainder interest. *Everson*, 328 Mich App at 392-393. However, because the probate court authorized Elizabeth, acting in a representative capacity for plaintiff, to convey plaintiff's remainder interest to Rondalyn, MCL 554.32 does not apply.

B. ANALYSIS

Plaintiff principally argues that she was denied due process because the trial court dismissed the case against Williams without allowing her to fully brief or argue the issues, and when there was no motion pending before the trial court. As explained in *Al-Maliki*, 286 Mich App at 485-486:

Due process is a flexible concept, the essence of which requires fundamental fairness. The basic requirements of due process in a civil case include notice of the proceeding and a meaningful opportunity to be heard. Where a court considers an issue sua sponte, due process can be satisfied by affording a party an opportunity for rehearing. [Citations omitted.]

In this case, the parties appeared before the court at a hearing January 9, 2020, and acknowledged at that time that the upcoming hearing in the companion case against Heard and Dillard was likely to resolve any outstanding issues in the case against Williams. The court provided plaintiff with notice that it would reconvene on January 30, 2020, after it had issued its decision in the case against Heard and Dillard, to evaluate where the case against Williams stood.

Additionally, as it relates to plaintiff's due-process right to be heard, the legal issues in the two cases were the same, and plaintiff had the opportunity to argue the merits of the issues and be heard in the case against Heard and Dillard. Indeed, at the hearing on January 9, 2020, plaintiff's lawyer agreed that the court's decision in the case against Heard and Dillard would likely be dispositive of the outcome of the case against Williams. Plaintiff does not contend that there are any material factual or legal differences between the two cases that would compel different results. Accordingly, the hearings in the related case, in addition to those held in plaintiff's case against Williams, demonstrate that plaintiff was afforded a sufficient opportunity to be heard.

Next, plaintiff's characterization of the trial court's decision as involving a sua sponte ruling is inapt, given that the parties had previously discussed that the court's ruling in the related case against Heard and Dillard would likely resolve the case against Williams, and that the court notified the parties that they would be reconvening on January 30, 2020, to evaluate the posture of the case against Williams after the court had issued its decision in the case against Heard and Dillard.

Furthermore, plaintiff has not shown that the trial court erred by dismissing her action for lack of standing. Standing to bring an action requires that one have a legal cause of action. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). Plaintiff raised the same arguments that she raised in the case against Heard and Dillard, and the legal issues in the two cases were the same. Thus, once the trial court decided in the case against Heard and Dillard that plaintiff did not have a viable claim to the Kentfield property, plaintiff had no legal basis to continue her action against Williams. Therefore, the trial court did not err by ruling that its decision in the case against Heard and Dillard equally applied to the case against Williams.

Finally, we reject plaintiff's argument that, on remand, the trial court violated the "law of the case" established in *Everson*. The prior decision only addressed the defenses of res judicata and the statute of limitations. The trial court did not revisit these issues on remand. Because

Everson did not decide the substantive issues that were the basis for the trial court's dismissal on remand, the law-of-the-case doctrine does not apply. See *Freeman v DEC Int'l, Inc*, 212 Mich App 34, 37; 536 NW2d 815 (1995).

Affirmed. Defendants in both cases may tax costs as the prevailing parties. MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Michael J. Kelly