# STATE OF MICHIGAN

# COURT OF APPEALS

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| RICHARD K. BEARDSLEY, SR. and MARCELLA BEARDSLEY,<br><br>Plaintiffs-Appellees, | UNPUBLISHED<br>December 11, 2012 |
| v | No. 307007<br>Arenac Circuit Court |
| JASON MCBRIDE and LISA MCBRIDE,<br><br>Defendants-Appellants. | LC No. 11-011544-CH |

Before: O'CONNELL, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's judgment quieting title in favor of plaintiffs and sanctioning defendants for asserting a frivolous defense. Because the trial court's findings regarding a conditional delivery of the quitclaim deed and inadequacy of consideration were not clearly erroneous, but the court clearly erred by finding that defendants' defense was frivolous, we affirm in part and vacate in part.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant Jason McBride is the grandson of plaintiffs Richard and Marcella Beardsley. Richard owned an undivided one-half interest in approximately 106 acres of real property. Richard's brother, "Bob," owned the other one-half interest. In early September 2010, Jason and Richard reached an agreement whereby Jason agreed to purchase Richard's interest for $50,000. On September 20, 2010, Jason handwrote a promissory note, stating:

> I, Jason McBride will pay Dick Beardsley $50,000 for unpaid debt owed to Dick Beardsley (Richard Beardsley) of 3994 Main Street Rd.
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> | | |
> |---|---|
> | /s/ Jason McBride | Jason McBride 9-20-10 |
> | /s/ Richard K. Beardsley | Richard Beardsley |
> | /s/ Marcella J. Beardsley | Marcella Beardsley (witness) |

Jason acknowledged that the note did not reference purchasing anything and that he did not owe Richard $50,000 at that time, but he maintained that he "thought it was a good enough purchase agreement between [his] grandfather and [him]self." Richard accepted the promissory note.

Jason arranged for a mortgage with Isabella Bank to obtain the $50,000 to purchase the property. On September 29, 2010, before Jason tendered any payment for the property, Richard and Marcella executed a quitclaim deed conveying the property to Jason, who recorded the instrument. The deed listed $1 as consideration. Thereafter, Jason signed the mortgage paperwork and he and his wife, defendant Lisa McBride, wrote four checks to plaintiffs in the amount of $12,500 each, totaling $50,000.[1] Ultimately, the mortgage could not be finalized because Bob refused to allow the property to be encumbered, and Jason was unable to obtain financing. The four $12,500 checks were never cashed.

The parties dispute what occurred next. Jason maintained that he and Richard worked out a deal pursuant to which Jason would make installment payments of at least $750 a month. The agreement was not in writing. Jason made payments totaling $5,000 in October, November, and December 2010, and the payments were accepted. Marcella recorded the payments on the promissory note. Notwithstanding the acceptance of the payments, Richard maintained that he never agreed to accept installment payments. Richard testified, "[h]eck no, that would take six and a half years to pay off. In six and a half years you'd just know about me by the newspapers." Richard further testified, "[m]y deal was a cash deal or hit the trail." Marcella also maintained that there was never an arrangement for installment payments. She testified that she and Richard needed the money and were forced to mortgage their home in December 2010 to obtain $15,000. According to Jason, Richard terminated the installment arrangement in January 2011 when he discovered that he could sell the property to the DNR for $5,000 an acre. Richard, on the other hand, testified that he wanted the property back because Jason had not paid for it and Richard was "tired of waiting."

On February 9, 2011, plaintiffs filed a complaint seeking to rescind the transaction and quiet title in their favor. They alleged that the quitclaim deed "was executed based upon the express understanding that it would not be conveying any title at that time, but was instead to be presented to the bank to obtain a mortgage loan within 48 hours so as to pay the Plaintiffs the sum of $50,000.00." Plaintiffs further alleged that "the Deed was never delivered to the Defendants with an intent of the Grantor to make a presently operative conveyance to the Grantees, rendering the Deed void."

In February 2011, Jason tendered a $600 payment to Richard, and in March, April, and May 2011, Jason tendered $800 payments to Richard. None of the checks was cashed. Jason testified that he did not have $50,000 to purchase the property at the time of his May 19, 2011, deposition, but shortly thereafter he made a written offer to pay Richard the $45,000 that he still owed. Jason did not tender $45,000, and it is unclear whether he actually had the money. Nevertheless, Richard did not accept the offer. Richard testified "[t]hat was like nine or ten months after I was supposed to have my money in two days."

A bench trial was held on September 13, 2011, following which the trial court ruled, in pertinent part, as follows:

[1] Defendants wrote four separate checks for tax purposes on the advice of their accountant.

> All right. Well, there is every indication that this was supposed to be a cash deal. Now, this is between mostly grandfather and grandson. The delivery of this deed was conditional. I mean, if you can't trust you grandson, who can you trust? There was no reason in these people's backgrounds to think otherwise. This delivery, this physical turning over of this deed, was certainly a conditional delivery conditioned on getting money within a very short period of time. There is no evidence of any installment deal here. That argument is ridiculous, that position is ridiculous.
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> * * *
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> This was to be a sale. These checks, these four checks for twelve thousand five hundred apiece dated October 22nd, real clear by that time fifty thousand dollars was to be paid. These checks are dated October 22nd, 2010, total fifty thousand dollars. We hear what – the situation under which they were delivered. Certainly there was nothing said about some multi-year-long installment payment program of so many dollars a month.
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> * * *
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> There is an – first of all, there was a conditional delivery of the deed, second, there is an inadequacy of consideration in this situation, so I am ordering the rescission. I will enter . . . an Order that reconveys this undivided half interest in this property to [plaintiffs], husband and wife, as tenants by the entirety, and I am ordering that [plaintiffs' counsel], who I was told has this trust fund money, will transfer three thousand of that money to [plaintiffs], two thousand of that money will be returned to [defendants], and I am doing that because the defense in this case is what I would call frivolous.

Thereafter, the trial court entered a judgment setting aside the deed, quieting title in plaintiffs' favor, and awarding costs and sanctions in the amount of $3,590.26.

## II. QUIET TITLE

Defendants first challenge the trial court's ruling quieting title in plaintiffs' favor. An action to quiet title is an equitable action that this Court reviews de novo. *Beach v Lima Twp*, 489 Mich 99, 106; 802 NW2d 1 (2011). We review the trial court's findings of fact for clear error. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008). A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *Id*.

Defendants first contend that the trial court erred by determining that there was a "conditional delivery" of the deed. "The whole object of the delivery of a deed is to indicate an intent upon the part of the grantor to give effect to the instrument." *Gibson v Dymon*, 281 Mich 137, 140; 274 NW 739 (1937).

> Physical delivery to the grantee raises a presumption of intent to pass title. This presumption, however, is not conclusive and may be rebutted by the evidence. The subsequent conduct of the parties may be taken into consideration

> in determining whether there was intention to pass title. This may be done despite the presumption of passage of title arising by virtue of possession of the deed by the grantee. [*Resh v Fox*, 365 Mich 288, 291-292; 112 NW2d 486 (1961) (citations omitted).]

Similarly,

> The whole object of the delivery of a deed is to indicate an intent upon the part of the grantor to give effect to the instrument. Any act presumptively a delivery will not be a delivery if the intent to make it such is wanting. Though the recording of a deed raises a presumption of delivery, yet a presumption is but a rule of procedure used to supply the want of facts. Its only effect is to cast the burden on the opposite party of going forward with the proof. Presumptions of fact never obtain against positive proof and are introduced only to supply the want of real facts. [*Gibson*, 281 Mich at 140 (citations omitted).]

Because plaintiffs physically conveyed the deed to Jason, it is presumed that they intended to deliver title to the property to Jason at the time that it was conveyed. The evidence presented during trial, however, was sufficient to rebut this presumption. The evidence showed that plaintiffs conveyed the deed to Jason so that he could obtain a mortgage to pay plaintiffs for the property. Thus, Jason was acting as a de facto escrow agent, holding the deed in order to obtain financing so that the deal could be completed. See *Ethel Assoc, LLC v Pontiac*, 278 Mich App 588, 591; 752 NW2d 492 (2008) ("The general rule is that a deed delivered to a third person to be by him delivered to the grantee upon the happening of some event in the future, which may or may not happen, does not pass the title to the land until such event occurs, and then only from that time.") (Quotation marks and citations omitted.) The trial court reasonably concluded, based on the evidence presented, that Richard did not intend to transfer the property until he was paid $50,000. The trial court's factual determination was not clearly erroneous.

Defendants also argue that the trial court clearly erred by finding an "inadequacy of consideration" given that the consideration was Jason's promise to pay $50,000. Plaintiffs, on the other hand, contend that the consideration for the property was not Jason's promise to pay $50,000 in the future, but rather, an immediate or shortly forthcoming payment in the amount of $50,000.

Initially, we note that the deed listed $1 as consideration for the property. "The general rule is that when a quitclaim deed is reduced to writing and executed with the proper formalities, 'it is presumed to contain the agreement made by the parties at the time' and 'is so conclusively presumed to embody the whole contract that parol evidence is inadmissible to contradict it or add to its terms.'" *In re Rudell Estate*, 286 Mich App 391, 410; 780 NW2d 884 (2009) (brackets omitted), quoting *Wild v Wild*, 266 Mich 570, 576-577; 254 NW 208 (1934). "However, it has long been established that this general rule does not apply to the recital of consideration in a deed." *In re Rudell Estate*, 286 Mich App at 410. The recitation of consideration in a deed is only prima facie evidence, is not conclusive, and may be inquired into. *Id*. at 406. Accordingly, although the deed listed the consideration as $1, neither party asserts that the actual consideration was $1 and the evidence established otherwise.

The trial court's determination that the consideration was inadequate because Jason failed to pay plaintiffs $50,000 was not clearly erroneous. The record does not support defendants' argument that the consideration for the property was Jason's promise to pay $50,000 at some unknown point in the future. Richard testified that he did not agree to sell the property based on a promise to pay $50,000 in the future. Rather, he claimed that Jason agreed pay him $50,000 in two days' time. Because he failed to pay the $50,000 promised, the trial court did not clearly err by finding that the consideration was inadequate. "In general, a complete or substantial failure of consideration may justify the rescission of a written instrument." *Id.* at 403. Accordingly, the trial court did not err by setting aside the deed and quieting title to the property in favor of plaintiffs.

## III. SANCTIONS

Defendants next argue that the trial court erred by determining that their defense, i.e., that Richard agreed to accept installment payments for the property, was frivolous. We review for clear error a trial court's determination whether an action or defense is frivolous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

Both MCR 2.625(A)(2) and MCL 600.2591[2] provide that a trial court *shall* award costs if it finds that an action or defense was frivolous. Pursuant to MCL 600.2591(3)(a), a defense is frivolous if:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
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> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

Here, the trial court ostensibly determined that defendants had no reasonable basis to believe that the facts underlying their position were true. The court opined that "[t]here is no evidence of any installment deal here. That argument is ridiculous, that position is ridiculous."

The trial court's finding that defendants' defense was frivolous was clearly erroneous. Although the trial court found Jason's testimony that Richard agreed to accept installment payments incredible, the record shows that plaintiffs did accept Jason's installment payments for a period of time. Marcella testified that she recorded the payments on the promissory note, and the promissory note reflects that Jason made installment payments in October, November, and December 2010 totaling $5,000. Thus, the record does contain some support for defendants'

[2] We note that although both MCR 2.625(A)(2) and MCL 600.2591 state that costs are awardable upon a motion filed by a party, the trial court in this case awarded such costs *sua sponte*.

defense. Accordingly, the trial court clearly erred by finding that the defense was frivolous, and we vacate the award of sanctions.

Affirmed in part and vacated in part. No party having prevailed in full, no costs are taxable pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio