STATE OF MICHIGAN

COURT OF APPEALS

HAROLD STERN, as Conservator for MAXWELL K. UNGER and TYLER B. UNGER,	UNPUBLISHED March 29, 2011
Plaintiff-Appellant,	
v	No. 295487 Oakland Circuit Court
STEVEN MARJIEH,	LC No. 2009-102749-CH
Defendant-Appellee.	

Before: WILDER, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Appellant, Harold Stern, as conservator for minors Maxwell K. Unger and Tyler B. Unger, brought an action to quiet title against defendant, Steven Marjieh.[1] The trial court granted defendant's motion for summary disposition, and appellant appeals. For the reasons stated below, we affirm.

I. BASIC FACTS

This case involves residential property located at 26104 Huntington Road, Huntington Woods, Michigan. The property was the former residence of decedent, Florence G. Unger, and her husband, Mark S. Unger. Mark was convicted of her murder and sentenced to life in prison.[2] River Place Trust ("River Place") was the successor personal representative of the estate of Florence and filed a wrongful death action against Mark. After a default judgment was entered, River Place obtained title to the property and later transferred it to the Florence G. Unger Trust, of which River Place was also the successor trustee. Defendant purchased the property from the trustee, and plaintiffs filed their action to quiet title.

[1] Although only Harold, in his role as conservator, appeals to this Court, other plaintiffs in the quiet title action included Harold (as an individual), Clara Stern, and Peter E. Stern. Accordingly, we will refer to Harold as "appellant" and the group, collectively, as "plaintiffs."

[2] See *People v Unger*, 278 Mich App 210; 749 NW2d 272 (2008).

II. SUMMARY DISPOSITION

Appellant argues that the trial court erred when it granted summary disposition in favor of defendant. Defendant moved for summary disposition under both MCR 2.116(C)(8) and MCR 2.116(C)(10). Because the parties and the trial court relied on evidence outside the pleadings, the trial court's granting of the motion, regardless of it explicitly mentioning "MCR 2.116(C)(8)," should be considered as being granted solely under MCR 2.116(C)(10). See *Mino v Clio School Dist*, 255 Mich App 60, 63 n 2; 661 NW2d 586 (2003).

We review de novo a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001).[3]

The Legislature codified actions to quiet title in MCL 600.2932(1), which provides:

> Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff.

In an action to quiet title to land, the plaintiff has the burden of proof to make out a prima facie case of his property interest. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Once a plaintiff establishes a prima facie case, the opposing party has the burden to show that it has superior title or interest. *Id.* However, a plaintiff cannot establish a prima facie case by merely relying on the weakness of a defendant's title. *Fleming v Conklin*, 237 Mich 243, 246; 211 NW 638 (1927); *Wilhelm v Herron*, 211 Mich 339, 345; 178 NW 769 (1920).

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[3] A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The moving party must specifically identify the matters that have no disputed factual issues and has the initial burden of supporting that position by affidavits, depositions, admission, or other documentary evidence. *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). Then the party opposing the motion has the burden of showing by evidentiary materials that a genuine issue of material fact exists. *Id.* A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Here, plaintiffs attempted to establish that they had a property interest by showing that the disputed property was ordered conveyed to River Place, the decedent's personal representative, pursuant to a wrongful death default judgment and subsequent order conveying title in lieu of a deed. Appellant, being one of the enumerated payees from the default judgment, contends that this judgment gave him an interest in the property. The default judgment, which was entered November 28, 2006, awarded $10,000,000 in damages to River Place Trust, as successor personal representative of the decedent. The order also enumerated how the court calculated the $10,000,000, with approximately $4,700,000 allocated to the decedent's two children, $1,000,000 allocated to the decedent's parents, and the remaining $4,300,000 going to the estate for loss of household services and loss of income. Nowhere does the order contemplate awarding anything but monetary damages to any party. Moreover, Michigan's wrongful death statute, MCL 600.2922, clearly details that such an action is an action for damages only.[4]

A couple of months later, the trial court ordered the property to be conveyed to the personal representative in lieu of any deed or writ of execution. The order stated unequivocally that River Place Trust, as successor personal representative was, among other things, "the sole owner" of the property. This order was recorded on January 29, 2007, in the office of the Oakland County Register of Deeds.

In light of the above evidence, we hold that plaintiffs failed to meet their prima facie case of establishing some interest in the property. At best, plaintiffs established an interest in the *proceeds* from the property's sale, but not in the property itself. Accordingly, for this reason alone, defendant was entitled to judgment as a matter of law in this quiet title action under MCR 2.116(C)(10).

Appellant's other arguments can be described as attacking the validity of defendant's title for various reasons. However, in an action to quiet title, a plaintiff must succeed first and foremost in making his own prima facie case, without relying on the weakness of a defendant's title. *Fleming*, 237 Mich at 246; *Wilhelm*, 211 Mich at 345. Thus, these other arguments do nothing to help plaintiffs establish their prima facie case. Accordingly, they are not persuasive.

III. NOTICE OF LIS PENDENS

Appellant argues that the trial court erred when it discharged the notice of lis pendens. The decision to cancel a notice of lis pendens on equitable principles is reviewed for an abuse of discretion. *Altman v City of Lansing*, 115 Mich App 495, 507; 321 NW2d 707 (1982). A trial

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[4] A defendant in a wrongful death action "shall be liable to an action for *damages*." MCL 600.2922(1) (emphasis added). "In every action under this section, the court or jury may award *damages* as the court or jury shall consider fair and equitable . . . . The *proceeds* of a settlement or judgment in an action for *damages* for wrongful death shall be distributed . . . ." MCL 600.2922(6) (emphasis added).

court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

In essence, appellant alleges that notices of lis pendens can only be cancelled pursuant to the statutory means as detailed in MCL 600.2725[5] and MCL 600.2731[6] – not by other common law or equitable means. However, this Court has held that these lis pendens statutes are not the sole means of cancelling a notice of lis pendens. See *Action Auto, Inc v Anderson*, 165 Mich App 620, 629; 419 NW2d 36 (1988) (stating that principles of equity can be used to cancel a notice of lis pendens instead of having to strictly rely on MCL 600.2731); *Altman*, 115 Mich App at 506-507. Accordingly, the basis of appellant's argument is without merit.

A notice of lis pendens can be discharged on equitable principles when the benefits of the notice are far outweighed by the damage the notice causes. *Altman*, 115 Mich App at 507. Here, the trial court granted the motion to cancel the notice of lis pendens because it thought that plaintiffs could not prevail on their quiet title claim, effectively determining that there was no benefit to plaintiffs. As discussed in Part II, *supra*, the trial court's ultimate conclusion was correct – plaintiffs could not prevail in their quiet title action. The fact that the trial court relied on defendant's status as a bona fide purchaser instead of the inability of plaintiffs to make a prima facie case is not dispositive. See *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003) ("A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason."). Accordingly, the trial court's decision to cancel the notice of lis pendens was not an abuse of discretion.

Appellant argues that plaintiffs were denied their right to due process because the trial judge's decision to cancel the notice of lis pendens constituted an impermissible prejudging of the issue or demonstrated a bias towards "big insurance." We review this unpreserved, constitutional issue for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009).

Because plaintiffs were not entitled to prevail in the underlying quiet title action, appellant cannot show how any error (if any existed) would have affected a substantial right or, in other words, would have "affected the outcome of the lower court proceedings." *DeCosta v Gossage*, 486 Mich 116, 138 n 13; 782 NW2d 734 (2010), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Accordingly, appellant's claim necessarily fails.

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[5] MCL 600.2725 "provides for record cancellation of a notice of lis pendens upon failure of timely service of process or determination of the cause." *Troy W Maschmeyer Co v Haas*, 376 Mich 289, 305; 136 NW2d 902 (1965).

[6] MCL 600.2731 grants the trial court discretion to require the party requesting the discharge to post a bond to cancel a notice of lis pendens. *Action Auto, Inc v Anderson*, 165 Mich App 620, 628; 419 NW2d 36 (1988).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Pat M. Donofrio