STATE OF MICHIGAN

COURT OF APPEALS

GEORGE MALLOY,

Plaintiff/Counter Defendant-Appellant/Cross Appellee,

v

SHERMAN PEARSON,

Defendant/Cross Defendant-Not Participating,

and

DARRYL SANDERS,

Counter Plaintiff/Cross Defendant-Appellee/Cross Appellant,

and

TREASURE HOMES, INC.,

Defendant/Counter Plaintiff-Appellee,

and

JOHN MARTIN,

Counter Plaintiff/Cross Plaintiff-Appellee/Cross Appellant,

and

WORLD WIDE FINANCIAL SERVICES, INC.,

Defendant-Appellee/Cross Appellant,

UNPUBLISHED
December 18, 2001

No. 222597
Wayne Circuit Court
LC No. 96-641633-CH

and

CITY OF DETROIT and COUNTY OF WAYNE,

Defendants-Not Participating.

Before: Cooper, P.J., and Cavanagh and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders in this action to quiet title. Defendants Darryl Sanders, John Martin and World Wide Financial Services, Inc. cross-appeal. We reverse in part and remand.

This is an action to quiet title to property located at 16750 Plainview in Detroit. Plaintiff's parents, Carroll and Natalie Malloy, purchased the property in 1958. After Carroll Malloy's death, Natalie Malloy deeded the property to herself and plaintiff as joint tenants in 1967. Natalie died in 1983. On December 19, 1994, a deed for the property was recorded in which the grantors were listed as George Malloy and Natalie Malloy, "a married couple" and carried their purported signatures. The grantee was listed as Sherman Pearson, a single man, who allegedly purchased the property for $1,000. On June 25, 1996, the following transactions occurred: (1) Pearson conveyed the property by warranty deed to defendant Darryl Sanders for $10,000; (2) Sanders conveyed the property by warranty deed to defendant John Martin for $43,000; and (3) Martin gave a mortgage on the property to World Wide Financial Services, Inc. for $38,700.

Following a bench trial, the trial court determined that the property never belonged to Sanders or Martin, who had nonetheless made substantial improvements to the property. The court ordered that the property be sold and the proceeds divided equally among plaintiff, Sanders, and Martin, and that the three parties would each be responsible for one-third of any unpaid taxes. The court also ruled that defendants need not pay plaintiff any rent for the period of time they possessed the property. On rehearing, the court revised its order to reduce the amount each party would receive in order to allow the outstanding mortgage to be paid.

Plaintiff argues that the trial court erred in failing to apply MCR 3.411, when it denied his request to quiet title in his name and ordered a sale of the property. Equitable determinations by a trial court are reviewed de novo, while the court's factual findings are reviewed for clear error. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998).

MCL 600.2932(1) provides that "[a]ny 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." Through this statute, the Legislature "codified actions to quiet title and authorized suits to determine competing parties' respective interests in land." *Republic Bank v Modular One LLC*, 232 Mich App 444, 448; 591 NW2d 335 (1998). In an action to quiet title to land, the plaintiff has the

burden of proof and must make out a prima facie case of title. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Road Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). If the plaintiff fails to carry this burden of proof, the trial court properly enters judgment for the defendant. *Ray v Bentley*, 39 Mich App 578, 579; 197 NW2d 827 (1972). Once the plaintiff makes out a prima facie case, the defendants then have the burden of proving superior right or title in themselves. *Beulah Hoagland, supra*. Pursuant to MCL 600.2932(3), "[i]f the plaintiff established his title to the lands, the defendant shall be ordered to release to the plaintiff all claims thereto."

A civil action to determine an interest in land, brought pursuant to MCL 600.2932, is governed by MCR 3.411. MCR 3.411(B) lists the pleading requirements for a plaintiff bringing suit to determine an interest in land, which includes a description of the premises sufficiently clear so that the premises can be identified, the interest the plaintiff claims in the premises, the interest the defendant claims in the premises, and the facts establishing the superiority of the plaintiff's claim. MCR 3.411(C) allows for written evidence of title in the parties' pleadings and at trial. Pursuant to MCR 3.411(D)(1), "[a]fter evidence has been taken, the court shall make findings determining the disputed rights in and title to the premises."

Here, plaintiff filed the appropriate pleadings with his complaint. Following the bench trial, the trial court determined that the property never belonged to defendants. The evidence reveals that this finding, although not complete, is unquestionably correct. The claims of defendants Sanders and Martin were brought under the Pearson deed, which the evidence established was a forgery. Therefore, defendants had no rights against plaintiff as the party whose name had been forged on the deed. See *VanderWall v Midkiff*, 166 Mich App 668, 685; 421 NW2d 263 (1988). "Where a deed is forged, those innocently acquiring interests under the forged deed are in no better position as to title than if they had purchased with notice." *Id*.

Having properly found that defendants never had title to the property, the trial court failed to take the next step and determine that title to the properly rested in plaintiff. Instead, the court chided the parties for failing to settle their claims and stated, "What the parties have not been able (or refuse) to do to accommodate one another, this Court can accomplish through its decision." Through its ruling, the court failed to comply with the plain language of MCR 3.411(D)(1), which mandates that the court "shall make findings determining the disputed rights in and title to the premises." MCR 3.411(F) allows claims against the party found to have title for the increased value of the premises due to improvements by another party. Thus, the court's order that the property be sold was not necessary to protect any right defendants had to the value of their improvements to the property. Under MCR 3.411(G), the person found to have title to the premises may elect to abandon the premises to the party claiming the value of the improvements and take a judgment against that party for the value the premises would have had without the improvements or may elect to have judgment entered entitling the titleholder to recover the premises and pay the value of the improvements. The election belongs to the person found to have title, but the rights of those who have made valuable improvements to the premises, here the defendants, are protected so long as the improvements were not made in bad faith.

Defendants argue that once the trial court acquired equitable jurisdiction over the matter, it had jurisdiction to settle all disputes relating to the property and to deny plaintiff any relief at all, despite the fact that the Pearson deed was a forgery. According to defendants, the equitable

defenses asserted by defendants were relied upon by the trial court. In answering plaintiff's complaint, defendants Martin and World Wide Financial Services, Inc. raised the equitable defenses of laches, unclean hands in apparently accepting the benefits received from the proceeds of the mortgage loan, equitable mortgage or constructive trust, and plaintiff's failure to do equity by failing to reimburse defendants for the payment of back taxes, water charges, and improvements on the property.

A suit to quiet title or remove a cloud on a title is one in equity and not at law. MCL 600.2932(5); *Crawford v Hamrick*, 327 Mich 591, 594-595; 42 NW2d 751 (1950). Because plaintiff was not in possession of the property when he brought this suit, his action was properly an ejectment action. *Tray v Whitney*, 35 Mich App 529, 533; 192 NW2d 628 (1971) (an ejectment action is one where the plaintiff is a party not in possession of the property who is seeking to determine proper title to the property in possession of another). However, MCL 600.2932 combined the actions of ejectment and quiet title, creating a single action to determine interests in land, which is equitable in nature. *Id*. at 534. Therefore, equitable defenses are applicable to the action. *Id*.

Laches is a judicially imposed equitable principle that denotes "the passage of time combined with a change in condition which would make it inequitable to enforce a claim against the defendant." *Id*. at 536. Defendants argue that plaintiff knew in March 1995 about the forged Pearson deed yet did nothing until after defendants had purchased the property from Pearson in June 1996. Further, the property appeared to be abandoned. However, "[l]aches is not the mere passage of time, but is rather the passage of time combined with a change in condition which would make it inequitable to enforce a claim against the defendant." *Id*. MCR 3.411(F) provides a method for defendants to make a claim for the improvements that they made to the premises. Therefore, defendants have not shown that they would be prejudiced by the enforcement of plaintiff's claim, and the doctrine of laches should not bar plaintiff's claim. See *McKane v Lansing*, 244 Mich App 462, 467, n 2; 625 NW2d 796 (2001) (the doctrine of laches is available as a defense only to protect against a plaintiff who sits on his rights so long that the ability of the defendant to defend would be prejudiced).

Defendants also argue that the affirmative defense discussed by this Court in *Karibian v Paletta*, 122 Mich App 353; 332 NW2d 484 (1983), applies to bar plaintiff's claim. In *Karibian*, this Court stated that "when faced with a choice, as here, between two innocent parties, courts will rule in favor of the party other than the one who made the fraud possible." *Id*. at 356. However, the defense does not apply in the present case because, unlike the defendants in *Karibian* who were good faith purchasers from someone who had defrauded the plaintiff, defendants claim of title stems from Pearson, who did not defraud plaintiff, but stole from him. Defendants, claiming under a forged deed, can claim no rights under that deed from plaintiff, whose name was forged. See *VanderWall*, *supra*.

Defendants also argue that the defense of estoppel should prevent plaintiff from prevailing on his claim. However, defendants acknowledge that the Supreme Court ruled in *Bentley v Cam*, 362 Mich 78; 106 NW2d 528 (1960) that, in the absence of fraud, title to real estate may not rest on estoppel. *Id*. at 84. Defendants acknowledge in their brief that, while they believe that plaintiff was negligent, his conduct was not sufficient to establish title in defendants. Nonetheless, they maintain that plaintiff's negligent conduct is enough to deny him the relief he requested. MCR 3.411(F) provides a method for defendants to recover their costs if the

improvements were not made in bad faith. However, pursuant to MCR 3.411(D)(1), plaintiff is entitled to a declaration that title to the property rests in him. Similarly, the other defenses asserted by defendants do not bar the operation of MCR 3.411.

Plaintiff next argues that the trial court erred in implicitly determining that the improvements made to the property by defendants Sanders and Martin were not made in bad faith and permitting these defendants to recover part of the value of the improvements.

MCR 3.411(F)(1) provides that, within twenty-eight days after the finding of title, a party may file a claim against the party found to have title for the amount that the present value of the premises has been increased by the improvements made by the party making the claim. If such a claim is filed, the court "shall hear evidence" on the value of the improvements made on the premises and the value the premises would have had without the improvements. MCR 3.411(F)(2). The court "shall determine" the amount the premises would have been worth at the time of the claim without the improvements and the amount the value increased at the time of the claim by the improvements. *Id*. However, "[t]he party claiming the value of the improvements may not recover their value if they were made in bad faith." MCR 3.411(F)(3).

Plaintiff argues that the improvements were made in bad faith because defendants reasonably should have known of the defect in their title and they had actual or constructive notice of his claim to title. Plaintiff first contends that defendants had constructive notice that plaintiff held title on June 25, 1996, because a reasonable inquiry would have required that they write to plaintiff as the person whose name and address appeared on the tax rolls to inquire about his interest in the property. This inquiry would have revealed to defendants that the Pearson deed was forged. Therefore, plaintiff argues, defendants had constructive notice of his claim from the date they "purchased" the property from Pearson. Plaintiff also contends that the irregularities surrounding the serial transactions on June 25, 1996, were sufficient to put a reasonable person on notice of some irregularity in the title. Alternatively, plaintiff argues that no recovery should be permitted for an increase in value after July 8, 1996, because defendants had actual notice of a question regarding the title when Sergeant Connell informed defendant Sanders that plaintiff claimed ownership to the property, or that no recovery for improvements made after September 27, 1996, when plaintiff filed his complaint, should be allowed.

Defendants assert that the trial court found that there had been no bad faith in these transactions. However, a review of the record reveals that the trial court never made a specific finding of fact on the record as required by MCR 2.517(A)(3). The portion of the record cited by defendants is part of the court's discussion during closing argument, and the cited statements were made in the context of a hypothetical question by the court. The court also did not make a specific finding that defendants did not act in bad faith in its opinion and judgment. To the contrary, the court determined that defendants had acquired the property under "some very dubious circumstances" and had developed the property "in the face of plaintiff's assertion of ownership" which "raises questions about the sincerity of their purposes."

Despite these findings, and a specific finding that defendants never owned the property, the court in essence awarded defendants a share of the increase in value of the property due to their improvements to the property. The trial court erred in awarding defendants any of the property's increase in value without making a specific finding with regard to whether they made any of the improvements in bad faith. In cases decided under earlier statutes that required an

improver to act in "good faith," the Supreme Court determined that "good faith" entailed "an honest belief of the occupant in his right or title." *Taylor v Hurd*, 293 Mich 425, 428; 292 NW 862 (1940); *Petit v Flint & Pere Marquette R Co*, 119 Mich 492, 494; 78 NW 554 (1899). GCR 1963, 754.5, the predecessor to MCR 3.411, provided that, in an action to determine interests in land, the party claiming the value of the improvements should not collect for the value of the improvements if they were made in "bad faith." Analyzing this version of the court rule, this Court determined that, although bad faith has often been equated with fraud or overreaching, in the context of the court rule, bad faith meant simply a lack of good faith. *Hogerheide v Hickey*, 2 Mich App 580, 584; 141 NW2d 357 (1966).

Defendants urge us to utilize a more stringent definition of bad faith used in other contexts. For example, in *Medley v Canady*, 126 Mich App 739; 337 NW2d 909 (1983), this Court determined that, in the context of an insurance contract under MCL 500.2006(4), "bad faith" was "not simply negligence or bad judgment but rather the conscious doing of a wrong because of dishonest purpose or moral obliquity. It is not merely the lack of good faith, but the opposite of good faith." *Id*. at 748.

In the present case, there was ample evidence that defendants exhibited bad faith in acquiring the property under the Pearson deed and making improvements in the face of plaintiff's claims. Plaintiff is correct in pointing out that defendants took the property with notice of his claim of ownership.

> Notice is whatever is sufficient to direct attention of the purchaser of realty to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. Notice must be of such facts that would lead any honest man, using ordinary caution, to make further inquiries in the possible rights of another in the property. [*Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995), quoting *Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535; 464 NW2d 713 (1990).]

Defendants took the property from Pearson on the basis of his quit claim deed, which contained a date error on its face and purported to convey the property for $1,000. Eighteen months after the Pearson deed was recorded, defendant Sanders purchased the unimproved property from Pearson for $10,000 and a promise to pay the back taxes and water bill on June 26, 1996. At the time, Sanders knew that plaintiff's name was listed as the owner of the property on the city's tax records. The tract index, however, listed Pearson as the owner. On the same day that he purchased the property, Sanders deeded the property to defendant Martin for $43,000, and Martin executed a mortgage on the property for $38,500. Martin then sold back his interest in the property to Sanders' business, Treasure Homes, although this transaction was not recorded. Under these circumstances, we find that defendants took the property with notice of plaintiff's possible interest, and these transactions were made in the absence of good faith. Arguably, any improvements made after June 25, 1996, were therefore made in bad faith.

Moreover, defendants certainly knew as early as July 7 or 8, 1996, that plaintiff claimed title to the property. On July 7, Sergeant Connell left his business card at the property with a note indicating that plaintiff was the owner of the house. Sanders and Connell spoke the next day. According to Sanders, the repairs were halfway completed when Sergeant Connell

informed him that plaintiff had claimed that the property was stolen from him. This uncorroborated testimony is questionable, because Sanders also testified that he first sought to sell the property, after the repairs were completed, in November 1996, two months after plaintiff filed the instant action. It is clear, however, that at least as early as July 8, 1996, less than two weeks after defendants had purchased the property under the Pearson deed, defendant Sanders knew that plaintiff, whose name appeared as the owner on the city's tax roll, claimed to be the owner of the property. Therefore, improvements made after this date were made in the absence of good faith or "an honest belief of the occupant in his right or title" and in bad faith in the sense of "the conscious doing of a wrong because of dishonest purpose or moral obliquity."

The trial court erred in implicitly determining that the defendants did not act in bad faith in making all of the improvements to the property. Because the trial court did not make specific findings of fact, however, we remand for a determination of the value of the property on July 8, 1996, when Sergeant Connell informed defendant Sanders that plaintiff claimed that the property was his. The increase in the value of improvements made between June 26 and July 8 is the only amount that defendants may recover, because the other improvements were made in bad faith.

Plaintiff next argues that the trial court erred in failing to award him reasonable rental payments for the period of time that defendants possessed the property. Pursuant to MCR 3.411(E), the party found to have title to the premises may file a claim against the party who withheld possession of the premises for the reasonable value of the use of the premises. If such a claim is filed, the court "shall hear evidence and make findings, determining the value of the use of the premises."

The trial court did not clearly err in determining that defendants did not have to pay rent to plaintiff. At trial, plaintiff acknowledged that he had not tried to sell or rent the property since his mother's death in 1983 and he knew of no person who had stayed overnight in the house since his mother's death. The evidence at trial established that when defendants came into possession of the house in July 1996, it had not been inhabited for at least the preceding five years and, therefore, the property had no value for use as a home when defendants took possession.

Plaintiff also argues that the trial court erred by failing to articulate findings of fact and conclusions of law as required by MCR 2.517(A). A trial court sitting without a jury must make specific findings of fact, state its conclusions of law separately, and direct entry of the appropriate judgment. MCR 2.517(A)(1); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Findings of fact map the path taken by a trial court through conflicting evidence. *Powell v Collias*, 59 Mich App 709, 714; 229 NW2d 897 (1975). Findings of fact regarding matters contested at a bench trial are sufficient if they are "[b]rief, definite, and pertinent," and it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation. MCR 2.517(A)(2); *Triple E, supra* at 176. Brevity in the articulation of factual findings is not fatal, as long as the appellate body is not forced to draw so many inferences that its review becomes merely speculative. *Powell, supra* at 714.

Plaintiff contends that the court's failure to articulate its findings of fact and conclusions of law leaves the parties and this Court guessing as to the facts and analysis on which the court relied in reaching its decision. According to plaintiff, not only was the court required to make

findings pursuant to MCR 2.517, it was also required to make specific factual findings pursuant to MCR 3.411.

Defendants argue that the court did make sufficient factual findings, but cite various comments made by the court during the parties' closing arguments in support of their position. Although the court may state its factual findings and conclusions of law on the record, MCR 2.517(A)(3), the examples cited by defendants are not statements of the court's factual findings, although they reveal much of the court's conclusions about the values of the property. We agree that the court did not state its findings of fact on the record or in a written opinion and, therefore, on remand, we direct the court to make specific factual findings and state its conclusions of law as required by MCR 2.517.

Finally, defendants argue on cross-appeal that the trial court actually awarded plaintiff a larger share of the proceeds from the sale of the property than he is entitled. In light of our resolution of plaintiff's appeal, we need not address this issue.

Reversed in part and remanded for a definitive statement of title and further findings with regard to the amount of the property's increase in value due to improvements not made in bad faith. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Jane E. Markey