STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF CLISSON J. FINNEY, deceased.

ESTATE OF CLISSON J. FINNEY,

Plaintiff-Appellant,

v

ROSA FINNEY,

Defendant-Appellee.

UNPUBLISHED
June 15, 2023

No. 361305
Genesee Probate Court
LC Nos. 17-208798-DE
18-211378-CZ

Before: RIORDAN, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Plaintiff, the estate of Clisson J. Finney, appeals by right the probate court's order, entered after a bench trial, dismissing plaintiff's complaint with prejudice, removing Clisson Johnson (Johnson) and appointing defendant as the personal representative of the estate, and ordering the disposition of certain vehicles and real property.[1] We affirm.

[1] Although plaintiff does not challenge on appeal that aspect of the trial court's order removing Johnson and appointing defendant as the personal representative of the estate, Johnson and his counsel appear to be continuing to direct this appeal ostensibly on behalf of the estate. Neither party having addressed the issue, we will nonetheless proceed to consider the merits of the appeal as presented.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Clisson J. Finney (Finney or the decedent) died intestate in September 2017. In November 2017, Johnson petitioned the probate court to open a supervised estate and appoint him as personal representative.[2] Johnson was appointed personal representative of the estate in January 2018.[3]

In November 2018, plaintiff, directed by Johnson, filed a complaint against defendant alleging various misconduct related to estate assets. Relevant to this appeal, plaintiff alleged that Finney had conveyed his home (the property) to defendant via quitclaim deed in August 2017, and that defendant had unduly influenced Finney into making the conveyance. The complaint noted that the quitclaim deed was signed by Finney and recorded with the Genesee County Register of Deeds. The complaint requested that the probate court enter a judgment voiding the deed and vesting title to the property with the estate.

Defendant answered the complaint and provided a list of affirmative defenses. That list included the following:

> 5. That although the decedent died intestate, he made his wishes known to his sister, Rosa Finney [defendant], and that is the reason for transferring the home to her, which is not for her personal gain and she has instructions as to whom to deed the home to at the requisite time. [*Id*. at 5.]

In February 2021, plaintiff filed a motion for partial summary disposition, arguing that plaintiff was entitled as a matter of law to a judgment voiding the quitclaim deed and vesting title to the property in the estate. Plaintiff argued that defendant had admitted during her deposition that although Finney had conveyed his home to defendant, both Finney and defendant "understood that the quit Claim Deed was intended for the benefit of another person[4] . . . and not Rosa Finney."[5] Therefore, plaintiff argued, a trust in real property had been created, but because such a trust could not be created by oral agreement and no written instrument existed creating it, the trust was invalid; thus, the conveyance to defendant was invalid and void.

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[2] The related proceedings on the petition were given the lower court docket number 17-208798-DE.

[3] Johnson is the decedent's son. Defendant is the decedent's sister.

[4] The other person was alleged to be the decedent's son, Clisson T. Finney.

[5] A footnote to the motion stated that "Plaintiff Estate of Clisson J. Finney will order and supply the transcript of Rosa Finney's deposition, as soon as satisfactory payment arrangements can be reached with the attending Court reporter." It does not appear that this was ever done; although defendant made some reference to her deposition testimony in arguing against plaintiff's undue-influence claim, plaintiff never provided defendant's deposition testimony containing her alleged admission. Later, during trial, counsel for plaintiff asked defendant if she "essentially confirm[ed]" the statement in her affirmative defense no. 5 during her deposition, to which defendant replied "I don't understand."

It does not appear from the record that the probate court ruled on plaintiff's motion. Prior to trial, plaintiff filed a trial brief arguing that defendant had obtained and distributed assets belonging to plaintiff, including the property, by undue influence. Although this brief stated that "Rosa Finney expressly admitted in her August 28, 2019, deposition that she received [the] quit claim [sic] deed in trust for the benefit of another and not as an absolute conveyance to her," it did not argue that the conveyance was void on that basis. (*Id*. at 5). Plaintiff subsequently filed a document entitled "Plaintiff's Trial Memorandum regarding MCL § 566.106's Statue of Frauds." In this memorandum, plaintiff argued that defendant's statement in her affirmative defense was an "issue-dispositive admission" regarding the quitclaim deed. The memorandum reiterated plaintiff's argument from its partial summary disposition motion, although it made no reference to defendant's deposition testimony.

A bench trial was held on April 8, 2021. At trial, plaintiff argued that defendant had admitted that she had received the quitclaim deed in trust for the benefit of another, and that this trust was void under the statute of frauds. Defendant responded that she had merely noted the decedent's wishes concerning the future disposition of the property, and that the property had been properly conveyed to her in fee simple.

After the close of proofs, the trial court dismissed plaintiff's complaint on its own motion under MCR 2.504. Regarding the property, the trial court held that there was no evidence presented that the quitclaim deed had not been executed properly and that the statute of frauds did not apply. The trial court subsequently entered an order dismissing plaintiff's complaint with prejudice. Plaintiff moved for reconsideration, which the trial court denied.

This appeal followed. Plaintiff's brief on appeal states that "This Appeal is solely grounded on the impact of MCL § 566.106[6] and the law of Agency on the September 18, 2017, 'Quit Claim Deed.' "

II. STANDARD OF REVIEW

We review for clear error a trial court's factual findings in a bench trial; we review its conclusions of law de novo. *Chelsea Investment Group, LLC v City of Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010). We review de novo questions of law, such as whether the statute of frauds applies. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 457; 733 NW2d 766 (2006).

III. ANALYSIS

Plaintiff argues that the trial court erred by failing to hold that the quitclaim deed to the property was void. We disagree.

Plaintiff's argument, to the extent this Court is able to understand it, rests entirely on the assertion that defendant made a "judicial admission" that she and Finney had agreed that she would hold the property as a trustee or agent of some sort, with the "real" beneficiary of the property

[6] MCL 566.106 is the statute of frauds.

being Finney's adult son, Clisson T. Finney. Plaintiff has not established a factual or legal basis for this claim.

Judicial admissions are "formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420; 551 NW2d 698 (1996), quoting 2 McCormick, Evidence (4th ed), § 254, p 142 n 11. A matter that has been judicially admitted in a civil pleading is conclusively established without need for further proof. *Id.*, see also MCR 2.312(D)(1).

Defendant, in her list of affirmative defenses accompanying her answer, stated that she was aware of the decedent's reasons for transferring the property to her, that the decedent did not intend for her to personally benefit, but had instructed defendant regarding the future disposition of the property. Plaintiff argues that this amounts to an admission that the property was not conveyed to her as an owner, but rather that she and decedent entered into an agreement under which she would hold the property in trust in order to later convey it to another person. Defendant's statement cannot bear the weight that plaintiff places upon it.

First, defendant's affirmative defense no. 5 cannot reasonably be read as admitting to the existence of a contract between her and Finney—for example, it makes no reference to any mutuality of obligation. See *Hall v Small*, 267 Mich App 330, 334-335; 705 NW2d 741 (2005). Rather, as the trial court noted, the affirmative defense merely indicates that defendant was aware of the decedent's wishes regarding the property, and that she intended to follow them by conveying the property to another person at some point in the future. At best, the affirmative defense indicates the existence of an unenforceable promise to follow the decedent's wishes by re-conveying the property to another person at some point in the future. See *McIntyre v McIntyre*, 205 Mich 496, 498; 171 NW393 (1919).

Additionally, plaintiff's argument and its repeated invocation of the statute of frauds is based on a fundamental misunderstanding of the application of the statute of frauds. MCL 566.106 requires that an interest in land, or any "trust or power over or concerning lands" shall not be created except by "act or operation of law, or by a deed or conveyance in writing . . . ." As plaintiff has repeatedly pointed out, no writings exist evidencing the existence of an agreement between defendant and Finney that she would act as his agent and hold the property in trust for another. Therefore, even if such an agreement had been made, it would have been "not enforceable as a parol trust." *McIntyre*, 205 Mich at 498. But the quitclaim deed exists, and plaintiff does not otherwise challenge its validity on appeal. In other words, the conveyance from Finney to defendant was accomplished by "a deed or conveyance in writing." MCL 566.106. Even if defendant and Finney had attempted to orally establish a trust or binding agreement obligating defendant to reconvey the property to another in the future, that agreement would have been invalid under the statute of frauds, leaving only the conveyance in writing. Plaintiff does not explain how *that* conveyance would become invalid as a result of the invalidation of any oral agreements concerning the property.

We need not belabor the matter further. Plaintiff's arguments lack factual and legal merit, and we reject them in their entirety.

Affirmed. As the prevailing party, defendant may tax costs. MCR 7.219(A)(1).

/s/ Michael J. Riordan
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra