

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT BENNETT,

Plaintiff-Appellant,

v

EDITH BUGBEE, Guardian and Conservator of
DONALD KERR, L.I.P./P.P.,

Defendant-Appellee.

UNPUBLISHED
November 15, 2012

No. 307977
Saginaw Circuit Court
LC No. 10-009839-CZ

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

In this quiet title action, plaintiff Robert Bennett appeals as of right the trial court's order denying his request to quiet title to real property. Because we conclude that the trial court did not clearly err by finding that Bennett failed to produce sufficient evidence demonstrating the exchange of consideration for title to the property, we affirm.

The property at issue is about 80 acres of vacant land in Saginaw County. Bennett maintains that he purchased the property from Donald Kerr on June 1, 2003, for \$10,000 in cash. Bennett recorded a quitclaim deed on September 25, 2009. Bennett filed a complaint to quiet title to the property on November 16, 2011, after Edith Bugbee, acting as guardian and conservator of Kerr, filed a notice of lis pendens and a claim of ownership of the property on October 6, 2009. Bugbee is Kerr's sister, and was appointed his guardian and conservator on May 16, 2007.

A bench trial regarding title to the property was held on November 16, 2011. Bennett testified that he met Kerr sometime in 2000 or 2001 because he approached Kerr about hunting on Kerr's property. Bennett maintained that he and Kerr became friends. Bennett explained that one day Kerr brought up the possibility of Bennett purchasing the property and said that he would sell the property for \$10,000. Bennett indicated that he was interested, and Kerr requested that the deed grant him a life estate on the property so that he could remain until his death or incapacitation. In exchange for a life estate, Kerr agreed to pay the property taxes until the expiration of the life estate. Bennett's half-sister, Tonya Stevenson, prepared the deed, and the closing occurred at her house. Bennett's now estranged wife and his mother, who was deceased at the time of the bench trial, were present at the closing as witnesses. Tonya was also a public notary, and notarized the deed. Bennett testified that Kerr drove himself to the closing, and

Bennett gave him the \$10,000 in cash after Kerr signed the quitclaim deed. Bennett explained that he waited until 2009 to record the quitclaim deed because Kerr asked him to wait to record the deed until the life estate expired, and Bennett did not learn of Kerr's incapacitation until 2009.

Bennett's estranged wife also testified at the bench trial; her testimony was consistent with Bennett's testimony. She explained that she was still living with Bennett in 2003, and that they did not use banks and kept all their cash in their home. She testified that she counted the \$10,000 on the day of the closing, and that she took the bag of money with her to Tonya's house. Tonya was not called as a witness during the bench trial.

Kerr testified that he originally purchased the property for \$25,000, and that he did not sell the property to any person. Kerr testified that he had never seen the quitclaim deed before, that he did not sign the quitclaim deed, and that he never sold the property to Bennett. Kerr acknowledged that the signature on the deed looked like his signature, but noted that the final "r" in his name had "too long" of a "tail." Kerr also testified that he never received \$10,000 from Bennett; however, Kerr remembered that Bennett did pay him \$400 to hunt on his property.

Bugbee testified that she took control of Kerr's financial assets in 2007 after she was appointed guardian and conservator. She testified that Kerr has always paid the taxes on the property. One restriction placed on her guardianship was that she would not sell Kerr's property. She testified that she petitioned for the appointment after Kerr was hospitalized several times. Bugbee testified that Kerr was diagnosed with paranoid schizophrenia, and that he is taking several prescription psychotic medications. Bugbee acknowledged that she did not have regular contact with Kerr in 2003, but that she did not believe he was receiving any medical treatment at that time. Bugbee testified that she was always under the impression that Kerr owned the property, and first heard that someone else may have title in 2009 when she was approached by one of the neighbors to the property who told her there was a "gentleman" who claimed to have a deed to the property.

On December 22, 2011, the trial court issued a written opinion and order. The trial court specifically found that "[t]here is no credible evidence that the \$10,000 was paid." Accordingly, the trial court stated that it "finds for the defendant and the relief sued for is denied." Bennett now appeals the trial court's decision as of right.

"Actions to quiet title are equitable in nature and are reviewed de novo by this Court." *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999).

We review a trial court's findings of fact in a bench trial for clear error. *Chelsea Investment Group LLC v City of Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010). "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." *Id.* at 251. We give the trial court's findings of fact "great deference because it is in a better position to examine the facts." *Id.* Further, when reviewing the trial court's findings of fact, we recognize "the trial court's superior ability to judge the credibility of the witnesses who appeared before it." *Ambs v Kalamazoo Co*

Rd Comm, 255 Mich App 637, 652; 662 NW2d 424 (2003) (quotation and citation omitted). See also MCR 2.613(C).

On appeal, Bennett argues that because the quitclaim deed was admitted as evidence without objection and the validity of a written, signed, witnessed, and notarized deed is presumed, his title must also be presumed valid. Bennett maintains that because the deed is presumed valid, and the deed states that \$10,000 was paid for transfer of title, the trial court's order denying his request to quiet title must be reversed because the trial court clearly erred by finding there was no credible evidence to demonstrate consideration was paid for the property.

In a quiet title action, the plaintiff has the initial burden of establishing a prima facie case of title. *Special Prop VI v Woodruff*, 273 Mich App 586, 590; 730 NW2d 753 (2007). If the plaintiff establishes a prima facie case of title, the burden shifts to the defendant to prove superior right or title. *Beulah Hoagland Appleton Qualified Personal Residence Trust*, 236 Mich App at 550. The law presumes that a deed to transfer realty is valid if it is in writing, signed by the grantor, witnessed, and notarized. MCL 565.47; MCL 565.152. The law also presumes that the signatures affixed to a deed are accurate and valid. *Boothroyd v Engles*, 23 Mich 19, 21 (1871). However, these presumptions are rebuttable by "clear, positive and credible evidence in opposition." *Vriesman v Ross*, 9 Mich App 102, 106; 155 NW2d 857 (1967). Clear and convincing proof that the deed was fraudulently executed also rebuts the presumption of validity. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996). Fraud will not be presumed; however, it may be established by circumstantial evidence. *Id.* at 457-458.

The trial court found that there was no credible evidence that consideration, the \$10,000, was paid by Bennett to Kerr. At trial, Kerr specifically testified that he did not receive \$10,000 from Bennett. Moreover, Bennett acknowledged that the trial court would have to "take his word for it," and that there was no physical evidence of the money transfer since he allegedly paid with cash that was never in a bank and did not have Kerr sign any kind of receipt for the cash. Kerr's bank records, which were admitted as evidence during trial, did not reveal any deposit of \$10,000. Moreover, Kerr purchased the property for \$25,000, and Bugbee testified that Kerr was very attached to the property, so much so that a condition of her guardianship was not to sell the property. Kerr also specifically testified that he never sold the property to Bennett, had never seen the quitclaim deed, and that the signature purporting to be his on the deed did not exactly match his own signature. Bugbee similarly testified that the signature on the deed did not look like Kerr's signature.

In light of this evidence, and keeping in mind "the trial court's superior ability to judge the credibility of the witnesses who appeared before it," *Amb's*, 255 Mich App at 652, we cannot conclude that the trial court clearly erred by finding that no consideration was paid for the property. Therefore, because a valid agreement vesting title to the property in Bennett cannot exist without consideration, *Detroit Trust Co v Struggles*, 289 Mich 595, 599; 286 NW 844 (1939), we affirm the trial court's order denying Bennett's request to quiet title.

Further, to the extent that Bennett challenges the trial court's failure to address specifically the presumption of validity afforded to a written, signed, witnessed, and notarized deed, we conclude that it is implicit that the trial court found any presumption of validity was rebutted in light of the evidence presented and its findings of fact. In actions tried without a jury,

“the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” MCR 2.517(A)(1). “Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts. MCR 2.517(A)(2). Findings of fact regarding contested matters at a bench trial are sufficient if “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.” *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). We conclude that the record is sufficient to facilitate appellate review and that it appears the trial court was aware of the issues and correctly applied the law.

Finally, we reject Bennett’s argument on appeal that the trial court was required to disregard Kerr’s testimony because Kerr was legally incapacitated at the time of the trial. Questions regarding the credibility of witnesses are best left to the trial court’s discretion. *Amb*, 255 Mich App at 652. Moreover, Kerr’s capacity to testify was not challenged during the trial, and Bennett does not argue on appeal that Kerr lacked the ability to testify truthfully. The alleged sale of the property occurred in 2003, before Bugbee was appointed guardian and conservator. Bennett himself testified that at the time, Kerr had a driver’s license and took care of himself. There is no evidence that Kerr lacked mental capacity in 2003, and there is also no conclusive evidence that Kerr was unable to accurately and reliably recall some events from 2003 during the trial despite his mental incapacity.¹

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro

¹ In light of our conclusion that the trial court did not clearly err by finding there was no evidence of consideration, we need not address Bennett’s additional arguments regarding undue influence and capacity to contract.