

STATE OF MICHIGAN
COURT OF APPEALS

GILBERT ENGELS,

Plaintiff-Appellant,

v

VIRGIL REVELS and DEBORAH REVELS,

Defendants-Appellees.

UNPUBLISHED
November 4, 1997

No. 200828
Wayne Circuit Court
LC No. 96-626181-CH

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) in this quiet title action. We affirm.

This case involves a dispute over ownership of a duplex located in Detroit. The property was originally owned by plaintiff's mother, Gertrude Engels. In 1976, Gertrude executed a quit claim deed to the property naming herself, plaintiff's sister Marlis Greening, and plaintiff as joint tenants and not as tenants in common. On March 23, 1988, however, Wayne County Probate Court Judge Joseph J. Pernick entered an order determining that title to the property was vested solely in Gertrude (who had been declared a legally incapacitated person), and that plaintiff and Greening had no right, title, or interest in the property. In June 1988, the conservator of Gertrude's estate sold the property to Daniel Brogan and Beth Duncan-Brogan on land contract.

Gertrude Engels died on December 14, 1988. On November 30, 1990, the Brogans assigned their land contract vendees' interest to defendants. The following April, Wayne County Probate Court Judge Freddie G. Burton entered an Order of Settlement regarding Gertrude Engels' estate. The order provided in pertinent part:

Both parties hereto, to wit: Gilbert Engels ("Engels") and Marlis Greening ("Greening"), having agreed to the settlement of all matters relating to this Estate, and said settlement having been placed upon the record and both Engels and Greening having acknowledged their agreement with and acceptance of this as the full and final

settlement of all matters relating to their late mother's estate, and the Court being otherwise duly informed in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the settlement of this matter shall be as follows:

* * *

B. Real Property

Engels will convey by quit claim deed his one-half (1/2) interest in the land contract vendor's interest in property located at 15627 East 7 Mile road, Detroit, MI to Greening in consideration for the forgiveness of the outstanding sum due from Engels to Greening in the amount of \$5,000 plus accrued interest. Said amount results from a \$10,000.00 loan made by the Deceased to Engels, the balance of which is presently approximately \$5,875.00.

* * *

E. Release

The Petition for Surcharge filed against H. William Freeman and the petition for Surcharge filed against Engels shall both be dismissed with prejudice and Engels and Greening shall release each other and all co-personal representatives, attorneys, and agents from any liability with respect to this Decedent's Estate, the Conservatorship Estate, or in any manner relating to the affairs of their mother or the actions or inactions of any of the parties above named.

On March 2, 1993, Judge Burton entered an order assigning the residue of Gertrude's estate, including any interest in the subject property, to Greening. On March 30, 1993, Greening executed a land contract selling the property to defendants as assignees of the original land contract.

Plaintiff subsequently filed this suit against defendants seeking to quiet title to the property. Defendants filed a motion for summary disposition, pursuant to MCR 2.116(C)(7), contending that plaintiff's claim was barred by the probate court orders previously entered. The trial court agreed, and granted defendants' motion.

"[A] settlement agreement . . . is a contract and is to be construed and applied as such. Absent a showing of fraud or duress, courts act properly when they enforce such agreements." *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). Here, we conclude that, because plaintiff agreed to the Order of Settlement issued by Judge Burton regarding Gertrude's estate and the property in question, and because plaintiff does not claim any such factors such as fraud or duress to prevent enforcement of the agreement, he is now barred from challenging ownership of the property. *Id.* Because the claim was barred and no factual development could provide a basis for recovery, the trial court properly granted defendants' motion for summary

disposition pursuant to MCR 2.116(C)(7). See *In re Beglinger Trust*, 221 Mich App 273, 275; 561 NW2d 130 (1997).

We further conclude that plaintiff's appeal is vexatious because, for the reason set forth above, it was taken without any reasonable belief that there was a meritorious issue to be determined on appeal. MCR 7.216(C)(1)(a). The record indicates that plaintiff has been sanctioned in the past for his unsuccessful attempts at challenging Gertrude Engels' estate and ownership of the property. We find plaintiff's current claim, made over five years after the settlement order was entered, to be yet another meritless attempt. Therefore, pursuant to MCR 7.216(C)(2), we remand to the circuit court for a determination and an award of defendants' actual damages and expenses, including reasonable attorney fees, incurred in defending against plaintiff's appeal. See *Resteiner v Sturm Ruger & Co, Inc*, 223 Mich App 374, 377; ___ NW2d ___ (1997).

Affirmed. Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ David H. Sawyer
/s/ Janet T. Neff