NO. COA14-837
NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2015

CHARLES HARTLINE AND MARY HARTLINE,
Plaintiffs,

v. Jackson County
Nos. 12 CVS 572, 707

WILLIAM ALBERT HARTLINE,
Defendant.

Appeal by plaintiffs from judgment entered 20 December 2013 by Judge M. Pope, Jr. in Jackson County Superior Court. Heard in the Court of Appeals 6 January 2015.

McLean Law Firm, P.A., by Russell L. McLean, III, for plaintiffs-appellants.

Frank G. Queen, PLLC, by Frank G. Queen, for defendant-appellee.

HUNTER, JR., Robert N., Judge.

In an action to reform a deed, the question presented for review is whether there was sufficient evidence presented at trial to send the issue of mutual mistake to the jury. Because our record review cannot find any competent, admissible evidence that defendant was mistaken at the time the deed was executed,

we affirm the trial court's judgment granting a directed verdict and dismissing plaintiffs' claim.

I. Factual and Procedural History

Plaintiff Mary Hartline is Plaintiff Charles Hartline's and Defendant William Albert ("Albert") Hartline's mother. Together with her late husband, Mrs. Hartline conveyed a 2.58 acre tract of land to Albert in September 2010. The deed for the conveyance was drafted by an attorney hired by Albert.

Charles, who thought that the property would be split between his brother and himself, discovered that the property was in his brother's name the following year. Charles brought the issue to his parents and in May 2012, Mrs. Hartline and her late husband signed and recorded a corrective deed as to the 2.58 acre tract. The corrective deed reduced the acreage conveyed to Albert. By a separate quitclaim deed, the acreage taken back by the corrective deed was conveyed to Charles. Defendant refused to sign the corrective deed.

Plaintiffs filed this action in order to either nullify or reform the deed conveying the 2.58 acre tract to defendant. Plaintiffs allege, *inter alia*, mutual mistake in executing the deed. At trial, Mrs. Hartline testified that she intended to convey approximately half of the tract to Charles and the other

half to Albert in 2010 and thought that she was signing a deed to that effect. Defendant testified that there was no mistake and that the property belongs to him. Testimony from the attorney who drafted the deed and his paralegal corroborated defendant's testimony. At the close of all the evidence, defendant moved for a directed verdict on the issue of mutual mistake, which was granted and a judgment was entered dismissing plaintiffs' claim. Plaintiffs filed a timely notice of appeal.

II. Jurisdiction

Plaintiffs' appeal from the trial court's judgment lies of right to this Court pursuant to N.C. Gen. Stat. § 7A-27(b) (2013).

III. Analysis

Plaintiffs contend that there was sufficient evidence to send the issue of mutual mistake to the jury. We disagree.

> A motion for a directed verdict under Rule 50(a) of the North Carolina Rules of Civil Procedure presents the same question for both trial and appellate courts: whether the evidence, taken in a light most favorable to plaintiff, was sufficient for submission to the jury. The question of the evidence's sufficiency is a matter of law, and the motion should be reversed if there is more than a scintilla of evidence to support all the elements of plaintiff's *prima facie* case. Therefore, this Court reviews the record and transcript *de novo*, reversing upon a finding of more than a

> scintilla of evidence supporting each element of plaintiff's *prima facie* case.

Castle McCulloch, Inc. v. Freedman, 169 N.C. App. 497, 500, 610 S.E.2d 416, 419, *aff'd*, 360 N.C. 57, 620 S.E.2d 674 (2005) (internal citations omitted). In other words, so long as "some view of the facts reasonably established by the evidence" would support a jury's decision in favor of plaintiffs on the issue of mutual mistake, the evidence should be submitted to the jury. *Stark ex rel. Jacobsen v. Ford Motor Co.*, 365 N.C. 468, 480, 723 S.E.2d 753, 761 (2012).

"A mutual mistake exists only when both parties labor under the same misconception respecting a material fact, the terms of the agreement, or the provisions of the written instrument designed to embody such agreement." *Sudds v. Gillian*, 152 N.C. App. 659, 662, 568 S.E.2d 214, 217 (2002) (internal quotation marks, brackets, and citation omitted). "While a written instrument may be reformed on the grounds of mutual mistake, the mistake that the law requires is that of both parties to the instrument. The mistake of one party not induced by the fraud of the other is not enough." *Mock v. Mock*, 77 N.C. App. 230, 231, 334 S.E.2d 409, 409 (1985) (internal citations omitted).

Here, Mrs. Hartline provided testimony tending to show that she was mistaken when the deed to defendant was executed and

that it was her intent to split the 2.58 acre tract between her two sons. Even so, there is no testimony tending to show that defendant was mistaken. Defendant, the attorney who drafted the deed, and the attorney's paralegal all testified that defendant knew from the outset that he was receiving the entire 2.58 acre tract in the conveyance. Although plaintiffs' brief directs our attention to testimony from Charles that recounts a conversation where defendant characterized the conveyance as a "mistake," a careful review of the transcript shows that this statement was never admitted into evidence. An objection and motion to strike the testimony was sustained by the trial court.

Plaintiffs further contend that certain testimony critical to their mutual mistake claim was improperly excluded by the trial court under N.C. R. Evid. 601(c), the "Dead Man's Statute." Specifically, plaintiffs contend that the trial court improperly excluded testimony from three witnesses, including Mrs. Hartline, which tended to show that her late husband was also mistaken in the execution of the deed and that it was his intent to split the property between his sons. Yet, even if this testimony had been admitted at trial, it would not tend to establish that defendant was mistaken, which is critical to plaintiffs' *prima facie* case. While Mr. and Mrs. Hartline may

have intended to split the property between their sons, without evidence that defendant had the same intention, there is insufficient evidence to send the issue of *mutual* mistake to the jury. *See Willis v. Willis*, 365 N.C. 454, 458, 722 S.E.2d 505, 508 (2012) ("[t]he mistake of one party to the deed, or instrument, alone, not induced by the fraud of the other, affords no ground for relief by reformation." (alteration in original) (quoting *Crawford v. Willoughby*, 192 N.C. 269, 272, 134 S.E. 494, 496 (1926))).

IV. Conclusion

For the foregoing reasons, the trial court's judgment granting a directed verdict and dismissing plaintiffs' mutual mistake claim is affirmed.

Affirmed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).