

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of LYLE F. STEINER.

STEVEN M. STEINER,

Intervenor-Appellee,

v

DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

Claimant-Appellant.

UNPUBLISHED

October 18, 2016

No. 328628

St. Clair Probate Court

LC No. 2014-000148-DE

Before: MURRAY, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

Claimant, the Department of Health and Human Services (DHHS), appeals as of right an order granting intervenor Steven M. Steiner's petition to reform a deed. For the reasons set forth below, we reverse and remand for entry of judgment in favor of DHHS.

I. FACTS AND PROCEDURAL HISTORY

In 2007, Tuscan Plaza Condominiums, LLC, conveyed a personal residence to Lyle F. Steiner and Steven Steiner. Specifically, the deed provides that the property was conveyed:

to LYLE F. STEINER, A SINGLE MAN AND STEVEN M. STEINER, A
SINGLE MAN.

Several years later, Lyle passed away. Steven was thereafter appointed personal representative of Lyle's estate.

After Steven was appointed personal representative, DHHS filed a claim against the estate for unpaid Medicaid bills in the amount of \$48,084.95. Steven subsequently filed a petition to reform the deed to Lyle's personal residence to indicate a joint tenancy with a right of

survivorship¹ Steven argued that Lyle intended a joint tenancy so that the property would transfer to Steven without the need for probate proceedings. DHHS filed a response to the petition and argued that by law, the estate created by the deed was a tenancy in common because there was no express language declaring the intent to create a joint tenancy or declaring the intent to grant a right of survivorship.

At a hearing on Steven's petition to reform the deed, the trial court found that the deed created a tenancy in common, but also found that a latent ambiguity existed. Given that there was a latent ambiguity, the trial court reformed the deed to comport with Lyle's intent to own the property with his son Steven as joint tenants, which included a right of survivorship.

II. ANALYSIS

DHHS argues that the probate court erred when it reformed the deed to create a joint tenancy. We review a probate court's factual findings for clear error. *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2 772 (2003). Clear error exists when this Court is left with a definite and firm conviction that a mistake has been made. *Id.* Additionally, because this case raises questions of the proper interpretation of a deed, we review those issues de novo. *In re Rudell Estate*, 286 Mich App 391, 402-403; 780 NW2d 884 (2009).

"In Michigan, there are five common types or forms of concurrent ownership that are recognized relative to the ownership of real property:" (1) tenancies in common, (2) joint tenancies, (3) joint tenancies with full rights of survivorship, (4) tenancies by the entireties, and (5) tenancies in partnership. *Wengel v Wengel*, 270 Mich App 86, 93; 714 NW2d 371 (2006). "An inquiry into the scope of the interest conferred by a deed such as that at issue here necessarily focuses on the deed's plain language." *Dept of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 669 NW2d 272 (2005). Our Supreme Court has set forth the following principles regarding the proper interpretation of a deed:

(1) In construing a deed of conveyance, the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable. [*Id.*]

In addition, "[a]ll conveyances and devises of land made to two or more persons shall be construed to create a tenancy in common, and not a joint tenancy, unless expressly declared to be a joint tenancy." *Wengel*, 270 Mich App at 93-94, citing MCL 554.44 and MCL 554.45.

¹ A right of survivorship means that a surviving tenant takes ownership of the whole estate upon the death of the other joint tenant. *Wengel*, 270 Mich App at 94.

As the trial court properly found, the deed's granting clause created a tenancy in common. The deed specifically states that Tuscan Plaza Condominiums, LLC, conveyed and warranted the property to "LYLE F. STEINER, A SINGLE MAN AND STEVEN M. STEINER, A SINGLE MAN." The deed did not expressly declare that the property would create a joint tenancy with a right of survivorship, thus we construe the deed to create a tenancy in common. *Id.*

Although the trial court recognized that the deed created a tenancy in common, it found that there was a latent ambiguity and reformed the deed to create a joint tenancy. However, the trial court clearly erred in determining that a latent ambiguity existed. "An ambiguity may either be patent or latent." *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). A patent ambiguity appears from the face of the document itself. *Id.* On the other hand, a latent ambiguity is one "that does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed." *Id.* at 668. "A latent ambiguity exists when the language in a contract [or deed] appears to be clear and intelligible and suggests a single meaning, but other facts create the necessity for interpretation or a choice among two or more possible meanings." *Id.*

To verify the existence of a latent ambiguity, a court must examine the extrinsic evidence presented and determine if in fact that evidence supports an argument that the contract language at issue, under the circumstances of its formation, is susceptible to more than one interpretation. Then, if a latent ambiguity is found to exist, a court must examine the extrinsic evidence again to ascertain the meaning of the contract language at issue. [*Id.*]

Steven presented extrinsic evidence to support his argument that the deed is ambiguous, specifically by his affidavit indicating that Lyle intended to create a joint tenancy with a right of survivorship so that the property would pass outside the probate estate. However, a latent ambiguity does not exist in this deed as the fact that Lyle intended to create a joint tenancy does not support an argument that the deed language at issue is susceptible to more than one interpretation. *Id.* Stated differently, the deed terms, as applied and executed, do not create the necessity for interpretation or a choice among two or more possible meanings. Here, the language conveying the property suggests a single meaning—that a tenancy in common was created. *Wengel*, 270 Mich App at 93-94. It cannot be said that the conveying language was intended to have a different meaning than that reflected in the text of the deed. See *City of Grosse Pointe Park v Michigan Municipal Liability and Property Pool*, 473 Mich 188, 202; 702 NW2d 106 (2005). Accordingly, the trial court clearly erred when it found that a latent ambiguity existed and subsequently reformed the deed.

Reversed and remanded for entry of judgment in favor of DHHS. No costs to either party. MCR 7.219(A). We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder