[Cite as *Danadic v. McCloskey*, 2010-Ohio-5660.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

RONDA L. DANADIC, et al.,	:	**O P I N I O N**
Plaintiffs-Appellants,	:	**CASE NO. 2010-T-0032**
- vs -	:	
LYNETTE McCLOSKEY,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2006 CV 1793.

Judgment: Affirmed.

William P. McGuire, William P. McGuire Co., L.P.A., 106 East Market Street, #705, P.O. Box 1243, Warren, OH 44482 (For Plaintiffs-Appellants).

Michael Georgiadis, 135 Pine Avenue, S.E., #211, Warren, OH 44481 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} Plaintiffs-appellants, Ronda L. Danadic and Ronald L. Danadic, Jr., appeal the Judgment Entry of the Trumbull County Court of Common Pleas, adopting the Magistrate's Decision and awarding defendant-appellee, Lynette McCloskey, an equitable lien of $34,991.61 plus interest in property titled to the Danadics. For the following reasons, we affirm the decision of the court below.

{¶2} On November 14, 2005, Ronda Danadic filed a Complaint for Forcible Entry and Detainer in Niles Municipal Court against McCloskey (her mother), seeking to

have her removed from the premises at 1815 Taft Avenue, Niles, Ohio.[1] The Danadics sought monetary compensation for rent, utilities, and property damage.

{¶3} On January 13, 2006, McCloskey filed her Answer and Counterclaim for Partition and Damages. McCloskey claimed a monetary interest in the Taft Avenue property and sought compensation for property held by the Danadics.

{¶4} On July 17, 2006, the case was transferred to the Trumbull County Court of Common Pleas, as the damages sought in McCloskey's Counterclaim exceeded the municipal court's jurisdiction.

{¶5} On August 11, 12, and 17, 2009, a trial was held before a magistrate of the common pleas court.

{¶6} The evidence at trial demonstrated that in March 2000, the Danadics and McCloskey signed a Real Estate Purchase Contract to purchase the property at 1815 Taft Avenue for the price of $140,000. The Contract identified the Danadics and McCloskey as the "buyer(s)" and provided that title would be taken in the name of the "same." It was further provided that the sale would be subject to a "bridge or blanket mortgage" of the buyer's choosing.

{¶7} Prior to entering into this agreement, McCloskey owned a home at 215 Beaver Street in Niles, Ohio. In order to purchase the Taft Avenue property, McCloskey took out a bridge mortgage on the Beaver Street property. From the equity in the Beaver Street property, McCloskey paid $34,991.61 toward the purchase of the Taft Avenue property.

1. Ronald Danadic was not identified as a party in the Complaint or the Counterclaim. The parties, by stipulation, consented to his participation in the proceedings as a plaintiff.

{¶8} The balance of the purchase price of the Taft Avenue property was secured by an Open End Mortgage in the amount of $105,000. The mortgagors/borrowers were the Danadics and McCloskey.

{¶9} At the closing of the sale on May 10, 2000, McCloskey signed the following: "I hereby authorize Thomas & Kurtz Attys. to remove my name as one of the purchasers of 1815-1817 Taft Ave. in Nile, Ohio 44446. Therefore, my name will only appear on the mortgage documents, not on the deed to the property." The deed recorded in May 2000 identifies Ronald and Ronda Danadic as grantees/owners.

{¶10} McCloskey testified that the Danadics requested her to remove her name from the deed because Ronald "is a fireman and they would harass him to death if they thought that his mother-in-law had to buy a home with him." McCloskey agreed to remove her name because she "really liked Ronnie and *** didn't want him to have to go through the embarrassment." Ronda testified that McCloskey asked to have her name removed from the deed because "[s]he knew she owed us money for quite a few years and she didn't want any part of the house." The Danadics claimed McCloskey owed them money for funeral expenses incurred for the burial of her mother and half-brother.

{¶11} Barbara A. VanDervort, the realtor involved in the sale of the Taft Avenue property, testified that McCloskey told her that "Ronda didn't want [her name on the deed] because she didn't want an embarrassment for him [Ronald]."

{¶12} The residence on the Taft Avenue property is a duplex, originally comprising two mailing addresses, 1815 and 1817 Taft Avenue, with separate utilities. The Danadics resided in one of the units and McCloskey resided in the other. It is disputed whether McCloskey contributed money toward the mortgage and/or the utilities

while she resided at Taft Avenue. The Danadics subsequently refinanced the mortgage on the property, but McCloskey was not involved in the refinancing.

{¶13} On January 19, 2010, the magistrate issued her Magistrate's Decision, Findings of Fact and Conclusions of Law. The magistrate determined that the imposition of a constructive trust was appropriate in the circumstances and that "McCloskey is entitled to a refund of the down payment provided toward the purchase of the Taft property since it would be unjust for the Danadics to retain the same as McCloskey no longer resides at the Taft residence." Accordingly, the magistrate decided that "McCloskey is entitled to an equitable lien on the Taft property in the amount of $34,991.61 plus interest from the date of this judgment entry." The magistrate further found in McCloskey's favor on the Danadics' claim for damages.

{¶14} On February 4, 2010, the trial court issued a Judgment Entry, adopting the Magistrate's Decision and entering judgment in McCloskey's favor as described in the Magistrate's Decision.

{¶15} On February 9, 2010, the Danadics filed a Motion for Reconsideration, on the grounds that "counsel for the plaintiffs never received a copy of the Magistrate's Decision," seeking to have the February 4, 2010 Judgment Entry vacated and leave to file objections within ten days.

{¶16} On February 18, 2010, the Danadics filed a Motion to File Objections to Magistrate's Report Instanter.

{¶17} On February 23, 2010, the trial court issued a Judgment Entry, denying the Motion for Reconsideration. The court noted that "the magistrate's decision included instructions to the Clerk of Courts to serve a copy of the decision upon counsel of record," "handwritten notes from the Clerk's staff indicate copies were issued to both

Plaintiffs' counsel and Defendant's counsel pursuant to Civ.R. 58," and parties have "a general duty to check the docket and stay informed regarding the status of a pending case."

{¶18} On March 4, 2010, the Danadics filed a Notice of Appeal from the trial court's February 4, 2010 Judgment Entry. On appeal, the Danadics raise the following assignments of error:

{¶19} "[1.] The trial court erred as a matter of law and abused its discretion when it gave no legal effect to the acknowledgement, a waiver to remove appellee's name as the grantee that was knowingly and voluntarily signed by the appellee."

{¶20} "[2.] The trial court erred as a matter of law and abused its discretion by permitting parol evidence when it held that appellee had an equitable interest in the subject property, thereby in effect causing a reformation of the deed."

{¶21} "[3.] The trial court erred as a matter of law and abused its discretion when it did not provide appellant with the presumption of a gift and relied upon parol evidence on various matters including checks of varying amounts that had large gaps in monthly payments in finding appellee made mortgage payments as a basis for claiming an equitable lien."

{¶22} "[4.] The trial court erred as a matter of law and abused its discretion when it held that appellee in providing funds for the purchase of real estate and voluntarily waived [sic] her right for her name to be placed on the deed; failed to initiate any action for 6 years and thereby [the] doctrine of laches precluded her from attempting to seek reformation of the deed wherein appellant had three intervening refinancing/equity loans."

{¶23} "[5.] The trial court erred as a matter of law and abused its discretion when it held that amounts used to acquire real estate were not a gift, when there was a lack of clear and convincing evidence that the presumption to make a gift had been overcome, as appellee failed to introduce any evidence of appellants' agreed repayment."

{¶24} "[6.] The trial court erred as a matter of law and abused its discretion when it held appellee had an equitable interest in the subject real property when the mortgagee was not included as a necessary party."

{¶25} "[7.] The trial court erred as a matter of law and abused its discretion when it held that the washing machine was not acquired by appellants."

{¶26} "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision." Civ.R. 53(D)(3)(b)(i). "Except for a claim of plain error," a party that fails to file objections to a magistrate's decision as provided in the Rules of Civil Procedure is precluded from "assign[ing] as error on appeal the court's adoption of any factual finding or legal conclusion." Civ.R. 53(D)(3)(b)(iv). "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson,* 79 Ohio St.3d 116, 1997-Ohio-401, at syllabus.

{¶27} In the present case, the Danadics failed to file timely objections to the Magistrate's Decision. Accordingly, our standard of review is plain error. *Smith v Treadwell*, 11th Dist. No. 2009-L-150, 2010-Ohio-2682, at ¶17; *Maybaum v. LaMarca*,

11th Dist. No. 2009-G-2902, 2010-Ohio-708, at ¶21; *Heerlein v. Farinacci*, 11th Dist. No. 2008-G-2818, 2008-Ohio-4979, at ¶17.

{¶28} In their first assignment of error, the Danadics argue the trial court/magistrate failed to recognize the "legal effect" of McCloskey's undisputed waiver of "her right to be placed on the deed." We disagree.

{¶29} The document relied upon by the Danadics authorized the removal of McCloskey's name "as one of the purchasers of 1815-1817 Taft Ave." from the deed. McCloskey's name was not included in the deed. The trial court has not ordered McCloskey's name to be added to the deed or that the deed be reformed in any manner. This document did not waive or forsake any interest McCloskey may have had in the property by virtue of her contribution of $34,991.61 toward the purchase price. Her name remained in the Purchase Contract and the original Mortgage.

{¶30} The trial court recognized McCloskey's equitable interest in the property. By definition, an equitable interest in property is an interest that exists apart from an interest based on legal and/or record title. Cf. Black's Law Dictionary (8th Ed.2004) 829 ("equitable interest": "[a]n interest *** claimed on equitable grounds"). The fact that McCloskey "waived" her right to be identified as a grantee on the deed, therefore, has no bearing on whether she may hold an equitable interest in the property. There is no plain error with respect to McCloskey's decision not to be included on the deed as a grantee.

{¶31} The first assignment of error is without merit.

{¶32} In their second assignment of error, the Danadics contend that the trial court/magistrate improperly relied upon parol evidence to create "an equitable interest in

contradiction to the voluntarily signed written waiver and deed." Again, the thrust of the Danadics' argument is inapposite in the present circumstances.

{¶33} In accord with the document signed by McCloskey, her name is not included on the deed. The lower court's judgment does not contradict the document or the deed, nor does it order the reformation of the deed. The Danadics construe the document to mean that McCloskey waived all interest in the property. The document, however, does not clearly or unequivocally state that McCloskey intended to forsake all interest in the property.

{¶34} The Danadics position rests on the supposition that the deed itself is determinative of all interests in the property. This supposition is incorrect. Ohio law contains many instances where unrecorded interests in property, such as equitable interests, are recognized. See, e.g., *Basil v. Vincello* (1990), 50 Ohio St.3d 185, 189 (recognizing that an equitable interest may exist in property where the deed was defective and failed to convey legal title); *First Natl. Bank of Cincinnati v. Tenney* (1956), 165 Ohio St. 513, 515 (recognizing a "resulting trust" where "the legal estate in property is transferred or acquired by one under facts and circumstances which indicate that the beneficial interest is not intended to be enjoyed by the holder of the legal title").

{¶35} In the present case, the magistrate determined that McCloskey acquired an equitable interest in the property by virtue of a constructive trust. The Ohio Supreme Court has defined a constructive trust as "[a] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of [a] wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to

property which he ought not, in equity and good conscience, hold and enjoy." *Ferguson v. Owens* (1984), 9 Ohio St.3d 223, 225 (citation omitted); cf. *Spade v. Tauche*, 11th Dist. No. 90-P-2190, 1991 Ohio App. LEXIS 3648, at *5-*8 ("as a general proposition," a deed or written document is required to establish a claim of interest in land; however, "Ohio recognizes equitable interests in real property," such as a constructive trust, "when there is an 'inherent unfairness and unfair dealing in the transaction'") (citation omitted).

{¶36} Finally, we emphasize that the court has not ordered the partition of the property or the reformation of the deed and the Danadics remain the legal owners of the Taft Avenue property. While the magistrate spoke of McCloskey having "an equitable lien on the Taft property," for practical purposes McCloskey is in the position of any other judgment creditor as provided in R.C. 2329.02 ("[a]ny judgment or decree rendered by any court of general jurisdiction *** within this state shall be a lien upon lands and tenements of each judgment debtor"). Accordingly, the Certificate of Judgment of Lien filed in the trial court post-judgment identifies McCloskey as a "judgment creditor" in the principal amount of $34,991.61 plus interest and the Danadics as "judgment debtors."

{¶37} There is no plain error with respect to the trial court's alleged reliance on parol evidence. The second assignment of error is without merit.

{¶38} In the third and fifth assignments of error, the Danadics argue they were entitled to the presumption that the $34,991.61 advanced by McCloskey for the purchase of the Taft Avenue property constituted a gift. They rely upon the case of *Milburn v. Conrey* (2nd Dist.1936), 22 Ohio Law Abs. 412, for the proposition that "[i]n a transaction between near relatives, a presumption arises that the party furnishing the

purchase price of property to be bought by another is making an advancement or gift to the grantee who takes title in his own name." Id. at 413. The presumption, however, is rebutted where there is evidence that "the person who paid the purchase price intended to retain a beneficial interest in the property" and/or "retain her equitable ownership." *Rardin v. Estate of Bain*, 7th Dist. No. 08 CA 853, 2009-Ohio-3332, at ¶91 (citations omitted).

{¶39} In the present case, any presumption of a gift was rebutted by McCloskey establishing her domicile in the Taft Avenue property, having mortgaged and sold her own residence in order to obtain the purchase money. Cf. *Creed v. Lancaster Bank* (1852), 1 Ohio St. 1, 10 ("it frequently occurs that property purchased and paid for by the father and placed in the name of a child, even where there is no positive evidence of trust, will be presumed, from the facts connected with it, to be intended for the use of the father, and held in trust for him").

{¶40} The Danadics raise several other arguments as to why the present facts do not support the imposition of a constructive trust. Having failed to file timely objections to the Magistrate's Decision, the Danadics are precluded from challenging the lower court's adoption of factual findings or legal conclusions. Civ.R. 53(D)(3)(b)(iv).

{¶41} There is no plain error with respect to the trial court's decision to impose a constructive trust. The third and fifth assignments of error are without merit.

{¶42} In the fourth assignment of error, the Danadics claim that McCloskey is barred from claiming an interest in the Taft Avenue property by the doctrine of laches. In the sixth assignment of error, the Danadics claim an indispensable party to the action, i.e. the current mortgagee, was not made part of the proceedings.

{¶43} The arguments were not raised in the court below and shall not be considered by this court on appeal. *Warmuth v. Sailors*, 11th Dist. No. 2007-L-198, 2008-Ohio-3065, at ¶36 ("[i]t is a well established rule of appellate review that a court will not consider issues that an appellant fails to raise initially at the trial court").

{¶44} The fourth and sixth assignments of error are without merit.

{¶45} In their seventh and final assignment of error, the Danadics argue the trial court erred by holding that a washing machine, allegedly removed by McCloskey from the Taft Avenue residence, was acquired by them.

{¶46} Our review of the Magistrate's Decision reveals no specific finding relative to a washing machine, but, rather a general conclusion that the Danadics have failed to sufficiently prove damages. As noted above, the Danadics are precluded from challenging the lower court's adoption of factual findings or legal conclusions. Civ.R. 53(D)(3)(b)(iv).

{¶47} The seventh assignment of error is without merit.

{¶48} For the foregoing reasons, the Judgment Entry of the Trumbull County Court of Common Pleas, adopting the Magistrate's Decision, is affirmed. Costs to be taxed against appellants.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.