STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of the ESTATE OF BARBARA L. WILSON, Deceased,

UNPUBLISHED
January 24, 1997

JAMES R. NEWSUM, SR.,

Petitioner-Appellant,

v

No. 188525

Oakland Probate Court
LC No. 94-00238114-SE

LEONARD T. WOSCHLANGER,

Respondent-Appellee.

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway,* JJ.

PER CURIAM.

Petitioner appeals as of right the probate court order denying his petition to amend the court's judgment or for a new trial in this probate estate action. We affirm.

Petitioner, the estranged, surviving spouse of Barbara Wilson, petitioned the probate court to set aside, under the Uniform Fraudulent Conveyance Act, (UFCA), MCL 556.11 *et seq.*; MSA 26.881 *et seq*., what he deemed to be the fraudulent conveyance of the marital home by Wilson to her son, and to bring the real estate into decedent's probate estate. The probate court denied the petition because (1) Wilson held the home in her name only, having received a deed from her former husband in 1970,[1] and (2) the UFCA did not apply because petitioner did not fit the definition of a creditor. The court did, however, give petitioner a $7,000 lien against the home that represented the value of improvements made by petitioner with his own funds.

Petitioner petitioned the court under MCR 2.611(B) to amend the judgment, or in the alternative for a new trial, arguing that sufficient evidence existed to establish that the UFCA did apply to petitioner's claim, and that he had presented evidence to show that the lien should be in the amount of

* Circuit judge, sitting on the Court of Appeals by assignment.

$17,300 instead of $7,000. At the same time, respondent filed a motion for reconsideration, pointing out that in its order granting petitioner a $7,000 lien, the court had misidentified who had testified that he had put $7,000 of his own funds into the home. The court once again held that Wilson's transfer did not fall under the UFCA, and granted respondent's motion for reconsideration, denying petitioner any lien on the home.

Petitioner first contends that the trial court erred in determining that the conveyance from Wilson to her son did not fall under the provisions of the UFCA. Section 4 of the UFCA, MCL 566.25; MSA 26.884, states that:

> [e]very conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration

Section 1 of the act defines a creditor as "a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent." MCL 566.11; MSA 26.881. For purposes of the act, the Michigan Supreme Court has held that with regard to fraudulent conveyances, any liability is considered as existing from the date the cause of action arose, fixing the status of the creditor as of that time. *Ashbaugh v Sauer*, 268 Mich 467, 472; 256 NW 486 (1934).

Petitioner relies on MCL 552.23; MSA 25.103 and MCL 552.401, MSA 25.135 to establish his status as a creditor. Petitioner claims that he was in the process of getting a divorce from Wilson at the time of her death, and that under these statutes, in a judgment of divorce or a decree of separate maintenance, the separate real and personal property of either party may be awarded to the other party for purposes of child support, alimony, or "as appears to the court to be equitable under all the circumstances of the case." MCL 552.23; MSA 25.103, MCL 552.401; MSA 25.135. Therefore, petitioner claims he has established his status as an unmatured creditor for purposes of the UFCA. However, it must be noted that the transfer of the property by quit claim deed between decedent and her son occurred on December 18, 1993, thus setting that as the date the cause of action arose for petitioner. *Ashbaugh, supra* at 471. The divorce action was not filed until January 20, 1994. Therefore, petitioner is precluded from relying on these statutes to demonstrate that he was a creditor of decedent.

In fact, pursuant to MCL 557.21; MSA 26.265(1), real property acquired by a woman before marriage remains the property of the woman, and she may sell, transfer, or mortgage the property in the same manner and with the same effect as if she were unmarried. Clearly decedent's transfer of the real property was valid and proper. Further, although petitioner petitioned the circuit court for an ex-parte temporary restraining order preventing his wife or respondent from disposing of or encumbering the marital home, the court's injunction was not served on decedent or respondent until January 19, 1995, a month after the transfer of the property had already occurred. The lower court did not abuse its discretion in denying petitioner's motion on this basis.

Petitioner also asserts that the court erred where sufficient evidence existed to establish that he had spent $17,300 of his funds, not the $7,000 amount originally granted by lien on the home to petitioner. We disagree.

Under MCR 2.611(A)(2)(c) and (d): "On a motion for a new trial in an action tried without a jury, the court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment." Here, after reading the parties' briefs and hearing oral arguments, the lower court stated: "A review of the transcript does reflect an error by the Court and thus no lien is awarded as Mr. Woschlanger is the owner of the property in question." It is clear from the court's order that the judge was not attempting to determine the amount of petitioner's improvements, but was making a complete repudiation that petitioner should have any lien against the property. Indeed, the court, after noting its misreading of the transcript, corrected its previous order, making it clear that as respondent was being awarded the property, no lien was necessary. Therefore, the lower court did not abuse its discretion by making new findings and conclusions and directing the entry of a new judgment.

Because we have found that the UFCA does not apply because petitioner does not fit the definition of a creditor, we decline to review his claims of error by the court in interpreting other provisions of the UFCA.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Barbara B. MacKenzie
/s/ Amy Patricia Hathaway

[1] Wilson and petitioner were married in 1986.