STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM L. SPRINGER II,

Plaintiff/Counterdefendant-Appellant,

v

WILLIAM L. SPRINGER III,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
April 22, 2021

No. 352647
Sanilac Circuit Court
LC No. 19-038167-CH

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Plaintiff/counterdefendant, William L. Springer II, is the father of defendant/counterplaintiff, William L. Springer III. After having an estranged relationship for many years, the parties reconnected, and plaintiff paid the purchase price of a home defendant was interested in purchasing. Concluding that the trial court did not err by finding that plaintiff gifted a one-half equitable interest in the property to defendant and finding no other reversible error, we affirm.

I. BACKGROUND

Plaintiff lived in Tennessee, and defendant lived in Michigan. After having an estranged relationship for the majority of defendant's life, the parties reconnected and began to speak over the phone. In the course of these conversations, defendant expressed an interest in purchasing the subject property located in Croswell, Michigan, but told plaintiff that before he could purchase the home, he would need to sell his current home in Roseville, Michigan. Plaintiff offered to pay the purchase price of the subject property so defendant would not "lose that house." The property would be in both of their names, but defendant and his family would live there and plaintiff would only be "[s]taying there." According to plaintiff, defendant orally agreed to reimburse him for half of the purchase price after selling his home in Roseville. If defendant did not pay his half by the time plaintiff passed away, defendant would inherit the home. There was no documentation establishing that defendant agreed to reimburse plaintiff for plaintiff's half of the purchase price.

The parties offered to purchase the property from a couple for $275,000, and later accepted a counteroffer of $280,000. Plaintiff and defendant signed the purchase agreement. On January

24, 2019, plaintiff wrote two checks to Maritime Title Company—one for $250,000 and one for $25,000. On February 1, 2019, plaintiff wrote a third check to Maritime Title Company for $5,210 to satisfy the $5,000 balance of the purchase price and the closing costs. On February 21, 2019, the couple executed a warranty deed transferring the property to plaintiff and defendant.

After the parties had a falling-out in spring 2019 when defendant went to visit plaintiff for a week, plaintiff decided that he no longer wanted to have a "financial connection" with defendant. Plaintiff never saw the property or stayed at the property, and defendant never paid any money toward the purchase of the property.

Plaintiff sued defendant, requesting that the property be sold in lieu of partitioning it, and that he be "reimbursed for the $280,000 purchase price as well as any other sums he expects on the property" from the proceeds of the sale. Defendant filed a counterclaim for partition of the property, requesting that he be allowed to pay plaintiff $140,000 for his interest in the property on the basis that plaintiff gifted defendant the remaining $140,000.

At the beginning of the bench trial, defendant's counsel stated that defendant sold his home in Roseville but that he was not aware of an oral agreement in which defendant allegedly agreed to reimburse plaintiff for half of the purchase price. Defendant's counsel argued that regardless, the alleged oral agreement was not memorialized in a writing as required under the statute of frauds. Defendant's counsel also argued that the warranty deed established that the parties owned the property as tenants in common and that the parol-evidence rule prevented plaintiff from presenting evidence to contradict the plain language of the deed. The trial court allowed plaintiff to testify about the alleged oral agreement but stated that it could not consider it as evidence in its ruling.

Plaintiff was the only witness who testified at the bench trial. Although plaintiff testified that by paying for the purchase price of the property, he did not intend to give a one-half interest in the property to defendant, in his trial brief, he stated, "When the Roseville property sold Defendant would reimburse Plaintiff for one-half of the purchase price." With respect to the purchase agreement, plaintiff testified that only defendant's "word" substantiated his belief that he and defendant did not purchase the property together.

The following exchange occurred between defendant's counsel and plaintiff regarding a conversation between the parties on January 26, 2019:

> *Q.* Did you tell [defendant] during your phone conversation on January 26, 2019 before any money was advanced by you,[1] that you were enabling him to purchase this property to make up to him for the past years that you were not in his life?
>
> *A.* Not specifically.

[1] Although the checks were dated January 24, 2019, the timestamps on the checks indicate they were not deposited until February 4, 2019.

Q. What did you say?

A. I said that maybe I have a chance to do something for you now. We didn't get along 10 or 11 years ago. Let's try that again. I'd like to help you.

Q. Very good, sir. And that of course was in the advancing of the money so that he could purchase a home for his family.

A. He didn't want this house to slip through his fingers, so he said.

Q. Okay. And he couldn't do it without your assistance, is that right?

A. I don't know whether he could or not because I don't know what he sold his house for. I've never been apprised of that.

The following exchange occurred between defendant's counsel and plaintiff regarding a conversation between the parties on February 1, 2019:

Q. I see. Do you, sir, recall on February 1, 2019 stating to [defendant] all the positive reasons as to why he should buy this house?

A. Sure.

Q. And you told him it was so that he could start a new life with his family?

A. That's right.

Q. It was all positive.

A. Yes.

Q. The savings, and I think you even added up in your head the amounts of money that [defendant], your son, I think you refer to him as Billy.

A. It was a very fatherly situation.

Q. Yes and you advanced that to him and told him that this was all good and positive for him and the family?

A. That's right.

At the conclusion of plaintiff's testimony, defendant's counsel moved for a directed verdict on defendant's counterclaim. The trial court stated that it would treat defendant's motion as a motion for involuntary dismissal under MCR 2.504(B)(2). Plaintiff's counsel argued, in relevant part, that plaintiff testified he did not have the donative intent to gift a one-half equitable interest to defendant and that there was not a "deed or other writing signed by my client or someone on his behalf" for purposes of the statute of frauds. Defendant's counsel argued that the evidence established that when plaintiff "advanced the money" for the property, they would own it as tenants in common.

The trial court found that plaintiff intended to gift defendant a one-half interest in the property and concluded that plaintiff's signature on the purchase agreement established delivery of the gift. The trial court concluded that defendant accepted the gift because defendant was living in the home and was paying the bills and other maintenance of the property. With respect to the statute of frauds, the trial court concluded that the purchase agreement and warranty deed established that the parties "own[ed] the property together." Specifically, the trial court stated that the warranty deed established that the parties owned the property as tenants in common, which meant that they each had "an undivided one-half interest in the property."

The trial court concluded that because the parties could not "get along as co-owners," a partition of the property was necessary but that because the property could not be "physically, equitably divided," a "financial division" was necessary. The trial court found that the value of the property was $280,210 and awarded each party 50% of the equity in the property. The trial court ordered, in relevant part, that defendant refinance the property, and that within 120 days from the entry of the judgment, defendant pay plaintiff $140,105 for his interest in the property. The trial court ordered that once defendant paid plaintiff the $140,105, plaintiff execute a warranty deed to defendant for his interest in the property. Alternatively, if plaintiff failed to execute a warranty deed, defendant could file a copy of the judgment with the register of deeds to accomplish the transfer of plaintiff's interest.

Defendant filed a notice stating that he had obtained the required financing and attached a letter from Lucrative Home Loans, Inc., in which a loan officer stated that defendant was "fully pre-approved for a refinance in the amount of $141,000 on a FHA loan." This appeal followed. Defendant represents that he gave plaintiff the $140,105 as ordered by the trial court but that plaintiff rejected the money.

II. ANALYSIS

Plaintiff argues that the trial court clearly erred by finding that he intended to gift a one-half undivided interest in the property to defendant. Plaintiff also argues that the trial court erred by awarding plaintiff only 50% of the equity in the property, or in the alternative, ordering that defendant pay plaintiff only $140,105 for his interest in the property. We disagree.

Following a bench trial, we review a trial court's factual findings for clear error and its conclusions of law de novo. *Patel v Patel*, 324 Mich App 631, 633; 922 NW2d 647 (2018). "A finding is clearly erroneous if there is no evidentiary support for it or if this Court is left with a definite and firm conviction that a mistake has been made." *Chelsea Investment Group LLC v Chelsea*, 288 Mich App 239, 251; 792 NW2d 781 (2010).

Although defendant moved for a directed verdict, the trial court properly treated defendant's motion as one for involuntary dismissal.

"[W]hen a trial court, sitting as the finder of fact, is asked to direct a verdict, the motion is actually one for involuntary dismissal." *2 Crooked Creek, LLC v Cass Co Treasurer*, 329 Mich App 22, 42; 941 NW2d 88 (2019). MCR 2.504(B)(2) provides:

> In an action, claim, or hearing tried without a jury, after the presentation of the plaintiff's evidence, the court, on its own initiative, may dismiss, or the

> defendant, without waiving the defendant's right to offer evidence if the motion is not granted, may move for dismissal on the ground that on the facts and the law, the plaintiff has no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517.
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> MCR 2.517(A) provides, in relevant part:
>
> > (1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
> >
> > (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.
> >
> > (3) The court may state the findings and conclusions on the record or include them in a written opinion.
> >
> > (4) Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule. See, e.g., MCR 2.504(B).

A motion for involuntary dismissal tests the factual support for a claim. *2 Crooked Creek, LLC*, 329 Mich App at 41. "[A] motion for involuntary dismissal calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences. Plaintiff is not given the advantage of the most favorable interpretation of the evidence." *Williamstown Twp v Hudson*, 311 Mich App 276, 287; 874 NW2d 419 (2015) (quotation marks and citations omitted).

A. GIFT THEORY

First, the trial court did not err by concluding that plaintiff gifted a one-half undivided interest in the property to defendant.

"In order for a gift to be valid, three elements must be satisfied: (1) the donor must possess the intent to transfer title gratuitously to the donee, (2) there must be actual or constructive delivery of the subject matter to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift." *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997). "Whether a party has acted with donative intent presents a question of fact." *In re Rudell Estate*, 286 Mich App 391, 404; 780 NW2d 884 (2009). "[T]he donor's intention to make a gift need not be expressed in any particular form, and donative intent may typically be proven through oral testimony." *Id*. at 405-406 (quotation marks and citations omitted; alteration in original). "A gift *inter vivos* is not only immediate, but absolute and irrevocable." *In re Casey Estate*, 306 Mich App 252, 263; 856 NW2d 556 (2014) (quotation marks and citation omitted). Here, plaintiff challenges only the first element.

The trial court did not clearly err by finding that plaintiff intended to gift a one-half undivided interest in the property to defendant. Plaintiff testified that on January 26, 2019, he told

defendant he was advancing the money for the following reason: "I said that *maybe I have a chance to do something for you now*. We didn't get along 10 or 11 years ago. Let's try that again. *I'd like to help you*." (Emphasis added.) Plaintiff also testified that on February 1, 2019, he told defendant he should purchase the home so he could start a new life with his family. Plaintiff testified that all of the reasons he provided were positive and that "[i]t was a very fatherly situation." Plaintiff's testimony demonstrates that because he had an estranged relationship for most of defendant's life, he wanted to do something to help defendant without expecting anything in return, which is evidence that plaintiff intended to transfer title of the property gratuitously to defendant. For these reasons, the trial court did not clearly err by finding that plaintiff intended to gift a one-half undivided interest in the property to defendant.

Plaintiff intended to transfer title of the property gratuitously to defendant, there was delivery of the property, and defendant accepted the gift. See *Davidson*, 227 Mich App at 268. Therefore, plaintiff could not revoke the gift after he decided he no longer wanted to have a "financial connection" with defendant. See *In re Casey Estate*, 306 Mich App at 263.

B. PARTITION

Having established that the trial court did not err by concluding that plaintiff gifted a one-half undivided interest in the property to defendant, we conclude that the trial court did not err by awarding plaintiff 50% of the equity in the property, awarding defendant 50% of the equity in the property, or by ordering that defendant pay plaintiff $140,105 for his interest in the property.

"In Michigan, there are five common types or forms of concurrent ownership that are recognized relative to the ownership of real property, and those are tenancies in common, joint tenancies, joint tenancies with full rights of survivorship, tenancies by the entireties, and tenancies in partnership." *Wengel v Wengel*, 270 Mich App 86, 93; 714 NW2d 371 (2006). "All conveyances and devises of land made to two or more persons shall be construed to create a tenancy in common, and not a joint tenancy, unless expressly declared to be a joint tenancy . . . ." *Id*. See also MCL 554.44. "A tenancy in common, the default and most prevalent form of a concurrent estate, arises where two or more persons hold possession of lands or tenements at the same time, by several and distinct titles. The quantities of their estate may be different, their proportionate share of the premises may be unequal, the modes of acquiring these titles may be unlike, and the only unity between them be that of possession." *Tkachik v Mandeville*, 487 Mich 38, 71 n 3; 790 NW2d 260 (2010) (quotation marks, citations, and alterations omitted). "All persons holding lands as joint tenants or as tenants in common may have those lands partitioned." MCL 600.3304.

In *Albro v Allen*, 434 Mich 271, 284; 454 NW2d 85 (1990), the Michigan Supreme Court stated:

> An action for partition has as its object the distribution of possession between those entitled to possession. Partition may be accomplished voluntarily by cotenants or by judicial action. Physical division of the jointly held property is the preferred method of partition. Normally a physical division of the property confers upon each cotenant his respective fractional portion of the land. Where such a division results in inequalities in owners' shares, the court may award money

> payments to offset the difference. Although partition in kind is favored, the court may also order sale and division of the proceeds when it concludes that an equitable physical division cannot be achieved. [Quotation marks and citations omitted.]

Here, plaintiff agrees that he and defendant held the property as tenants in common but argues that the trial court erred by concluding that each held an undivided one-half interest in the property. Rather, plaintiff argues that parol evidence was admissible to show that he and defendant agreed to hold the property as tenants in common in accordance with their respective contributions to its costs. Specifically, plaintiff argues that the trial court should have found that plaintiff owned 100% of the equity in the property and therefore ordered that plaintiff owned the property or that the property be sold and that plaintiff receive all of the proceeds. Alternatively, plaintiff argues that the trial court should have found that each party owned 50% equity and ordered that the property be sold, that the proceeds be divided equally, and that defendant pay plaintiff $140,105 from his proceeds. We conclude that the trial court did not clearly err by finding that each party owned 50% of the property and did not err by ordering that defendant pay plaintiff $140,105 for plaintiff's interest in the property.

The parol-evidence rule prohibits the use of extrinsic evidence to interpret unambiguous language within a document. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). "It is certainly true that the plain language of a deed is the best evidence of the parties' intent." *In re Rudell Estate*, 286 Mich App at 409. If the language in a document is ambiguous, extrinsic evidence can be presented to determine the parties' intent. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). This Court defers to a trial court's superior ability to evaluate the credibility of witnesses. *Smith v Straughn*, 331 Mich App 209, 217; 952 NW2d 521 (2020). "Where a conveyance or deed to two or more persons does not state the interest of each, their estates are presumed to be equal: but the presumption may be rebutted by proof." *Taylor v Taylor*, 310 Mich 541, 545; 17 NW2d 745 (1945) (quotation marks and citation omitted). Similarly, in *Campau v Campau*, 44 Mich 31, 34; 5 NW 1062 (1880), the Michigan Supreme Court stated:

> Where lands are conveyed or devised to two or more persons, and the instrument is silent as to the interest which each is to take, then the presumption will be that their interests are equal. Such would be the legal effect and construction of the instrument. Where, however, the interest of each is not thus made apparent, there can be no such presumption. The quantities of the estate of tenants in common, and their proportional shares therein, may be so different and unequal that no such presumption could, with safety, be indulged in.

Parol evidence is admissible to rebut this presumption. *Hill v Reiner*, 167 Mich 400, 403; 132 NW 1031 (1911).

Here, although the parties owned the property as tenants in common, because neither the purchase agreement nor the warranty deed stated the interest *each* party would take, i.e., their proportional share, there was a rebuttable presumption that plaintiff owned a 50% equitable interest and that defendant owned a 50% equitable interest in the property. See *Taylor*, 310 Mich at 545; *Campau*, 44 Mich at 34. Plaintiff testified, "[defendant] told me that his house was paid for and when he sold it he would be *re*paying me for his half." (Emphasis added.) This testimony does not support the conclusion that the parties intended that defendant's 50% co-ownership was

entirely contingent on payment of his half of the home's purchase price. Rather, as previously concluded, the trial court did not clearly err by finding that plaintiff gifted *defendant's* one-half interest to him, and defendant's failure to pay plaintiff for *plaintiff's* one-half interest does not alter defendant's ownership interest. Therefore, the trial court did not err by finding that each party owned a 50% equitable interest in the property and accordingly ordering that defendant pay plaintiff $140,105 for his 50% interest in the property.

Although plaintiff also argues that the trial court erred in its analysis with respect to the statute of frauds, this argument parallels his argument regarding the partition of the property. Plaintiff notes that at the bench trial, he argued that there was no writing that would satisfy the statute of frauds to establish that plaintiff transferred any of his interest in the property to defendant. Plaintiff does not elaborate on this theory in his brief on appeal. Therefore, he has abandoned any argument regarding the statute of frauds. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008) ("[A]ppellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims.").

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle