STATE OF MICHIGAN

COURT OF APPEALS

SHARON WHEELOCK-FLAKE,

Plaintiff-Appellee,

v

RONALD F. WHEELOCK and RONALD WHEELOCK, JR.,

Defendant-Appellants.

UNPUBLISHED
June 25, 2002

No. 230010
Cheboygan Circuit Court
LC No. 99-006576-CH

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment quieting title to plaintiff's one-half interest in real property. We affirm.

The parents of defendant Ronald F. Wheelock and plaintiff Sharon Wheelock-Flake, owned a 160-acre parcel (the "parcel") in Cheboygan County. Shortly after their father died in 1985, Ronald prepared a quitclaim deed (the "1985 deed") conveying the parcel from their mother, Betty Wheelock, to herself and Ronald's son, Ronald Wheelock, Jr., as joint tenants. Later, Betty Wheelock declared that it had been her intention to leave half the property to plaintiff when she died. She consulted an attorney who did not realize that, in Michigan, a deed to two parties as joint tenants, without specific language of survivorship, gives either party the right to convey away his or her interest. See *Albro v Allen*, 434 Mich 271, 274-276; 454 NW2d 85 (1990). Instead, the attorney prepared a document purporting to revoke the "gift" to defendant Ronald Wheelock, Jr., and a warranty deed (the "1991 deed") conveying the mother's interest as follows: one-half to plaintiff and one-quarter to each defendant. Defendants refused to recognize the validity of the 1991 deed, and plaintiff brought this suit to quiet title to her one-half interest in the parcel. The trial court reformed the 1991 deed to give plaintiff and defendant Ronald Wheelock, Jr., each an undivided one-half interest in the parcel, and then partitioned the property so that each ended up with approximately eighty acres.

Defendants contend that the trial court erred by reforming the 1991 deed because the mistake by the attorney was not sufficient to justify reformation in the absence of a mutual mistake of fact. Actions to quiet title are equitable and therefore reviewed de novo, although the circuit court's factual findings are not reversed unless they are clearly erroneous. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993).

Here, there was undisputed testimony from both plaintiff and Betty Wheelock's attorney that Betty Wheelock's intent in having the 1991 deed drafted was to convey her one-half interest in the subject property to plaintiff. Plaintiff also consulted Betty Wheelock's attorney regarding the 1991 deed. In fact, there is no evidence indicating a contrary intent by either the grantor or grantee in regard to the purpose of the 1991 deed. Although Betty Wheelock and plaintiff were under the mistaken impression that the 1991 deed would convey the one-half interest to plaintiff, the 1991 deed failed to do so. Because the remedy of reformation may be granted to correct a mutual mistake, *Sobel v Steelcraft Piston Ring Sales*, 294 Mich 211, 217; 292 NW 863 (1940), we are not persuaded that the trial court erred by reforming the 1991 deed to correct the mutual mistake.[1]

Defendants also argue that the 1985 deed should have been reformed to a joint tenancy with rights of survivorship. As noted above, reformation may be granted in a proper case for mutual mistake. *Sobel*, *supra* at 217. The burden of establishing a mutual mistake is on the party seeking the remedy. *Id.* "The evidence must be clear and convincing and must establish beyond cavil the right to reformation." *Id.*

Here, the evidence of a discussion between Betty Wheelock and defendants regarding whether she could convey away her interest in the property is equivocal and contradictory. As such, the trial court was required to weigh the witnesses' credibility in resolving this issue. We have opined: "Due regard shall be given to the trial court's superior opportunity and ability to judge the credibility of witnesses." *Sparling Plastic Indus v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998). Thus, although defendants introduced evidence to support their assertion below, we do not believe that the trial court erred by failing to find that defendants satisfied their difficult burden of proof.

Defendants also argue that Betty Wheelock's statement in her revocation of gift that "Ronald Wheelock, Jr. misrepresented to me that I could still leave my one-half (1/2) of this real estate to my daughter," showed that she intended to create an indestructible joint tenancy at the time she signed the 1985 deed. However, this statement has no bearing on determining what her intent was at the time the 1985 deed was executed. Indeed, she could have been seeking reassurance that she could leave plaintiff a one-half interest in the subject property. Alternatively, it is plausible that she was merely seeking his "approval" to be polite or, in light of the litigation that has resulted, to prevent an intra-family dispute over her actions. In other words, we are not persuaded that defendants met their burden of establishing, by clear and convincing evidence, a mutual mistake in the drafting and execution of the 1985 deed. Therefore, we do not believe that the trial court erred by denying to reform the 1985 deed. *Sobel*, *supra* at 217.

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[1] We may affirm where the trial court reaches the right result, but for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993).

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper