STATE OF MICHIGAN

COURT OF APPEALS

IMOGENE L. BLACK,

Plaintiff-Appellee,

v

GENEVIEVE M. HILL,

Defendant-Appellant.

UNPUBLISHED
June 11, 2020

No. 348849
Ontonagon Circuit Court
LC No. 2017-000090-CH

Before: CAMERON, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Defendant, Genevieve M. Hill, appeals as of right the trial court's order voiding a 1976 transfer of farmland between herself and her daughter, plaintiff Imogene L. Black. We affirm.

I. BACKGROUND

Plaintiff suffers from mental illnesses, the most significant of which are bipolar disorder and schizoaffective disorder, which have affected her throughout her life. Plaintiff's grandmother conveyed the farmland to plaintiff in 1974. In August 1976, plaintiff suffered a mental breakdown and was hospitalized for a number of weeks. In early September 1976, she was discharged. Later that September, plaintiff conveyed the farmland to defendant at an attorney's office.[1]

Plaintiff brought the instant action in 2017, claiming that defendant unduly influenced her to convey the property. Plaintiff noted that, at the time of the conveyance, she had only recently been discharged from the hospital for her mental breakdown, and claimed she had been under the influence of potent antipsychotic drugs at the time of the conveyance. Plaintiff did not dispute that the statutory period of limitations for her action would have expired in September 1991.[2]

[1] The transfer was to both defendant and her husband, plaintiff's father, but he died before plaintiff filed this lawsuit.

[2] The conveyance of the farmland occurred in 1976, and the longest period contemplated by MCL 600.5801(4), which addresses actions for the recovery of land, is 15 years.

However, plaintiff asserted that MCL 600.5851 applied, tolling the statute of limitations until a year after the insanity that prevented her from bringing an action was removed.[3] Plaintiff contended that, since the conveyance in 1976, she had been continuously insane under MCL 600.5851 and, therefore, the statutory period of limitations did not expire.

At trial, plaintiff offered extensive testimony from two expert witnesses in the field of psychiatry. Both doctors had treated plaintiff and reviewed her medical records. Various documents from plaintiff's medical history were also admitted. After taking evidence, the trial court agreed with plaintiff's position. It determined that plaintiff had been continuously insane since 1976 until sometime in 2017 and that, accordingly, she had until 2018 to file this lawsuit. Given that plaintiff filed suit in November 2017, the trial court concluded that plaintiff's action was timely filed.

The trial court also found that defendant had unduly influenced plaintiff to transfer the farmland in 1976. In particular, the trial court found that plaintiff had suffered a mental breakdown, had recently been discharged following hospitalization, was under the influence of potent antipsychotic drugs, was completely dependent on her parents, and feared what would happen if she refused to sign the conveyance. In addition to voiding the transfer to defendant, the trial court granted defendant a life estate in the farmland. Defendant could live on the land until her death, but she was responsible for paying taxes and maintaining the general upkeep of the property. Upon defendant's death, the land would transfer to plaintiff.

This appeal followed.

II. DISCUSSION

A. STANDARD OF REVIEW

We review de novo "the applicability of a statute of limitations[.]" *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 21; 896 NW2d 39 (2016). We review a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A factual finding is clearly erroneous when "there is no evidentiary support for [it] or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

B. INSANITY

First, defendant argues that the trial court clearly erred in its findings regarding plaintiff's insanity. We disagree. There was ample evidence supporting the trial court's determination that plaintiff was continuously insane, for purposes of MCL 600.5851, from 1976 until 2017.

Typically, the burden rests on the party asserting a statute of limitations defense to prove that the statute of limitations applies. *Warren Consol Schs v W R Grace & Co*, 205 Mich App 580, 583; 518 NW2d 508 (1994). "However, where it appears that the cause of action is prima facie

[3] The term "insanity" is one that the statute utilizes, and we accordingly will use it to refer to plaintiff's conditions.

barred, the burden of proof is upon the party seeking to enforce the cause of action to show facts taking the case out of the operation of the statute of limitations." *Id*. It is undisputed that the statutory period of limitations in this case had expired; accordingly, it was prima facie barred. The burden thus rested on plaintiff to show that the statute of limitations was tolled.

In relevant part, MCL 600.5851(1) provides an exception to a statutory period of limitations for a person who is disabled due to insanity:

> . . . [I]f the person first entitled to make an entry or bring an action under this act is . . . insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run.

The term "insane" is defined as "a condition of mental derangement such as to prevent the sufferer from comprehending rights . . . she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane." MCL 600.5851(2). The "insanity must exist at the time the claim accrues. If the disability comes into existence after the claim has accrued, a court shall not recognize the disability under this section for the purpose of modifying the period of limitations." MCL 600.5851(3). Furthermore, a party may "not tack successive disabilities. A court shall recognize only those disabilities that exist at the time the claim first accrues and that disable the person to whom the claim first accrues for the purpose of modifying the period of limitations." MCL 600.5851(4).

In *Lemmerman v Fealk*, 449 Mich 56, 71; 534 NW2d 695 (1995), our Supreme Court considered how this Court had previously analyzed what constituted insanity under MCL 600.5851(2). The Court discussed *Makarow v Volkswagen of America, Inc*, 157 Mich App 401; 403 NW2d 563 (1987), in which we held that "there was no evidence that [the plaintiff] 'suffered from an overall inability to function in society.' " *Lemmerman*, 449 Mich at 72, quoting *Makarow*, 157 Mich App at 414. The Court also discussed *Hill v Clark Equip Co*, 42 Mich App 405; 202 NW2d 530 (1972), in which we "acknowledged that the plaintiff had been able to secure social security and worker's compensation benefits and spoke to an attorney over a year before commencing the action against the defendant." *Lemmerman*, 449 Mich at 72, citing *Hill*, 42 Mich App at 408, 411-412. However, we concluded in *Hill* that plaintiff's insanity was an issue of material fact because there was evidence "suggesting that arrangement for benefits had been made by others on the plaintiff's behalf[]" and because there was "nothing in the record regarding the nature of the plaintiff's discussions with the attorney, and the defendant offered no evidence supporting its claim that the plaintiff was sane." *Lemmerman*, 449 Mich at 72, citing *Hill*, 42 Mich App at 408, 411-412. The Court also discussed *Davidson v Baker-Vander Veen Constr Co*, 35 Mich App 293; 192 NW2d 312 (1971), in which we "noted that affidavits had been filed on the plaintiff's behalf suggesting, inter alia, that the plaintiff was 'unable to attend to personal and business affairs,' that 'it was necessary to explain to him matters the ordinary person would understand,' and that 'he was unable to comprehend simple legal procedures.' " *Lemmerman*, 449 Mich at 73, quoting *Davidson*, 35 Mich App at 298. In *Davidson* we also "refused to find that retention of an attorney was conclusive proof of the plaintiff's ability to comprehend his rights." *Lemmerman*, 449 Mich at 73, citing *Davidson*, 35 Mich App at 300-301.

Defendant argues that, because plaintiff's diagnoses differed and were not *exactly* the same since 1976, this demonstrates that plaintiff attempted to "tack" successive disabilities in violation of MCL 600.5851(4). Defendant is correct that plaintiff's diagnoses did change over this period of time. However, two medical experts testified that it took time for a patient's illness to become completely clear. Mental health diagnoses are often dynamic and require refinement over time, but this does not mean that the patient has developed new disorders. Both experts, in fact, testified that they believed plaintiff's mental illnesses had been present since childhood. The experts explained that bipolar disorder and schizoaffective disorder were similar and often difficult to distinguish from each other, which would explain why some diagnoses since 1976 included only one or the other. Thus, there was evidence that plaintiff had an ongoing mental illness, and the trial court did not clearly err.

We also reject defendant's contentions that plaintiff was not continuously insane and thus there were periods in which plaintiff could have brought this lawsuit. The record evidence supports the trial court's findings as to plaintiff's insanity. Plaintiff has been hospitalized for her mental illnesses approximately 20 times throughout her life, including in 1976, 1983, 1986, 1987, 1988, 1989, 1993, 2003, 2005, 2006, 2008, 2014, and 2017, which demonstrated that her conditions were chronic, persistent, and severe enough to require hospitalization. Medical documentation demonstrated that a key part of plaintiff's illness had been her inability to accept that she was in fact mentally ill and required treatment. This often led to her improperly modifying or stopping completely her medication dosages, leading to breakdowns and hospitalizations. Defendant also points to the letters that plaintiff wrote in 2006 in which she stated she was not ill and that her illness was not permanent. Defendant believes this is evidence that plaintiff was sane during this period; however, as one of the main issues with plaintiff's mental illnesses had been the inability to accept that she is, in fact, mentally ill, these letters do not demonstrate that the trial court clearly erred. Moreover, one of the doctors who testified was not surprised that plaintiff may have written letters indicating she was "better" and not ill because this was common for such patients, and for plaintiff in particular, to deny their illness. The medical doctors, both of whom had treated plaintiff, testified extensively regarding plaintiff's inability to think long-term, think logically, establish goals, function effectively in everyday life, and understand her legal rights or bring this lawsuit. Both experts believed that plaintiff's conditions were chronic, severe, and persistent.

Although there were no medical records from December 14, 1990 to June 3, 1993, this is not, as defendant contends, dispositive evidence that plaintiff had recovered. The medical doctors both explained that lack of hospitalization did not mean that a patient was no longer ill and suffering symptoms, and one of the doctors believed plaintiff was still ill during this period due to the chronicity of her illness. And although plaintiff was able to obtain her Licensed Practical Nursing (LPN) license in August 1998 and to work for a period of time, the ability to work is not automatically dispositive of whether a person is insane under MCL 600.5851. *Davidson*, 35 Mich App at 300-301. Moreover, it was undisputed that, apart from this brief period, plaintiff never worked again. There was also evidence that plaintiff suffered a mental breakdown soon after she began work as a nurse and this prevented her from continuing to work. Similarly, although plaintiff and her husband met with an attorney approximately two years prior to filing this action, conferring with an attorney is not conclusive of whether a plaintiff is insane under MCL 600.5851 because the person may only be "partially aware of the circumstances entitling him to maintain an action." *Makarow*, 157 Mich App at 409, 414. There was also no evidence on the record indicating the extent of plaintiff's involvement during that meeting.

We also reject defendant's contentions that the trial court and expert witnesses erroneously focused on whether plaintiff could understand her legal rights. Our Supreme Court explicitly stated that the "question implicating the insanity grace period was whether the plaintiff had the ability, before commencement of the action outside the limitation period, *to aid in pursuit of the claim against the objecting defendant*." *Lemmerman*, 449 Mich at 73-74 (emphasis added). Caselaw demonstrates that we have used similar terminology. See *Lemmerman*, 449 Mich at 73, quoting *Davidson*, 35 Mich App at 298 (stating that the plaintiff " 'was unable to comprehend simple legal procedures' "); *Lemmerman*, 449 Mich at 72, citing *Hill*, 42 Mich App at 407-408, 411-412 (discussing whether the plaintiff was able to assist his attorney); *Makarow*, 157 Mich App at 414 (stating that conferring with an attorney is a factor). Therefore, it was not improper for the trial court or the expert witnesses to use this terminology as well. Both experts opined that, up until plaintiff's substantial improvement in 2017, plaintiff was unable to fully understand her legal rights or have the mental capacity to pursue this action. Notably, defendant presented no expert witness testimony.

In light of the record evidence, we cannot conclude that the trial court's factual findings and conclusions lacked *any* evidentiary support, nor can we say, in viewing the evidence, that we are left with a definite and firm conviction that a mistake was made. See *Hill*, 276 Mich App at 308. Given that plaintiff was insane until sometime in 2017, she had one year from that time to file her complaint; in other words, plaintiff had until sometime in 2018 to timely file her suit. The exact time is not needed because plaintiff filed her complaint in November 2017, before 2018, within the statutory one-year window. Accordingly, the trial court did not clearly err by applying MCL 600.5851 to this case and allowing plaintiff's action to proceed.

C. UNDUE INFLUENCE

Next, defendant argues that the trial court clearly erred in concluding that plaintiff had been unduly influenced as to the 1976 conveyance. We disagree.

Undue influence occurs when:

> [T]he grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, is not sufficient. [*In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).]

A party may establish a presumption of undue influence:

> [U]pon the introduction of evidence that would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. [*Id.*]

In this case, plaintiff established a presumption of undue influence at the time of the conveyance in 1976. It is undisputed that plaintiff is defendant's daughter, and testimony showed that plaintiff was entirely dependent on her parents during that period in her life. Plaintiff had recently been hospitalized and she was in a vulnerable state of mind. It is also undisputed that defendant benefited from the conveyance. Plaintiff testified that she was under the effects of potent antipsychotic drugs, and she did not remember how she arrived at or left the attorney's office. She further testified that she had not known ahead of time the reason for visiting the attorney's office. Therefore, defendant had opportunity to influence plaintiff's decision.

Defendant failed to offer sufficient evidence to rebut this presumption. In fact, defendant herself testified that plaintiff had been in a "zombie-like" state since being discharged from the hospital. Plaintiff testified that she did not believe she could refuse to sign over the farmland because she feared that her parents would not allow her to live with them. Plaintiff testified that she had no resources and no other place to go. Plaintiff testified that she was told where to sign. Both doctors testified that the antipsychotic drugs were extremely powerful and capable of causing cognitive impairment. In light of such evidence, we cannot conclude that the trial court's findings of undue influence were clearly erroneous.

D. PUBLIC POLICY

Finally, defendant argues that public policy should invalidate the trial court's decision. We decline defendant's invitation to ignore MCL 600.5851's plain statutory language.

Initially, we note that this argument was not raised in the trial court, and we therefore review it for plain error affecting substantial rights. *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). Public policy is "more than a different nomenclature for describing the personal preferences of individual judges"; rather, the "focus of the judiciary must ultimately be upon the policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law." *Terrien v Zwit*, 467 Mich 56, 66-67; 648 NW2d 602 (2002). Public policy must "be clearly rooted in the law," "explicit," "well defined," and "dominant[.]" *Id*. at 67-68 (quotation marks and citations omitted).

Defendant's argument is essentially that, because she was forced to defend this action decades after the conveyance occurred, the trial court violated public policy. She contends that statutes of limitation were meant to exclude these very types of delayed actions. What defendant ignores is that Michigan law, through MCL 600.5851, is an *explicit* exception to statutes of limitation. Our legislature, in passing this statute, recognized that individuals may be disabled from timely pursuing an action and it permitted them a short grace period after their disability was removed to bring their actions. Apart from referencing the general policy behind statutes of limitation, defendant cites no authority allowing us to ignore MCL 600.5851's explicit provisions simply because a significant amount of time has passed. Under these circumstances, the legislature

chose not to include a time limitation, and MCL 600.5851's plain language must be respected. See *McQueer v Perfect Fence Co*, 502 Mich 276, 286; 971 NW2d 584 (2018).

Affirmed.

/s/ Thomas C. Cameron
/s/ Mark T. Boonstra
/s/ Anica Letica