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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-392

Filed: 7 April 2020

Vance County, No. 18 CVD 945

RUSSELL W. BOYD, Plaintiff,

v.

JERRY TAYLOR, Defendant.

Appeal by plaintiff from order entered 15 February 2019 by Judge Benjamin Hunter in Vance County District Court. Heard in the Court of Appeals 4 December 2019.

The Law Offices of Ajulo E. Othow, PLLC, by Ajulo E. Othow, for plaintiff-appellant.

Stainback, Satterwhite & Zollicoffer, PLLC, by Paul J. Stainback for defendant-appellee.

BRYANT, Judge.

Where there is no genuine issue of material fact, the trial court did not err in entering summary judgment in favor of defendant and dismissing plaintiff's action.

In 2009, plaintiff Russell W. Boyd inherited real property—a house—located in Henderson, North Carolina, from his father. Defendant Jerry Taylor was plaintiff's first cousin and lived next door. Plaintiff had lived with his father at the

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residence prior to his father's death. After his father's death, plaintiff and defendant continued to live next door to each other for several years. However, plaintiff was heavily addicted to drugs.

On or about 6 December 2014, plaintiff was arrested and later convicted of breaking and entering. Plaintiff had entered defendant's property, broke into his shed, and took a number of items including two televisions and a mini bike. Meanwhile, plaintiff had been delinquent on his property taxes for the years 2012, 2013, and 2014, and on or about 20 March 2015, Vance County filed a foreclosure action against plaintiff for failure to pay delinquent taxes. Plaintiff was eventually released, placed on probation, and allowed to return home.

A month after returning home, defendant met with plaintiff and offered to pay the delinquent taxes to prevent foreclosure on the home. Per their oral agreement, defendant loaned plaintiff \$5,000 and took title to plaintiff's property. Plaintiff was to remain on the property as a tenant and pay defendant \$100 a month in rent until the full amount of the loan was paid off. On 25 June 2015, plaintiff and his wife executed a general warranty deed, conveying plaintiff's property to defendant in fee simple absolute. Thereafter, plaintiff continued to live on the property but failed to pay rent as agreed.

On or about 3 September 2015, plaintiff was arrested and charged with stealing gas from defendant's tractor. Defendant initiated a summary ejectment

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action for unpaid rent on or about 3 October 2015. Plaintiff was thereafter evicted from the premises.

On 15 October 2018, three years later, plaintiff initiated the present action against defendant for recovery of the property. In the complaint, plaintiff sought a declaration of constructive trust as to the property and asserted claims for constructive fraud, breach of fiduciary duty, and negligent misrepresentation. Defendant answered denying plaintiff's allegations. On 18 January 2019, defendant moved for summary judgment on plaintiff's claims.

The action was heard before the Honorable Benjamin Hunter, District Court Judge of Vance County. By order entered 15 February 2019, the trial court granted summary judgment in favor of defendant and dismissed plaintiff's action. Plaintiff appeals.

On appeal, plaintiff argues the trial court erred in granting defendant's motion for summary judgment and dismissing plaintiff's claims for constructive fraud, breach of fiduciary duty, and negligent misrepresentation—all claims challenging defendant's ownership and title to the property. After careful consideration, we overrule plaintiff's arguments.

We review the trial court's ruling on a motion for summary judgment *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). Rule 56 of the

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North Carolina Rules of Civil Procedure provides that any party is entitled to judgment as a matter of law “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[.]” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2019). When considering a motion for summary judgment, “[a]ll facts asserted by the [nonmoving] party are taken as true, and their inferences must be viewed in the light most favorable to that party.” *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523, 723 S.E.2d 744, 747 (2012).

A party moving for summary judgment may prevail if it meets the burden (1) of proving an essential element of the opposing party’s claim is nonexistent, or (2) of showing through discovery that the opposing party cannot produce evidence to support an essential element of his or her claim If the moving party meets this burden, the non-moving party must in turn either show that a genuine issue of material fact exists for trial or must provide an excuse for not doing so.

Hart v. Brienza, 246 N.C. App. 426, 430, 784 S.E.2d 211, 215 (2016) (citation omitted).

In the instant case, the parties reached an oral agreement. Plaintiff conveyed the deed to the property in exchange for \$5,000, much of which was used to pay off the delinquent taxes. The undisputed facts show the existence of a deed, signed by plaintiff and his wife, conveying property to defendant in fee simple without any restrictions. That deed was recorded in the Vance County Register of Deeds. Plaintiff agreed to rent the premises from defendant for \$100 a month. Plaintiff took

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possession of the property as a tenant for approximately four months but was later evicted due to unpaid rent.

Yet, plaintiff argues, in his complaint and on appeal, that the relationship with defendant—his first cousin—gave rise to a confidential or fiduciary relationship. Specifically, plaintiff contends the parties’ oral agreement that, prior to the legal conveyance of the property, defendant would give the property back upon repayment of the loan, supported the imposition of a constructive trust as an equitable remedy.

We note that constructive trusts “arise by operation of law against one who *in any way* against equity and good conscience holds legal title to property which he should not.” *Upchurch v. Upchurch*, 122 N.C. App. 172, 175, 468 S.E.2d 61, 63 (1996) (quotation marks omitted); *see also Variety Wholesalers, Inc.*, 365 N.C. at 530, 723 S.E.2d at 751 (stating that a constructive trust may be imposed if the holder acquired the land through fraud, breach of duty, or any other circumstance in which an inequitable result would occur). “The burden is on the party wishing to establish a trust to show its existence by clear, strong and convincing evidence.” *Upchurch*, 122 N.C. App. at 175, 468 S.E.2d at 63 (quotation marks omitted).

Where a transferee of property stands in a confidential or fiduciary relationship to the transferor, it is the duty of the transferee to exercise the utmost good faith in the transaction and to disclose to the transferor all material facts relating thereto and his failure to do so constitutes fraud. *Such a relationship exists in all cases where there has been a special confidence reposed in one who in equity*

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and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence.

Link v. Link, 278 N.C. 181, 192, 179 S.E.2d 697, 704 (1971) (emphasis added) (internal citation and quotation marks omitted).

Notwithstanding plaintiff's allegations that defendant's actions amounted to a breach of fiduciary duty and constructive fraud, there is no factual evidence establishing the existence of a confidential or fiduciary relationship to maintain either claim. *See Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 599, 821 S.E.2d 711, 725 (2018) ("A claim for constructive fraud only arises where a confidential or fiduciary relationship exists." (quotation marks omitted)); *see also Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001) ("For a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties."). While plaintiff does contend that defendant was "like a father figure" and "trusted authority figure," the parties' relationship alone does not automatically give rise to a relationship of "special confidence" or a presumption of fraud. *See Guy v. Guy*, 104 N.C. App. 753, 757, 411 S.E.2d 403, 405 (1991) ("Fraud is not automatically presumed by the mere failure, nothing else appearing, to perform an agreement or to carry out a promise[.]"); *see also id.* ("Neither is fraud presumed by the existence of a family relationship.").

Here, plaintiff never indicates that he paid or attempted to pay the "loan" he claims as the basis of his allegations of fraud based on the existence of a confidential or fiduciary relationship. In fact, plaintiff candidly admits in his complaint that "at

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all times relevant [he was] heavily addicted to drugs [and] he was a daily user of crack cocaine.”

Even absent a confidential or fiduciary relationship, we remain unpersuaded that other circumstances exist on which to impose a constructive trust. As there is no evidence to support a finding or conclusion that defendant failed to disclose or misrepresented material facts involving the conveyance, plaintiff’s claim for negligent misrepresentation cannot survive either. *Rountree v. Chowan Cty.*, 252 N.C. App. 155, 158, 796 S.E.2d 827, 830 (2017) (“The tort of negligent misrepresentation occurs when a party justifiably relies to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care.”).

Thus, we agree with the trial court, that plaintiff’s forecast of evidence, when viewed in the light most favorable to him, was not sufficient to create a genuine issue of material fact. Accordingly, as we find that entry of summary judgment dismissing plaintiff’s action was proper, the trial court’s ruling is

AFFIRMED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).