

STATE OF MICHIGAN
COURT OF APPEALS

DAVID VANDERHYDE, CAROL VANDERHYDE,
and THOMAS J. VANDERHYDE,

UNPUBLISHED

Plaintiffs/Counter-Defendants/
Third Party Defendants/Appellees,

and

EVANS FORD CORPORATION, d/b/a
VANDERHYDE-MCKIMMY FORD,

Plaintiff/Counter-Defendants/Appellees,

and

VANDERHYDE BROTHERS FORD, INC., SHAWN
VANDERHYDE, DANIEL C. CARBONNEAU,
LILLIAN T. CARBONNEAU, JANE RUSSELL,
RU-CHAR, INC., PERRY MCKIMMY, and FAYE
MCKIMMY,

Third Party Defendants/Appellees,

v

AMERICAN WAY GENERAL INSURANCE
COMPANY,

Defendant/Counter-Plaintiff/Appellant.

No. 179289
Kalamazoo Circuit Court
LC No. 90-003643-CH

AMERICAN WAY SERVICE CORPORATION,

Plaintiff-Appellant,

v

SCHENK, BONCHER & PRASHER, GARY P.
SCHENK, and GREGORY G. PRASHER,

No. 180572
Kalamazoo Circuit Court
LC No. 93-003566-CZ

Defendants-Appellees.

Before: Cavanagh, P.J., and Holbrook, Jr., and Jansen, JJ.

JANSEN, J. (concurring in part and dissenting in part).

I agree that there appears to be a defect in title with respect to Perry and Faye McKimmy's deed as stated by the majority. See, e.g., *DeYoung v Mesler*, 373 Mich 499; 130 NW2d 38 (1964), but compare MCL 557.151; MSA 26.211. There might be a defect in the chain of title where the parties have assumed that the deed created a joint tenancy with full rights of survivorship, but because this issue was not raised by the parties, either below or on appeal, and because there is no record to review this important question, I would reserve ruling on it at this point. Rather than definitively rule that the McKimmys held their share of the property as tenants by the entirety, I would remand to the trial court for the parties to brief this issue, create a record on it, and permit the trial court to rule whether a tenancy by the entirety or joint tenancy with full rights of survivorship was created. As noted by the majority, its ruling has the potential to change the entire dynamics of this case. That being so, I would prefer to permit the parties to brief this issue and allow the trial court to rule on it, rather than sua sponte decide such an important question.

I would retain jurisdiction in this matter.

/s/ Kathleen Jansen