STATE OF MICHIGAN

COURT OF APPEALS

MOSES PARIS,

Plaintiff-Appellee,

v

THERESA GREEN, MELVIN GREEN, KELLY GREEN, and TAMARA GREEN, a/k/a TAMMORA GREEN,

Defendants-Appellants.

UNPUBLISHED
January 20, 2005

No. 249740
Oakland Circuit Court
LC No. 2000-023912-CH

Before: Schuette, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendants appeal by leave granted from an amended judgment awarding plaintiff ownership, as a co-tenant, in defendants' home and vacating the court's prior judgments, which were issued after a bench trial. The original judgments quieted title to the house in defendants' daughters and awarded case evaluation sanctions to defendants. We reverse the amended judgment, vacate the original judgments, and remand for entry of a judgment in favor of defendants, entry of an order quieting title in Theresa and Melvin Green, and further proceedings consistent with this opinion.

This case arises from a family dispute over ownership of defendants' home. Theresa Green, plaintiff's sister, is married to defendant Melvin Green, and is the mother of Kelly and Tammora Green. Plaintiff alleged that he loaned Melvin and Theresa $19,300 in 1990 so they could redeem their home and property from a tax sale. In September 1990, after the transaction, Melvin and Theresa executed a quitclaim deed to plaintiff. Plaintiff's complaint alleged that defendants agreed to the conveyance as security for the loan. Plaintiff subsequently denied that the agreement was a loan, insisting that Theresa agreed to give him ownership of the house in return for the money to pay the redemption. In December 1990, plaintiff executed a quitclaim deed to Kelly and Tammora, who were then both minors. In March 1991, Kelly and Tammora executed a quitclaim deed to reconvey the property back to plaintiff, even though both were still minors. Both signed notices to disaffirm this conveyance after they turned eighteen.

In its original judgment, the court ruled that the deed Melvin and Theresa Green executed to plaintiff had the effect of transferring ownership of the home from them to plaintiff. The court also held that defendants' daughters had disaffirmed the conveyance back to plaintiff, leaving title in them. On reconsideration, the court determined that it had made an error of law in the

earlier decision by accepting Kelly Green's disaffirmance after she had turned nineteen, which was more than a year after she reached her majority. Therefore, the court amended the judgment to quiet title in plaintiff and his younger niece, Tammora Green. The court also vacated the case evaluation sanctions that plaintiff had been ordered to pay after the initial judgment.

Defendants first argue that the court erred in concluding that a deed given as security for a loan was a sale. Because the court found, as a matter of fact, that there was a loan from plaintiffs to defendants given before the deed was executed, we agree that the court erred in finding that defendants sold rather than mortgaged their property to plaintiff.

> This Court reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed. In contrast, we review a trial court's conclusions of law de novo. Furthermore, where the trial court's factual findings may have been influenced by an incorrect view of the law, an appellate court's review of those findings is not limited to clear error. [*Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000) (citations omitted).]

It is a long-established rule that Michigan courts, when prompted by compelling evidence, will look beyond the face of a deed to resolve the question of whether the parties intended the deed as a transfer of ownership or as security for a loan. *Wilson v Potter*, 339 Mich 247, 253; 63 NW2d 413 (1954); *Gunderman v Gunnison*, 39 Mich 313, 316 (1878) ("The fair effect of the whole evidence, direct, circumstantial and presumptive, is to prove that the parties intended that between themselves the transaction should be an assignment [of the certificate of property purchase] as security for the valid existing debt . . . , and not an absolute sale . . . ."). For example, in *Mintz v Soule*, 182 Mich 564, 571; 148 NW 769 (1914), our Supreme Court observed,

> The only question calling for serious consideration is whether the defense has sustained the burden of establishing that this warranty deed, on its face conveying the absolute title, was, between the parties, but a mortgage to secure a loan.
>
> It is well settled that such question is open to litigation, and the courts may so declare when the testimony impels to that conclusion. In passing upon the proof courts favor written evidence, rather than oral, but are required to consider together the writings, relations of the parties, surrounding facts and conditions generally, to arrive, if possible, at the real intent, understanding, and agreement of the contracting parties.

One factor in determining whether a transaction is a sale or mortgage is whether the "seller" retained possession of the property. *Meigs v McFarlan*, 72 Mich 194, 196-197; 40 NW 246 (1888); see also *McKeighan v Citizens Commercial & Savings Bank of Flint*, 302 Mich 666, 670; 5 NW2d 524 (1942). Another factor is the adequacy of consideration involved. *Sheets v Huben*, 354 Mich 536, 540; 93 NW2d 168 (1958). "While inadequacy of consideration is not an infallible test, it is an indication that the parties did not consider the conveyance to be absolute, particularly where the bargaining positions of the parties are markedly unequal." *Id.* at 540-541 (citations omitted). "Under Michigan law, it is well settled that the adverse financial condition

of the grantor, coupled with the inadequacy of the purchase price for the property, is sufficient to establish a deed absolute on its face to be a mortgage." *Koenig v Van Reken*, 89 Mich App 102, 106; 279 NW2d 590 (1979).

In this case, the trial court erred in finding both a loan and a sale in the same transaction. Because the same transaction cannot be both, we conclude that the court's factual findings were influenced by an incorrect view of the law. *Walters*, *supra* at 456. Therefore, our review is not limited to the clear error standard, and the trial court erroneously failed to categorize the transaction as the grant of a deed merely as a mortgage.

There was an extreme disparity in the value of the real property—which was worth more than $40,000 in 1990—and the $15,000 the court found that plaintiff loaned to defendants. Theresa Green testified that plaintiff did not lend her enough money to redeem the house, and that she had to borrow more money from another brother and use additional money from her own accounts to pay off the difference. She testified that she repaid the other brother by babysitting for him and that she repaid plaintiff by paying the remainder of his car payments and car insurance. Plaintiff acknowledged that Melvin and Theresa Green had paid his car insurance for "ten or eleven years." The trial court made the corresponding factual finding that defendants paid $22,217 "to or on behalf of plaintiff." Plaintiff also acknowledged that Melvin and Theresa Green paid the taxes and insurance on the house at all times.

The disparity in value between the consideration and the value of the property, defendants' retention of possession, the lack of documentation about a sales agreement, plaintiff's initial admission that the deed merely represented security for a loan, defendants' payment of house taxes and insurance, and the unrebutted testimony that defendants paid more than $22,000 to or on behalf of plaintiff all support the conclusion that the transaction was a mortgage and not a sale.[1]

Because Melvin and Theresa will retain title to the property, defendants will prevail in this action and will be entitled to case evaluation sanctions after entry of the judgment in the trial court. MCR 2.403(O)(2)(b). On remand, the court should carefully consider the following factors when determining the appropriate award of attorney fees that MCR 2.403(O)(6) allows: "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).

We reverse and remand for entry of judgment for defendants, entry of an order quieting title to the disputed property in defendants Melvin and Theresa Green, and further proceedings

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[1] In light of this conclusion, we need not address the effect of the quitclaim deed passed between plaintiff and defendants' daughters, because plaintiff could only convey his right to foreclose on the mortgage. Therefore, plaintiff's quitclaim deed to his nieces conveyed no outright ownership interest to them.

consistent with this opinion on the issue of case evaluation sanctions. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ David H. Sawyer
/s/ Peter D. O'Connell