

STATE OF MICHIGAN
COURT OF APPEALS

LAURA HUGHES, Personal Representative
of the ESTATE OF RICHARD A. HUGHES,
Deceased,

UNPUBLISHED
July 25, 1997

Appellant,

v

ROBERT GLENN and GERALDINE GLENN,

No. 194422
Ingham Probate Court
LC No. 93-009498-CK

Appellees.

Before: Corrigan, C.J., and Michael J. Kelly and Hoekstra, JJ.

PER CURIAM.

Appellant appeals as of right an order of the Ingham Probate Court that found that a valid land contract existed between appellant's decedent, Richard Hughes (decedent), and appellees. The trial court ordered appellant to complete the transaction for the sale of the property described in the land contract. We affirm.

Appellant first argues that the trial court disregarded evidence that the land contract was not valid and erred by looking outside the contract itself to determine whether there was an intent to contract. We disagree. Whether a contract is valid presents a "mixed question of law and fact." See *Toles v Duplex Power Car Co*, 202 Mich 224, 229; 168 NW 495 (1918). Questions of fact are reviewed for clear error. *Tuttle v Dep't of State Highway*, 397 Mich 44, 46; 243 NW2d 244 (1976). Questions of law are reviewed de novo. *In re Lafayette Towers*, 200 Mich App 269, 273; 503 NW2d 740 (1993). In attacking the validity of the subject land contract, appellant challenges its formation by alleging that decedent never intended to contract with appellees for the sale of the property and thus, no contract was formed. Extrinsic or parol evidence is always admissible to show whether the parties entered into a contract. *Tepsich v Howe Construction Co*, 377 Mich 18, 23-24; 138 NW2d 376 (1965); *Scott v Grow*, 301 Mich 226, 239; 3 NW2d 254 (1942). The parol evidence rule applies to exclude consideration of extrinsic evidence only where the parties to an unambiguous, integrated written instrument seek to contradict, vary or add to its terms. *Paul v University Motor Sales Co*, 283 Mich 587, 599; 278 NW 714 (1938). Here, the terms of the contract were not

disputed. Instead, the issue was whether decedent intended to enter into an agreement with appellee for the sale of the disputed property. Evidence was introduced that established that payments were made by appellees to decedent. A witness testified that decedent intended to contract with appellees for the sale of the subject property. Another witness stated that she signed the land contract on decedent's behalf and at his direction, pursuant to a valid power of attorney. We conclude that the trial court properly considered all of this evidence in determining whether a contract existed for the sale of the disputed property, and we find no error in the fact-finding made by the trial court.

Appellant's next argument is that the trial court abused its discretion by improperly assessing the credibility of an attorney witness based on personal knowledge of the attorney witness. We disagree. At the outset, we note that there is no evidence that the trial court was either not impartial or personally biased against appellant. MCR 2.003(B); *Mich Ass'n of Police v City of Pontiac*, 177 Mich App 752, 757; 442 NW2d 773 (1989). The trial court, in its opinion, did refer to its knowledge of the attorney witness's reputation in the local legal community. However, we find no basis on which to conclude that the trial court improperly weighed this witness's credibility based on outside knowledge. See *People v Simon*, 189 Mich App 565, 567; 473 NW2d 785 (1991); *In re Thacker Estate*, 137 Mich App 253, 258; 358 NW2d 342 (1984). Weighing of credibility, which is part of the factfinding process, must be reviewed in the context of the specific factual issues raised by the parties. *Simon, supra* at 568-569. When examined in its entirety, the trial court's opinion indicates that the decision in this case was based on all the evidence presented. Although the trial court's familiarity with the attorney witness may have been a factor, we believe it was not an overriding consideration and the decision was otherwise adequately supported by the evidence in the case.

Appellant also argues that the contract did not comply with the witness requirement of MCL 565.351; MSA 26.671 and was thus void as a matter of law. We disagree. MCL 565.351 requires that a contract for the sale of land shall be executed in the presence of two witnesses. Here, there was conflicting testimony regarding when and in whose presence the contract was signed. Nevertheless, such a defect makes a contract voidable, not void, as a matter of law. MCL 565.604; MSA 26.824; see also *Mier v Hadden*, 148 Mich 488, 493; 111 NW 1040 (1907) (applying the predecessor of MCL 565.604 to contracts for the sale of land).

Finally, appellant argues that appellees failed to meet the test for equitable relief under the doctrine of part performance. This was appellees' alternate theory of recovery and the trial court did not reach this issue, ruling instead that the contract was valid. Because we agree with that ruling, we need not address this final argument.

Affirmed.

/s/ Maura D. Corrigan
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra