

STATE OF MICHIGAN
COURT OF APPEALS

GERALD BRAAFHART,

Plaintiff-Appellee,

v

NANCY BRAAFHART, SHATTUCK
BRAAFHART, and SAQUANA BRAAFHART,

Defendants-Appellants.

UNPUBLISHED

April 11, 1997

No. 171731

Muskegon Circuit Court

LC No. 91-027695-CH

Before: Bandstra, P.J., and Hoekstra and S.F. Cox*, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiff summary disposition pursuant to MCR 2.116(C)(9) as to defendant Nancy Braafhart, and from an amended judgment determining priority of interests in property entered by the trial court following a bench trial that determined that plaintiff's interest in the property was superior to that of defendants Shattuck and Saquana Braafhart (hereafter "defendant children"). We affirm.

Defendant Nancy Braafhart contends that the trial court erred when it granted summary disposition and thereby failed to allow defendant Nancy Braafhart to void the provision in the divorce judgment that created plaintiff's lien interest in the disputed property. Defendant Nancy Braafhart argues that the original divorce judgment was inequitable or resulted from error. With regard to whether the original divorce judgment was inequitable, we agree with the trial court that the challenge constitutes an impermissible collateral attack. See *McGinn v McGinn*, 126 Mich App 689, 692-693; 337 NW2d 632 (1983). The divorce judgment was final on August 30, 1979, and we find no basis that would permit defendant Nancy Braafhart to relitigate the equity of the property settlement in her divorce judgment more than a decade later.

Also, we find without merit the allegation that the inclusion in the divorce judgment of a lien interest in favor of plaintiff was the result of mistake or clerical error. A claim of mistake pursuant to

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

MCR 2.612(C)(1)(A) must comply with the time requirements imposed by MCR 2.612(C)(2). By that standard, to allege mistake now is clearly untimely. Likewise, the attack on the lien provision of the divorce based upon clerical error pursuant to MCR 2.612(A) must fail because there is no evidence in the record to support the claim that the provision resulted from a mistake in the judgment or from an oversight or omission.

Defendant children argue that the trial court erred in finding that plaintiff did not abandon his interest in the subject property. Whether plaintiff abandoned his interest in the property is a question of fact, *Collins v Collins*, 348 Mich 320, 327; 83 NW2d 213 (1957), and this Court reviews a trial court's findings of fact for clear error, *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A trial court's finding is clearly erroneous only if this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

The burden of showing abandonment of a lien on real property is on the owner of the charged estate. *FM Sibley Lumber Co v Wayne Circuit Judge*, 243 Mich 483, 487; 220 NW 746 (1928). Further, whether a lien has been relinquished or abandoned turns on the intent of the holder of the lien. *Id.* Because defendant children produced no evidence at trial tending to support their contention that plaintiff intended to relinquish his post-divorce interest in the property and because plaintiff's post-divorce interest in the property was never extinguished through a proper foreclosure or forfeiture proceeding, we agree with the trial court's findings relating to abandonment and relinquishment of the lien.

Defendant children also argue that the trial court erred in ruling that they had to be purchasers for valuable consideration, without notice of plaintiff's interest, in order to prevail over plaintiff. Specifically, defendants contend that because the parent-child relationship is a special relationship, no consideration was necessary to effectuate the transfer of an interest in the property to defendant children. Defendants' contention is accurate regarding the validity of a transfer between a parent and a child. Callaghan's Michigan Civil Jurisprudence, Parent and Child, § 20. However, the issue here is not the validity of the transfer; it is the priority of competing valid claims. Competing interests in real property must be reconciled through this state's recording statute. MCL 565.29; MSA 26.547. Accordingly, for defendant children to prevail over plaintiff's judgment lien, defendant children must have purchased their interests for valuable consideration, without notice of plaintiff's interest.

In this case, the evidence established that defendant children failed to tender valuable consideration for their ownership interests in the property. Moreover, the record reveals that defendant children had actual notice of plaintiff's interest in the property at the time they acquired their interests. Accordingly, we find no error in the trial court's ruling that plaintiff's lien interest in the property was superior to that of defendant children.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Sean F. Cox