[Cite as *Cartwright v. Allen*, 2012-Ohio-3631.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

LOREN A. CARTWRIGHT, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2011-10-025
	:	O P I N I O N
- vs -		8/13/2012
	:	
MARY JANE ALLEN, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 10CVH00101

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POWELL, P.J.

{¶ 1} Plaintiffs-appellants, Jack and Loren Cartwright, appeal a decision of the Fayette County Court of Common Pleas denying their complaint to quiet title to their brother's farm.

{¶ 2} In the early 1960s, appellants and their brother, Lloyd Cartwright, began a partnership with their father. After their father's death, each brother received a one-third interest in the partnership assets, including a 28-acre farm located in Union Township, Ohio. Appellants then deeded the farm to Cartwright to allow him to operate his construction business. In exchange, Cartwright gave appellants a $75,000 judgment lien on the property.

{¶ 3} On May 12, 2000, Cartwright created an inter vivos trust, but revoked the trust in writing in 2005, without ever having funded the trust. However, on July 16, 2008, Cartwright executed a quitclaim deed purporting to convey title to the farm to appellants, signed: "Lloyd H. Cartwright, Trustee of the Lloyd H. Cartwright Inter Vivos Trust dated May 12, 2000 * * *." Two days later, Mark Pitstick, an attorney for the family, recorded the deed in the Fayette County Recorder's Office.

{¶ 4} Cartwright died on August 18, 2008, leaving his estate to his daughters, Mary Allen and Sherri Pennington, defendants-appellees in the current action. However, when appellees discovered that the farm was not listed in the estate inventory, they filed exceptions with the trial court, arguing that the farm passed to them under the terms of Cartwright's will. Appellees claimed that the deed to appellants was ineffective, because Cartwright did not hold title to the farm as trustee, and that Cartwright was of unsound mind and under undue influence at the time he executed the deed.

{¶ 5} Appellants subsequently brought an action to quiet title to the farm and to reform the deed. Appellants argued that Cartwright's erroneous designation as grantor-

trustee did not trump Cartwright's clear intention to convey the farm to them.

{¶ 6} After a trial on the matter, the court denied appellants' complaint, and found that the trustee's deed was void because it attempted to convey property that Cartwright never held in trust. The trial court also declined to reform the deed and, as a result, quieted title in appellees' names.

{¶ 7} Appellants timely appeal, raising one assignment of error for review:

{¶ 8} THE TRIAL COURT ERRED AS A MATTER OF LAW AND THAT ITS DECISION IS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE WHEN IT DENIED APPELLANTS' COMPLAINT TO QUIET TITLE TO THEIR FARMLAND AND VOIDED APPELLANTS' DEED AND RECONVEYED TITLE TO THE FARM BACK IN DECEDENT, LLOYD H. CARTWRIGHT [sic].

{¶ 9} In their sole assignment of error, appellants raise various challenges to the trial court's decision denying their quiet title action.

{¶ 10} "Quiet title actions are reviewed under a manifest weight of the evidence standard, unless the reviewing court must apply a de novo standard because resolution of the appeal involves construction of the deed." (Citation omitted.) *Maxwell v. Fry*, 12th Dist. No. CA2007-11-284, 2009-Ohio-1650, ¶ 12. Because the central issue in this case is the validity of Cartwright's deed, we review the trial court's decision de novo. *Id.*; *Graham v. Drydock Coal Co*., 76 Ohio St.3d 311, 313 (1996).

{¶ 11} Appellants first argue that appellees are "estopped" from denying the deed's validity where Cartwright's intent to convey the farm prevails over the nature of the deed or the form of his signature. In other words, appellants argue that the decisive question is the intention of the grantor, rather than the technical rules of construction.

{¶ 12} Initially, we agree with appellants that the intent of the parties to a deed controls its interpretation. *See Esteph v. Grumm*, 175 Ohio App.3d 516, 2008-Ohio-1121, ¶ 9 (4th

Dist.). "[I]f the intention of the parties is apparent from an examination of the deed 'from its four corners,' it will be given effect regardless of technical rules of construction." *Hinman v. Barnes*, 146 Ohio St. 497, 508 (1946); *Am. Energy Corp. v. Datkuliak*, 174 Ohio App.3d 398, 2007-Ohio-7199, ¶ 50 (7th Dist.). "When determining the grantor's intent, a court must analyze the language used in the deed, 'the question being not what the parties meant to say, but the meaning of what they did say, as courts [cannot] put words into an instrument which the parties themselves failed to do.'" *Datkuliak* at ¶ 50, quoting *Larwill v. Farrelly*, 8 Ohio App. 356, 360 (5th Dist.1918).

{¶ 13} Here, appellants argue that they proved Cartwright's intent to give them the farm, and that a simple mistake in Cartwright's signature does not trump this evidence. This argument lacks merit.

{¶ 14} In executing the deed, Cartwright signed his name as: "Lloyd H. Cartwright, *Trustee* of the Lloyd H. Cartwright Inter Vivos Trust Dated May 12, 2000 * * *." (Emphasis added.) This language plainly and unambiguously shows that Cartwright intended to convey the farm solely in his capacity as trustee. However, Cartwright never placed the farm in trust. Instead, title to the farm belonged to Cartwright, individually. It is well settled that "[a] quitclaim deed conveys to the grantee whatever interest the grantor has in the property." *Whitt v. Whitt*, 2nd Dist. No. 02-CA-93, 2003-Ohio-3046, ¶ 20. Because Cartwright lacked an interest in the farm to convey as trustee, the attempted transfer by way of the quitclaim deed was ineffective, and conveyed nothing to appellants. *See Candlewood Lake Assn., Inc. v. Scott*, 10th Dist. No. 01AP-631, 2001 WL 1654288, * 3 (Dec. 27, 2001). *See also UAP-Columbus JV326132 v. Young*, 10th Dist. No. 11AP-926, 2012-Ohio-2471, ¶ 16-19 (clear distinction between a party's individual capacity and official capacity as trustee).

{¶ 15} Accordingly, we reject appellants' first argument.

{¶ 16} Secondly, appellants claim that because the deed was properly executed, it is

presumed to be valid, and that appellees failed to rebut that presumption with proper evidence.

{¶ 17} Appellants are correct in their statement of law with respect to written deeds. "A deed executed in the correct form is presumed to be valid and will not be set aside except upon clear and convincing evidence." *Henkle v. Henkle*, 75 Ohio App.3d 732, 735 (12th Dist.1991). Where the validity of a deed is attacked, the burden of proof is generally on the party attacking it. *See, e.g., Weaver v. Crommes*, 109 Ohio App. 470, 474 (4th Dist.1959).

{¶ 18} In this case, neither party contests the fact that the deed was properly executed and was therefore presumed valid. However, after trial, the court apparently found that appellees presented sufficient evidence to rebut this presumption. In its decision, the court noted the conflicts between the affidavit and testimony of attorney Mark Pitstick, whose office drafted the deed. While Pitstick averred that Cartwright advised him that he intended to deed the farm back to appellants, Pitstick testified at trial that he never personally spoke with Cartwright regarding the deed or his intentions for the farm. Pitstick also testified that he was not present when Cartwright signed the deed, despite stating the opposite in his affidavit:

> Affiant says that pursuant to the instructions given to him by Lloyd H. Cartwright, he prepared the attached Quit Claim Deed; that he with his secretary, Wanda J. Bryan, on the morning of the 16th day of July 2008 took the Trustee's Deed to the home of Lloyd H. Cartwright, presented the deed to Mr. Cartwright for his approval; that Mr. Cartwright reviewed the same, signed the deed in the presence of this Affiant and Wanda J. Bryan, his secretary, who notarized the deed on the 16th day of July 2008 and handed the deed back to this Affiant * * *.

{¶ 19} Aside from Pitstick, the only other person to testify directly as to Cartwright's intent to deed the farm to appellants was Loren Cartwright himself. However, three witnesses testified that Cartwright intended to give the farm to appellees upon his death. Because the trial court was in the best position to evaluate the credibility of the witnesses, we will not substitute our judgment for that of the trial court in this matter. *See, e.g., Village of*

Seaman v. Altus Metals, Inc., 4th Dist. No. 99 CA 683, 2000 WL 331596, * 4 (Mar. 24, 2000). As such, we find appellants' second argument lacks merit.

{¶ 20} Appellants next argue that "every deed properly executed and delivered must be strongly construed against the grantor and in favor of the grantee." According to appellants, this rule of construction operates to defeat appellees' contention that the deed was invalid. However, appellants misstate the current law in Ohio.

{¶ 21} Instead, the rule is that "a deed is to be construed most strongly against the grantor *in the resolution of any ambiguities* contained in the instrument; however, a deed's language is conclusively presumed to express the parties' intention absent 'uncertainty' in the language employed." (Emphasis added.) *37 Robinwood Assoc. v. Health Industries, Inc.*, 47 Ohio App.3d 156, 157 (10th Dist.1988); *Metzger v. Joyce*, 70 Ohio App. 94, 96 (1st Dist.1941) ("[t]he rule that the instrument shall be construed most strongly against the grantor * * * is only called into use as a last resort to resolve ambiguity").

{¶ 22} As we held before, the deed plainly and unambiguously expresses Cartwright's intent to convey his interest in the farm as trustee. While any misconception that Cartwright held as to his ownership may have produced suboptimal results for appellants, this does not render the deed language uncertain. Under these circumstances, we find that there is no need to invoke the aforementioned rule of construction, and therefore we reject appellants' third argument.

{¶ 23} Appellants pose their fourth issue as follows: "[When] the grantor's deed recites that it is for valuable consideration and the grantee assumes an existing mortgage on the real property being transferred, does such constitute a deed of purchase and not one of a gift?" Appellants now claim that they acquired title to the farm by a deed of purchase, rather than a deed of gift, when they assumed an outstanding mortgage on the property. *See First Church of God of S. Lebanon v. Rudd*, 12th Dist. No. CA86-08-052, 1987 WL 7175, * 2 (Mar. 2,

1987). We disagree.

{¶ 24} Even if we were to treat the deed as one of purchase, we would still find that the transaction was ineffective. We reiterate the fact that Cartwright did not own the property as trustee. Because this was the sole capacity in which Cartwright attempted the transfer, he had no interest to sell to appellants by way of the deed. *See, e.g., Rippel v. Rippel*, 58 Ohio Law Abs. 579 (2nd Dist.1950) (grantor cannot convey in a deed what he does not own); *Smith v. Newell*, 8th Dist. No. 87697, 2007-Ohio-72, ¶ 27; *Royon v. Greenstein*, 122 Ohio St. 340, 346 (1930).

{¶ 25} Accordingly, we reject appellants' fourth argument, and uphold the trial court's finding that the deed was void, regardless of whether it was a deed of purchase or a deed of gift.

{¶ 26} In their final argument, appellants contend that the trial court erred in refusing to reform the deed to reflect Cartwright's intent to convey the farm to them. They claim that the deed did not express this intention due to a mutual mistake of fact, namely, their shared belief that Cartwright held title to the farm as trustee.

{¶ 27} "Reformation of an instrument [such as a deed] is an equitable remedy whereby a court modifies the instrument which, due to a mutual mistake on the part of the original parties to the instrument, does not evince the actual intention of those parties." *Jones v. Alvarez*, 12th Dist. No. CA2006-10-257, 2008-Ohio-1994, fn. 3, quoting *Mason v. Swartz*, 76 Ohio App.3d 43, 50 (6th Dist.1991). "The purpose of reformation is to cause an instrument to express the intent of the parties as to the contents thereof, i.e., to establish the actual [agreement] of the parties." *Delfino v. Paul Davies Chevrolet, Inc.*, 2 Ohio St.2d 282, 286 (1965). Generally, reformation applies to cases involving mutual mistake, but not a unilateral mistake. *See Butler Cty. Bd. of Commrs. v. Hamilton*, 145 Ohio App.3d 454, 474 (12th Dist.2001).

{¶ 28} The standard of review applicable to claims for equitable relief is abuse of discretion. *See Sandusky Properties v. Aveni*, 15 Ohio St.3d 273, 275 (1984). "Abuse of discretion" connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 29} R.C. 2719.01 provides for the correction of defects in instruments as follows:

> When there is an omission, defect, or error in an instrument in writing or in a proceeding by reason of the inadvertence of an officer, or of a party, person, or body corporate, so that it is not in strict conformity with the laws of this state, the courts of this state may give full effect to such instrument or proceeding, according to the true, manifest intention of the parties thereto.

{¶ 30} A person seeking reformation of a written instrument must prove by clear and convincing evidence that the mistake regarding the instrument was mutual. *See Alvarez*, 2008-Ohio-1994 at fn. 3; *Stewart v. Gordon*, 60 Ohio St. 170 (1899), paragraph one of the syllabus. Clear and convincing evidence is that which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re S.W.*, 12th Dist. No. CA2011-12-028, 2012-Ohio-3199, ¶ 13. "[I]n an action for reformation, the intention of the parties can be discovered through parol evidence." *Swartz*, 76 Ohio App.3d at 50.

{¶ 31} In the case at bar, the trial court determined that appellants failed to show that the parties were mutually mistaken as to the capacity in which Cartwright owned the farm. Based on the facts in the record, we tend to agree.

{¶ 32} A year before Cartwright executed the deed, appellants negotiated several agreements that clearly indicated that Cartwright owned the farm as an individual, rather than a trustee. First, in June 2007, appellants received a $75,000 judgment lien against the property, which named Cartwright, individually, as the sole defendant. Additionally, in October 2007, appellants, acting as co-executors, renewed a mortgage on the farm, which

named Cartwright, individually, as the sole mortgagor. In light of these dealings, we find that appellants' claim that they were mistaken as to Cartwright's ownership as trustee to be disingenuous.

{¶ 33} Under these circumstances, the trial court did not abuse its discretion in refusing to reform the deed, where appellants failed to clearly and convincingly demonstrate a mutual mistake. As the trial court aptly stated, "[a]ny mistake on the part of Lloyd H. Cartwright as to how he held title to the real estate was a unilateral mistake and this instrument cannot be reformed by [appellants] against [appellees] – the heirs and devisees of Lloyd H. Cartwright." *See Butler*, 145 Ohio App.3d at 474.

{¶ 34} Having carefully considered appellants' arguments, we find that the trial court did not err in denying appellants' quiet title action and request to reform Cartwright's deed. Appellants' single assignment of error is overruled.

{¶ 35} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.