NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

STONE WALL ACQUISITION, LLC, Appellee v. ESTATE OF REBECCA HAISFIELD, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2927 EDA 2012

Appeal from the Order September 6, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No.: 01158 Nov Term, 2011

BEFORE: GANTMAN, J., ALLEN, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. **FILED AUGUST 13, 2013**

Appellant, the Estate of Rebecca Haisfield, appeals from the grant of summary judgment for Plaintiff Appellee, Stone Wall Acquisition, LLC (Stone Wall), in a declaratory judgment action. Stone Wall brought the action to quiet title on a property it acquired through a Sheriff's sale. Appellant argues that its interest in the property under a mortgage in favor of Mrs. Haisfield was not extinguished by a quit claim deed Mrs. Haisfield had executed. Appellant claims that by granting summary judgment the trial court ignored genuine issues of material fact, in particular by failing to inquire into the intent of the parties to the quit claim deed. We affirm.

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* Retired Senior Judge assigned to the Superior Court.

There is no substantial dispute about the underlying facts.

"Sometime in the 1990s[,]" Mrs. Haisfield deeded the property in question, 7248 Rising Sun Avenue, Philadelphia, to her children, Richard Haisfield, Jeffrey Haisfield, and Lynn Sirignano. (Appellant's Brief, at 5). Appellant concedes the transaction was not recorded. In 1996, Jeffrey and Lynn transferred their respective interests in the property by quit claim deed, to Azco Partners, II, LP (Azco), of which brother Richard was a principal. Appellant states this transfer was recorded. On November 8, 2001, Azco executed a mortgage in favor of Mrs. Haisfield to secure Azco's obligation to repay her loan of $230,000. This mortgage was recorded on January 9, 2002. In 2007, during an apparently unrelated quiet title suit,[1] Mrs. Haisfield executed another quit claim deed in favor of Azco, which was recorded. (***See id.*** at 6).

In relevant part, the Quit Claim Deed, dated December 24, 2007, for a recited $10.00 consideration paid by Azco to Mrs. Haisfield, "remise[d] release[d] and quit-claim[ed] unto the said second party [Azco] forever, all the right, title, interest, claim and demand which the said first party [Mrs. Haisfield] has in and to" the property at 7248 Rising Sun Avenue, incorporating by reference a full legal description in an attached exhibit.

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[1] ***Azco Partners II v. Edith Davidson, et al.***, Philadelphia CCP Civil No. 2006-1120. This appears to be the same case as ***Azco v. Zumoff***, 26 A.3d 1202 (Pa. Super. 2011) (unpublished memorandum).

(Quit Claim Deed, 12/24/07, at 1). The deed further provided that Azco was to have and hold the property together with all appurtenances, "and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever." (Quit Claim Deed, 12/24/07, at 2).

Mrs. Haisfield passed away in 2008. (***See*** Trial Court Opinion, 1/14/13, at unnumbered page 2).[2] In 2010, an affiliate of Stone Wall, Cincinnati Capital Corporation, bought the property at a Sheriff's sale pursuant to a judgment against Azco. (***See id.***). The Sheriff issued the deed directly to Appellant Stone Wall. (***See id.***).

Stone Wall brought the instant action for declaratory judgment against the estate of Mrs. Haisfield to quiet title to the property. On September 6, 2012, the trial court granted summary judgment in favor of Stone Wall. This timely appeal followed on October 4, 2012.[3]

Appellant presents four overlapping claims, framed as two questions, on appeal:

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[2] Appellant notes that Mrs. Haisfield is "now deceased," but offers no additional details. (***See*** Appellant's Brief, at 11). It appears Mrs. Haisfield died either on March 20, 2008, (***see*** Complaint to Quiet Title, 11/15/11, at ¶17), or March 30, 2008, (***see*** Joint Stipulation of Facts, 7/02/12, at ¶8).

[3] The trial court did not order Appellant to file a statement of errors. ***See*** Pennsylvania Rule of Appellate Procedure 1925(b). The trial court filed a Rule 1925(a) opinion on January 15, 2013. ***See*** Pa.R.A.P. 1925(a).

> 1. Did the trial court err in granting Appellee Stone Wall Acquisition, LLC's motion for summary judgment pursuant to Pa. R.C.P. 1035 [sic], implicitly finding that there were no "genuine issues of material fact" for trial, despite the fact that there were significant issues of fact pertaining to[:]
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> > i. whether the 2007 quit claim deed released the mortgage between Rebecca Haisfield and AZCO; and
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> > ii. whether AZCO's ownership interest merged with the mortgage, requiring a look into the intent of the parties to the quit claim deed; and
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> > iii. whether Stone Wall Acquisition, LLC met its burden of proof in its action to quiet title?
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> 2. Did the trial court err in granting summary judgment when the issue of Stone Wall Acquisitions' status as a bona fide purchaser remained a factual issue to be resolved at trial?

(Appellant's Brief, at 3).

Appellant argues that the trial court improperly granted summary judgment because the 2007 quit claim deed did not expressly release the mortgage between Mrs. Haisfield and Azco. (***See*** Appellant's Brief, at 11). It also maintains that summary judgment was improper because the trial court should have considered extrinsic evidence to determine the intent of the parties to the 2007 quit claim deed. It posits that Appellee Stone Wall was not a *bona fide* purchaser because it bought with knowledge of the recorded mortgage. Appellant proposes that because the record must be viewed in the light most favorable to it as the non-moving party, and there were genuine issues of material fact, this Court should find that the trial court erred as a matter of law in granting summary judgment. We disagree.

> Our review on an appeal from the grant of a motion for summary judgment is well-settled. A reviewing court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion. ***Capek v. Devito***, 767 A.2d 1047, 1048, n. 1 (Pa. 2001). As with all questions of law, our review is plenary. ***Phillips v. A–Best Products Co.***, 542 Pa. 124, 665 A.2d 1167, 1170 (1995).
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> In evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule. Pa.R.C.P. 1035.2. The rule states that where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered. Where the non-moving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment. "Failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on which it bears the burden of proof . . . establishes the entitlement of the moving party to judgment as a matter of law." ***Young v. PennDOT***, 560 Pa. 373, 744 A.2d 1276, 1277 (2000). Lastly, we will view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. ***Pennsylvania State Univ. v. County of Centre***, 532 Pa. 142, 615 A.2d 303, 304 (1992).

Murphy v. Duquesne Univ. of the Holy Ghost, 777 A.2d 418, 429 (Pa. 2001). "Our scope of review is plenary when considering an order granting summary judgment pursuant to a declaratory judgment action." ***Wall Rose Mut. Ins. Co. v. Manross***, 939 A.2d 958, 962 (Pa. Super. 2007), *appeal denied*, 946 A.2d 688 (Pa. 2008).

The following legal principles are relevant to our review:

> Quit-claim deeds, long known to the law, are used when a party wishes to sell or otherwise convey an interest he may think he has in land but does not wish to warrant his title. It does not purport to convey anything more than the interest of the grantor at the time of its execution. 16 ***Am.Jur.*** p. 560, sec. 219: "The distinguishing characteristic of a quitclaim deed is that it is a

> conveyance of the interest or title of the grantor in and to the property described, rather than of the property itself."

Greek Catholic Congregation of Borough of Olyphant v. Plummer, 12 A.2d 435, 437 (Pa. 1940).

> [C]ertain rules are applicable in the construction of deeds. Among such rules are those providing: (1) that the nature and quantity of the interest conveyed must be ascertained from the instrument itself and cannot be orally shown in the absence of fraud, accident or mistake and we seek to ascertain not what the parties may have intended by the language but what is the meaning of the words; (2) effect must be given to **all** the language of the instrument and no part shall be rejected if it can be given a meaning; (3) the language of the deed shall be interpreted in the light of the subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed.

Yuscavage v. Hamlin, 137 A.2d 242, 244 (Pa. 1958) (emphasis in original). Similarly,

> When construing a deed, a court's primary object must be to ascertain and effectuate what the parties themselves intended. The traditional rules of construction to determine that intention involve the following principles. First, the nature and quantity of the interest conveyed must be ascertained from the deed itself and cannot be orally shown in the absence of fraud, accident or mistake. **We seek to ascertain not what the parties may have intended by the language but what is the meaning of the words they used.** Effect must be given to all the language of the instrument, and no part shall be rejected if it can be given a meaning. If a doubt arises concerning the interpretation of the instrument, it will be resolved against the party who prepared it. . . . To ascertain the intention of the parties, the language of a deed should be interpreted in the light of the subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed.

Consolidation Coal Co. v. White, 875 A.2d 318, 326-27 (Pa. Super. 2005) (citations omitted; emphasis added).

Pennsylvania law defines the parol evidence rule as follows:

> Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the **only**, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract . . . and **unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence**.

Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 436 (Pa. 2004) (citation omitted) (emphases added). "When the words of a contract are clear and unambiguous, the intent of the parties must be ascertained from the language employed in the contract, which shall be given its commonly accepted and plain meaning." ***TruServ Corp. v. Morgan's Tool & Supply Co., Inc.***, 39 A.3d 253, 260 (Pa. 2012) (citation omitted).

Similarly,

> The interpretation of any contract is a question of law and this Court's scope of review is plenary. Moreover, we need not defer to the conclusions of the trial court and are free to draw our own inferences. In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement. When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. This Court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation.

Currid v. Meeting House Rest., Inc., 869 A.2d 516, 518-19 (Pa. Super. 2005), *appeal denied*, 882 A.2d 478 (Pa. 2005) (citation omitted).

Here, Appellant does not allege fraud, accident, or mistake in the execution of the quit claim deed. Instead, Appellant asserts that extrinsic evidence, such as inclusion of the mortgage in an inventory of assets of Mrs. Haisfield's estate and the estate's tax returns, raised a genuine issue of material fact about Mrs. Haisfield's intent to exclude the mortgage from the rights she released in the deed.[4] (***See, e.g.***, Appellant's Brief, at 6, 19). We conclude that the trial court properly disregarded such claims in granting summary judgment.

Under the well-settled principles embodied in the parol evidence rule, the trial court properly determined that there was no genuine issue of material fact. Appellant made no showing of fraud, accident or mistake. Therefore, the trial court properly disregarded any evidence other than the quit claim deed itself to show Mrs. Haisfield's intent to reserve an interest in the property by mortgage while expressly divesting all right, title and interest to the property by the deed. ***See Yocca***, ***supra*** at 436 ("unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor

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[4] Appellant also explains a tax transfer certification which reported the quit claim deed as a "bona fide sale free and clear of all liens and encumbrances," as a "clerical mistake." (Appellant's Brief, at 7).

subtracted from by parol evidence."). When construing a deed, we seek to ascertain not what the parties may have intended by the language, but what is the meaning of the words they used. ***See Consolidation Coal***, ***supra*** at 326.

Notably, the quit claim deed at issue here contained no express reservation of a mortgage interest. To the contrary, the plain, unambiguous and all-inclusive traditional language used in the quit claim deed leaves no objective doubt that by its own terms the grantor, Mrs. Haisfield, intended a total and unreserved renunciation of her interest in the property. "When the words of a contract are clear and unambiguous, the intent of the parties must be ascertained from the language employed in the contract, which shall be given its commonly accepted and plain meaning." ***TruServ***, ***supra*** at 260.

Because the trial court properly disregarded extrinsic parol evidence to ascertain the meaning of the quit claim deed, which is otherwise plain, clear, and transparent, we discern no abuse of discretion or error of law by the trial court in its grant of summary judgment.

None of Appellant's other claims require a different result.

Specifically, Appellant argues that the trial court committed an error of law by deciding that the 2007 quit claim deed released the recorded mortgage listed on the title report. (***See*** Appellant's Brief, at 13). As with all questions of law, our review is plenary. ***See Murphy***, ***supra***.

For the reasons already noted, we agree with the trial court. We conclude that the commonly accepted and plain meaning of the language of the quit claim deed, releasing "**all"** of Mrs. Haisfield's "right, title, interest, claim and demand" to the described property, without reservation, manifestly embraces all interests, including a mortgage. (Quit Claim Deed, 12/24/07, at 1) (emphasis added). Appellant offers no pertinent authority to the contrary.[5] We decline to adopt the strained interpretation, tacitly excluding mortgage rights, which Appellant suggests.[6]

Appellant's reliance on North Dakota authority, ***Gilbertson v. Gilbertson***, 452 N.W.2d 79 (N.D. 1990), not binding on this Court,[7] is

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[5] Appellant suggests this case is controlled by ***Pease v. Doane***, 33 Pa. Super 6 (Pa. Super. 1906) which opined in 1907 that "[e]quity does not favor mergers; and, in law, mergers are said to be odious." ***Id.*** at 9 (citation omitted); (***see*** Appellant's Brief, at 18-19). Notably, however, ***Pease*** did not address the import of a quit claim deed in which the grantor purported to divest all of her interest in a property, for a specific strategic litigation purpose.

[6] On appeal, Appellant seeks to minimize the intrinsic import of the quit claim deed by emphasizing its strategic purpose in the ***Davidson*** litigation, (***see supra*** at n.1; ***see also*** Appellant's Brief, at 6 (quit claim deed "transferring her ownership to Azco" to "remove the potential standing issue"); 16 ("Quit Claim Deed was executed **only** to clear a gap in title") (emphasis in original). We observe that any purported reservation of rights, in contravention of the all-inclusive terms of the quit claim deed, would have subverted that litigation purpose.

[7] This Court has noted:

> At the outset we observe that it is well-settled that this Court is not bound by the decisions of federal courts, other than the

(Footnote Continued Next Page)

unpersuasive. (***See*** Appellant's Brief, at 15-16). ***Gilbertson***, which involved a mistake, is easily distinguished. In that divorce case, the ex-husband gave a mortgage to his ex-wife on the family residence as part of the property settlement. ***See Gilbertson***, ***supra*** at 80. On remarriage the ex-husband sought and received a court-compelled quit claim deed, premised on the express reservation of the mortgage to the ex-wife. Nevertheless, the executed quit claim deed omitted the reservation. The North Dakota Supreme Court concluded that because both parties were aware of the reservation of the mortgage interest from the divorce decree and subsequent court order, that the question of mistake was adequately raised, obviating the prohibition of the parol evidence rule. ***See id.*** at 81 ("If mistake is not at the root of this dispute, we are at a loss to understand what is."). None of those facts, or anything similar, pertain here.

Appellant next argues that the trial court erroneously determined that Azco's ownership interest in the property merged with the mortgage interest after the execution of the quitclaim deed. (***See*** Appellant's Brief, at 17-19).

(Footnote Continued) ———————————

> United States Supreme Court, or the decisions of other states' courts. ***See Trach v. Fellin***, 817 A.2d 1102, 1115 (Pa. Super. 2003), *appeal denied sub nom.* ***Trach v. Thrift Drug, Inc.***, 577 Pa. 725, 847 A.2d 1288 (2004). "We recognize that we are not bound by these cases; however, we may use them for guidance to the degree we find them useful and not incompatible with Pennsylvania law." ***Id.***

Eckman v. Erie Ins. Exch., 21 A.3d 1203, 1207 (Pa. Super. 2011).

This argument is waived for Appellant's failure to reference where the issue was raised or preserved, and to reference where in the record the matter referred to occurs. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); Pa.R.A.P. 2117(c); Pa.R.A.P. 2119(c). Furthermore, we will not scour the record to develop an argument for an appellant. ***See J.J. DeLuca Co., Inc. v. Toll Naval Assocs.***, 56 A.3d 402, 411 (Pa. Super. 2012).

Moreover, the claim would not merit relief for the reason already noted. An assignment of error for failure to consider whether Azco acquired interest by merger without considering the extrinsic intent of the parties is no more than a semantic variation on the primary claim that the trial court erred in granting summary judgment without considering extrinsic parol evidence of the parties' intent. Appellant's variant claim is also without merit.

Next, Appellant asserts that Stone Wall failed to meet its burden of proof. (***See*** Appellant's Brief, at 19-21). This argument is also waived for the failures of citation and reference previously noted. ***See*** Pa.R.A.P. 302(a), 2117(c), 2119(c). Moreover, the claim would not merit relief.

Even if we assumed for the sake of argument that Appellant properly raised this issue with the trial court, it fails to develop a focused argument supported by reference to pertinent authority on appeal. (***See*** Appellant's Brief, at 19-21). Specifically, Appellant offers no authority whatsoever in

support of its particular claim that the trial court improperly received or considered evidence of Appellee's Sheriff's Deed in support of its claim of rightful ownership. (***See id.*** at 19-20). Instead, Appellant anticipates its final argument of whether Appellee Stone Wall was a *bona fide* purchaser. (***See id.*** at 19-21). Appellant's burden of proof argument fails.

Finally, Appellant again argues that Appellee Stone Wall was not a *bona fide* purchaser. (***See id.*** at 21-24). The essence of the unfocused argument is that Appellee bought with knowledge of the recorded mortgage in favor of Mrs. Haisfield. Obscured, and nearly lost, in Appellant's analysis is the companion fact that Appellee also bought with knowledge of the recorded quit claim deed. Appellant argues that "[Stone Wall] was on notice of the [m]ortgage but it made an interpretation of the properly recorded documents that was wrong." (***Id.*** at 21-22). To the contrary, Appellant is wrong. Appellee was right. The final claim fails. The trial court properly granted summary judgment.

Order affirmed.

Judgment Entered.

Prothonotary

Date: 8/13/2013