STATE OF MICHIGAN

COURT OF APPEALS

ISABELLA COUNTY, Plaintiff-Appellee,	UNPUBLISHED December 21, 2006
v	No. 271467 Isabella Circuit Court
STEVEN STARK and TOM KUNSE, Defendants-Appellants.	LC No. 05-004481-CH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

This case involves a dispute over property in Isabella County. Isabella County filed this action to quiet title and for injunctive relief on the grounds that the county owns the property and that defendants Steven Stark and Tom Kunse should be ordered to stop construction on the land and return the property to its former condition.[1] The trial court agreed with Isabella County and entered an order that quieted title in favor of the county and granted the county's request for injunctive relief. We affirm.

I. Facts

The property line dispute arises from various transfers of railroad property beginning in the late 1980s when CSX Transportation owned the Pere Marquette Railroad in Clare. On May 26, 1988, CSX conveyed part of the railroad property by quitclaim deed to Tuscola & Saginaw Bay Railway Company, Inc. (TSBR). On August 13, 1990, CSX conveyed another part of the railroad property by quitclaim deed to the County of Midland. On March 20, 1996, TSBR conveyed part of the property by quitclaim deed to Steven Stark. And, on December 2, 1997, Midland County conveyed part of the property to Isabella County.

The problem with the above transfers occurred when TSBR conveyed the property to Stark in 1996. Isabella County argued that TSBR's deed to Stark purported to convey more

[1] Stark asserts that Kunse does not own any part of the property and it appears he is a named defendant only because of his initiation of the construction project. Accordingly, unless a distinction is necessary, this writer refers to both defendants as Stark throughout this opinion.

property than CSX originally sold to TSBR, thus, mistakenly, the quitclaim deed to Stark included property actually owned by Midland County and its successor, Isabella County. In other words, the TSBR deed to Stark contains a legal description of land that overlaps the prior CSX to Midland County deed.

On April 28, 2006, Isabella County filed a motion for summary disposition under MCR 2.116(C)(10), and argued that there is no factual dispute that Stark cannot own the disputed portion of land because it was already owned by Isabella County's predecessor, Midland County. Isabella County submitted affidavits of three experts—a land surveyor and two title lawyers—who concluded that the property allegedly deeded to Stark already belonged to Midland County. In response, Stark did not dispute that the Stark deed contains a description that overlaps Isabella County's property. However, Stark submitted the affidavit of a title examiner, Ann Collison, who reviewed the chain of title for the property since the 1800s. According to Collison, in a conveyance dated May 24, 1871, the owners of the property merely conveyed an easement across their property to the Pere Marquette Railway Company for railroad purposes only. Collison further opined that, because the owners did not convey fee simple title to the land, Isabella County's only interest in the property is a railroad easement. Stark claimed that, if a factfinder concludes that the railroad has been abandoned, Isabella County has no interest in the property whatsoever.

Following oral argument on May 19, 2006, the trial court ruled from the bench that the 1871 deed conveyed a fee simple interest in the property and, thus, it rejected Stark's argument that an issue of fact remains about whether Isabella County could own the disputed land. In a written opinion, the trial court also ruled that the TSBR deed to Stark is invalid as to the portion of property that TSBR purported to convey, but did not own.

II. Analysis

Isabella County brought its motion for summary disposition pursuant to MCR 2.116(C)(10).[2] "This Court reviews the grant or denial of summary disposition de novo to

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[2] Stark argues that the trial court should not have granted summary disposition to Isabella County because discovery was not complete. While Stark is correct that, when Isabella County filed the motion, a few weeks remained before the discovery cutoff date, his argument is unavailing. "Generally, a motion for summary disposition is premature if granted before discovery on a disputed issue is complete. However, summary disposition may nevertheless be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Oliver v Smith*, 269 Mich App 560, 567; 715 NW2d 314 (2006), quoting *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 24-25; 672 NW2d 351 (2003). Here, Stark does not describe what evidence he needed in order to respond to the motion for summary disposition and he does not dispute Isabella County's assertion that he essentially conducted no discovery throughout this case. Regardless, there is no reasonable chance that Stark could uncover further factual support for his claim because the trial court's ruling was based on the language of the written instrument itself and no further evidence is necessary or permitted to establish the intent of the original grantors.

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determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood* 461 Mich 109, 118; 597 NW2d 817 (1999). As the *Maiden* Court further explained:

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

The parties dispute whether the 1871 conveyance is ambiguous and whether it conveyed an easement or a fee estate. The pertinent language of the instrument is as follows:

> This [unreadable] made this twelfth day of January 1871 between Amos B. Merrill of Boston, Massachusetts and David Whitney, Jr. of Detroit, Michigan and Jacob W. Strichfield of Saginaw City, Michigan, parties of the first part and [unreadable] Pere Marquette Railway Company of Michigan, party of the second part. Witnesseth, that the said parties of the first part for and in consideration of one dollar (which consideration said parties of the first part has received from said party of the second part) have granted, bargained, and sold and by these presents do grant, bargain, sell, and convey unto the said party of the second part its successor and assigns *all the land and premises situated in the County of Isabella and Clare in the State of Michigan described as follows*, to wit:
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> A parcel of land one hundred feet in width being fifty feet on each side of the line of road established by said party of the second part for the line of its railroad over and across the lands of said parties of the first part described as follows: The west fractional half of the northeast fractional quarter and the northwest fractional quarter of section one (1) and the north fractional half of the north east fractional quarter of section two (2) in Township Sixteen (16) north of Range Farm (4) in the southwest quarter of the southeast quarter of section thirty-five (35) in Township Seventeen (17) north of Range Farm (4) west, which strip of land one hundred feet in width shall be used only for railroad purposes.
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> Together with all singular and hereditaments and appurtenances [unreadable] belonging or in anywise appertaining, and *all the estate, right, title, claim, and demand whatsoever of the parties of the first part both legal and equitable. To have and to hold the above granted premises to the said party of*

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> *the second part its successors and assigns forever*. [Emphasis added; capitalization and punctuation modified for clarity.]

As our Supreme Court recently explained in *MDNR v Carmody-Lahti Real Estate*, 472 Mich 359; 699 NW2d 272 (2005):

> An inquiry into the scope of the interest conferred by a deed such as that at issue here necessarily focuses on the deed's plain language, and is guided by the following principles:
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> "(1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable." [Quoting *Purlo Corp v 3925 Woodward Avenue, Inc*, 341 Mich 483, 487-488; 67 NW2d 684 (1954).]
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> These four principles stand for a relatively simple proposition: our objective in interpreting a deed is to give effect to the parties' intent as manifested in the language of the instrument.
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> The instrument's granting clauses are a natural starting point for discerning the parties' intent.

Stark asserts, incorrectly, that a reference in a margin to a "right of way deed" and the use in the instrument of the phrase "over and across the lands" establishes that the grantors intended to convey an easement or, at least, renders the conveyance ambiguous. The conveyance here explicitly states that it is the sale of a specific portion of land "and all the estate, right, title, claim, and demand whatsoever of the parties of the first part both legal and equitable." It then reiterates that the conveyance is intended to bestow "all singular and hereditaments and appurtenances . . . belonging or in anywise appertaining, and all the estate, right, title, claim, and demand whatsoever of the parties of the first part both legal and equitable."

While " 'no language in the instrument may be needlessly rejected as meaningless,' " we reject Stark's reliance on the phrase "over and across the lands" to establish that an easement was conveyed. *Carmody-Lahti, supra*. As the trial court noted, the above language does not describe the conveyance itself; it is merely a description of where the fee lies. Further, Stark clearly mischaracterizes the reference to "right of way deed" when he asserts that "[t]he deed is entitled a 'Right of Way Deed.' " While the phrase appears in a *margin* of the document, its placement cannot be reasonably interpreted to either describe or title the written conveyance. Further, the language is not otherwise made part of the contract itself, and does not appear anywhere in the body of the document. Indeed, the phrase is next to a drawing of a $50 bill (which is not the amount Pere Marquette paid for the land) and, thus, the "right of way deed" language could just

as easily refer to some other transaction or may be nothing more than an idle scribble. We will not speculate nor will we presume that this is part of the real estate conveyance.

Both parties rely on *Carmody-Lahti, supra*, to support their positions. In *Carmody-Lahti*, the conveyance stated that, for $1 consideration, Quincy Mining "does grant, bargain, sell, remise, release, alien and confirm unto [Mineral Range] its successors and assigns forever a right of way for the railroad of [Mineral Range] . . . to consist of a strip of land one hundred feet in width being fifty feet on each side of [a] surveyed line across the" Quincy Mining property. *Id*. at 363, quoting the written instrument. Carmody-Lahti was a successor in interest to the land that belonged to Quincy Mining. *Id*. at 364. The right of way was used until the 1980s and, thereafter, the MDNR sought to use the land for a public snowmobile and recreation trail. *Id*. at 365. Carmody-Lahti objected to its use by the public and claimed a fee simple interest in the strip of land. *Id*. at 366.

In analyzing the issue, our Supreme Court first noted that, "[a]s we discussed over seventy years ago in *Quinn* [*v Pere Marquette R. Co,* 256 Mich 143; 239 NW 376 (1931)], a deed *granting* a right-of-way typically conveys an easement, whereas a deed granting *land itself* is more appropriately characterized as conveying a fee or some other estate . . . ." (Emphasis in original.) The Court also quoted *Quinn* for the proposition that if the land is conveyed, even if "for railroad purposes only," the conveyance is in fee. *Carmody-Lahti, supra* at 371, quoting *Quinn, supra* at 150. In *Carmody-Lahti*, the Supreme Court concluded that the conveyance was a right of way because it was explicitly designated as such and the language merely conveyed a legal right to "use" the strip of land. Accordingly, and because the conveyance contained no language that could be read to convey an interest in the land, the Court held that the deed only conveyed an easement.

Unlike the conveyance in *Carmody-Lahti*, here, the document granted "all the estate, right, title, claim, and demand," both legal and equitable in the land. The conveyances in *Carmody-Lahti* and the cases cited therein contain no such language and, in the granting clause, clearly express that the grant is for the right of way for a railroad. As the *Carmody-Lahti* Court observed:

> [D]eeds that this Court and the Court of Appeals have read as conveying a fee rather than an easement typically contain language that unambiguously conveys an estate in land and are therefore readily distinguishable from that at issue here. In *Quinn*, this Court held that a deed conveying a " 'parcel of land' " " 'to be used for railroad purposes only' " conveyed a fee estate. Not only did that deed omit any reference to a "right of way," but it specifically conveyed " *all the estate, right, title, claim and demand whatsoever of the [grantor], both legal and equitable, in and to the said premises . . . .*" This language unambiguously showed the grantors' intent to convey their *entire* estate.

Moreover, to the extent the deed specified that the land should be used for railroad purposes, as in *Quinn, supra*, this was merely a declaration of the purpose of the conveyance and did not limit

the grant of a fee. Here, the conveyance clearly expresses the grantors' intent to convey a fee simple and the trial court correctly granted summary disposition to Isabella County.[3]

Affirmed.[4]

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder

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[3] Isabella County also raises the question whether Stark has standing to assert his defense that the county only acquired an easement. The trial court ruled that Stark and Kunse had standing to do so because they could challenge the "quality of the title that is being asserted against them." "In order to have standing, a party must show an actual injury that is caused by the opposing party and is ' "likely" ' to 'be "redressed by a favorable decision." ' " *Twp of Homer v Billboards By Johnson, Inc*, 268 Mich App 500, 504; 708 NW2d 737 (2005), quoting *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 734; 629 NW2d 900 (2001), quoting *Lujan v Defenders of Wildlife*, 504 US 555, 561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).

While, arguably, Stark could defeat Isabella County's quiet title action if he could show that the county has no ownership rights, there is some question whether that ruling would result in a "favorable decision" for Stark because, even if he is correct, it would also divest his property interest. *Twp of Homer, supra* at 504. Nonetheless, assuming Stark could raise the issue, for the reasons stated, his argument fails as a matter of law.

[4] Stark asserts that the trial court erred when it attempted to describe the valid portion of TSBR's deed to Stark. However, the description has nothing to do with the disputed portion of property in this case. As counsel for Isabella County observed at oral argument, if Stark wishes to clarify or reform his title, he may do so in another transaction or proceeding.