

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY SIEGLER and MARY ANN SIEGLER,

Appellants,

v

ESTATE OF JEAN B. SIEGLER by ROBERT THOMAS, Personal Representative, JOHN R. SIEGLER, and JANET MUSE,

Appellees.

UNPUBLISHED

July 17, 2012

No. 305783

Lapeer Probate Court

LC No. 11-036387-CZ

Before: O'CONNELL, P.J., AND JANSEN AND RIORDAN, JJ.

PER CURIAM.

Appellants, Jeffrey and Mary Ann Siegler, appeal as of right the trial court's order granting summary disposition to appellees John R. Siegler (John) and Janet Muse (Janet). We affirm.

I. BACKGROUND FACTS

The facts of this case are undisputed. Decedent, Jean B. Siegler, and her husband were married for over 68 years and had eight children. In 1989, decedent signed her last will and testament, naming appellees John and Janet as copersonal representatives. In 2003, decedent signed a durable power of attorney, appointing her two daughters as attorney's-in-fact. This durable power of attorney became relevant in 2009, when the attorney's-in-fact and decedent's husband (in his individual capacity) signed a lease agreement with appellants, consenting to lease real property to appellants. As part of the lease agreement, appellants had an option to purchase the property for \$75,000, reduced by any lease payments already tendered. The lease also provided that Joel Siegler, another of decedent's sons, would receive the total amount owed under the lease upon the death of decedent and her husband. On the same day the lease was signed, the attorneys-in-fact and decedent's husband executed a quitclaim deed to appellants. The deed was held in escrow by an independent attorney representing the attorneys-in-fact and decedent's husband.

Decedent died in early 2011, only weeks after her husband's death. One month after decedent's death, appellants exercised their option under the lease agreement to purchase the property. Two months later, appellants filed suit against John and Janet, copersonal representatives in decedent's will. Appellants requested specific performance of the option to

purchase in the lease agreement through a warranty deed, not quitclaim deed. Eventually, attorney Robert Thomas became a party to the suit and was appointed general personal representative of decedent's estate, although the trial court ordered John and Janet to remain in the case as interested parties.

As opposed to filing an answer to the complaint, John and Janet filed a motion for summary disposition pursuant to MCR 2.116(C)(10). A hearing was held on the motion and the parties agreed that specific performance was proper. Thus, the only remaining issue was the type of deed to be tendered. Appellants, however, argued that John and Janet should not even be allowed to remain in the case, since the personal representative had been appointed and John and Janet lacked standing to file the motion for summary disposition. The trial court held that John and Janet had standing in the case because they were originally listed as defendants and because they had an interest in the case. Moreover, the court granted the motion for summary disposition, holding that a quitclaim deed was appropriate. Appellants now appeal.

II. STANDARD OF REVIEW

“Whether a party has standing is a question of law that we review de novo.” *Manuel v Gill*, 481 Mich 637, 642; 753 NW2d 48 (2008) (internal quotations and citation omitted). Moreover, a grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). The motion “tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Id.* In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers “affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006).

III. ANALYSIS

A. Standing

Appellants first challenge John and Janet's standing in the lawsuit and ability to file a motion for summary disposition. However, appellants decided to file suit against John and Janet as named defendants, who then had the right to file a responsive pleading pursuant to MCR 2.111(F). Moreover, although a personal representative was subsequently joined as a party, MCR 2.202(B) provides:

[i]f there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c).

“Notably, the use of the term ‘may’ instead of ‘shall’ in this court rule indicates discretionary rather than mandatory action.” *Church & Church Inc v A-1 Carpentry*, 281 Mich App 330, 339; 766 NW2d 30 (2008), citing MCR 2.202(B); see also *Murphy v Ameritech*, 221 Mich App 591,

600; 561 NW2d 875 (1997). Thus, the court rule grants the trial court discretion in determining whether an original party should remain in the case. Appellants fail to cite any caselaw justifying a conclusion, contrary to the permissive language in MCR 2.202(B), that the trial court was somehow obligated to remove John and Janet from the case. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (internal quotations and citations omitted) (stating that a party may not simply “announce a position or assert an error and then leave it up to this Court to . . . search for authority either to sustain or reject his position.”).

Further, appellants’ argument that every child of decedent can now intervene in the lawsuit is meritless. First, appellees did not intervene in the lawsuit, they were named defendants. Moreover, the standards for intervention, MCR 2.209, are unrelated to MCR 2.202(B), and appellants once again fail to cite any legal authority suggesting otherwise. See *Wilson, supra*. Thus, contrary to appellants’ assertion, it was within the trial court’s discretion to allow John and Janet to remain in the lawsuit as interested parties and to file the motion for summary disposition.

B. Summary Disposition, MCR 2.116(C)(10)

Furthermore, there is no genuine issue of material fact regarding appellants’ claims. “The main goal of contract interpretation generally is to enforce the parties’ intent.” *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). While appellants allege that the amount owed on the lease should be paid to the estate and not Joel, the lease specifically states that Joel will receive the total amount owed on the lease when decedent and her husband die. A mere allegation or claim that the amount should be paid to the estate is insufficient to contravene the plain language in the lease agreement or to create a genuine issue of material fact. See *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In regard to appellants’ request for a warranty deed, Michigan law provides that when the type of deed is not specified in a land contract, then the conveyance shall be done “by an appropriate deed.” MCL 565.361(1). Since the lease agreement in this case did not specify a particular type deed, the only requirement is that of an appropriate deed. While appellants clearly prefer a warranty deed, they provided no evidence that a quitclaim deed was not an appropriate deed under the statute. Hence, appellants failed to raise a genuine issue of material fact suggesting that the quitclaim deed executed the same day as the lease was not an appropriate deed.

Furthermore, appellants’ argument that decedent was mentally incapacitated when signing the durable power of attorney is insufficient to raise a genuine issue of material fact. If appellants are correct and decedent lacked the mental capacity to sign the durable power of attorney, then the lease agreement and option to purchase, the very document appellants are trying to enforce, is also invalid. Even ignoring the incongruity of appellants’ argument, the only evidence of decedent’s mental capacity was her death certificate. The death certificate listed the cause of death as vascular dementia and Parkinson’s disease, and the “approximate interval between onset and death” was more than 10 years for both disorders. However, appellants failed to present any evidence that vascular dementia equates to mental incapacity in that decedent was unable “to consent to, render a degree of control over, and appreciate the significance and consequences” of the resulting power of attorney relationship. See *Persinger v Holst*, 248 Mich

App 499, 505; 639 NW2d 594 (2001). Moreover, other than a generalized time frame for decedent's mental illness, appellants submitted no evidence that this alleged mental incapacity affected decedent at the actual moment when she executed the durable power of attorney agreement. *Id.* at 506.

Thus, allowing appellants to amend their complaint and include a claim for mental incompetence would have been "futile or otherwise unjustified." *Boylan v Fifty Eight, LLC*, 289 Mich App 709, 728; 808 NW2d 277 (2010). Likewise, while generally "summary disposition is premature if granted before discovery on a disputed issue is complete[.]" it may be proper when "further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion." *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000) (citations and internal quotations omitted).

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Michael J. Riordan