

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of WILLIAM A. MAXSON, Deceased.

LARRY A. MAXSON, as Personal Representative
of the Estate of WILLIAM A. MAXSON,
Deceased,

UNPUBLISHED
March 27, 2007

Plaintiff-Appellant,

v

HENRY A. RISK and DOROTHY S. RISK,

No. 267011
Hillsdale Probate Court
LC No. 02-032709-DE

Defendants-Appellees.

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In this action to determine title to real property, plaintiff appeals as of right the trial court's order dismissing his action against defendants. We reverse and remand for entry of a judgment in favor of plaintiff.

In June 1968, Shirley Risk executed a warranty deed ("the 1968 deed"), conveying 10 acres of property and a perpetual easement for rights of ingress and egress (collectively "the gravel pit"), to the Hillsdale County Road Commission ("HCRC"). The deed provided, in part:

It is further agreed this parcel is sold for gravel purposes only and shall be deeded to the party of the first part, their successors or assigns at such time as the party of the second part shall have removed the gravel or shall deem it undesirable for gravel purposes.

In 1977, Shirley and William A. Maxson executed a land contract, under which Shirley purported to sell to William the parcel of property that contained the gravel pit, "excepting" the gravel pit described in the 1968 deed. The land contract provided, in pertinent part:

15. The parties further agree and acknowledge the existence of an easement in favor of the Hillsdale County Road Commission. The easement is specifically described in a deed recorded in Liber 414, page 441, Hillsdale County Records. In the event said easement should lapse, the property therein contained

will, upon fulfillment of the terms of this contract, become the property of the purchasers.

16. The parties further acknowledge and agree that there is a possibility that the 10 acre EXCEPTION contained in the description in this contract may revert to seller herein [in the] event the Hillsdale County Road Commission ceases use of this property for the purpose of removing gravel. In the event said 10 acre EXCEPTION does so revert, title to said property shall, upon fulfillment of this contract by purchasers, become vested in purchasers.

In December 1984, Shirley conveyed her interests in the land and gravel pit, to herself and her son, defendant Henry Risk. Ultimately, on August 23, 1985, Shirley, Henry, and Henry's wife, defendant Shirley Risk, conveyed the property described in the land contract, not including the gravel pit, to William by way of a warranty deed ("the 1985 deed"). William died in 2002. William's son, plaintiff Larry Maxson, was appointed as personal representative of William's estate. The estate went through informal probate and was closed in 2004.

On April 14, 2005, the HCRC conveyed the gravel pit, by way of quitclaim deed, to Henry. The HCRC had not used the property for gravel purposes for several years. After learning of the conveyance, plaintiff filed a petition to reopen William's estate pursuant to MCL 700.3959 and MCR 5.312. The probate court reopened the estate and plaintiff initiated this action against defendants, alleging that, under the terms of the 1977 land contract, defendants were obligated to convey the gravel pit to plaintiff. The probate court dismissed plaintiff's action against defendants. The court concluded that, pursuant to MCL 554.62, defendants' right to terminate the HCRC's interest in the gravel pit expired after 30 years and thus, after June 1998, the HCRC was no longer obligated to convey the gravel pit to defendants in the event that it ceased using the gravel pit "for gravel purposes."

Plaintiff moved for reconsideration of the trial court's decision under MCR 2.119(F), arguing that HCRC held its interest in the gravel pit for public purposes and, therefore, the 30-year limitation in MCL 554.62 did not apply. See MCL 554.64(c). The court denied plaintiff's motion. The court determined that the interest was not held for public purposes and that plaintiff did not have an enforceable interest in the property because (1) the property did not revert back to defendants before the terms of the land contract were fulfilled, and (2) the provisions in the land contract concerning defendants' promise to convey the gravel pit to plaintiff merged into the 1985 deed; therefore, after the 1985 deed was recorded, the provisions were unenforceable.

Plaintiff first contends that the trial court erred in concluding that the terms of the land contract merged into the 1985 deed and, therefore, the provisions in the land contract concerning defendants' promise to convey the gravel pit to plaintiff were unenforceable. We review the probate court's factual findings for clear error. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). "A finding is said to be clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* We review de novo the probate court's application of the law to the facts. *In re Eggleston Estate*, 266 Mich App 105, 112; 698 NW2d 892 (2005).

"Generally, a deed executed in performance of a contract for the sale of land operates as satisfaction and discharge of the terms of the executory contract." *Chapdelaine v Sochocki*, 247

Mich App 167, 171; 635 NW2d 339 (2001). “However, an exception exists where the deed does not constitute full performance of the purchase agreement.” *Id.*

“Where . . . the deed constitutes only a part performance of the preceding contract, other distinct and unperformed provisions of the contract are not merged in it. And where a contract of sale provides for the performance of acts other than the conveyance, it remains in force as to such other acts until full performance.” [*Goodspeed v Nichols*, 231 Mich 308, 316; 204 NW 122 (1925) (citation omitted).]

The primary goal of contract interpretation is to determine and enforce the parties’ intent by reading the agreement as a whole and attempting to apply the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). When Shirley conveyed the gravel pit to the HCRC in the 1968 deed, she reserved an interest in the property. She had a possibility of reverter. See *Ludington & Northern R v The Epworth Assembly*, 188 Mich App 25, 35-36; 468 NW2d 884 (1991). When she conveyed the parcel of property containing the gravel pit to William, she agreed that, in the event that the gravel pit reverted back to her or her successors in interest, “title to said property shall, upon fulfillment of this contract by purchasers, become vested in purchasers.” The plain terms indicate that it did not matter *when* the property reverted. The land contract merely provided that *if* the property reverted, and the terms of the land contract were fulfilled, then title to the property would become vested in the purchaser. Based on the plain language of the land contract, we conclude that the parties intended paragraphs 15 and 16 of the land contract to address a condition that could occur after the terms of the land contract were fulfilled, and after delivery of the 1985 deed. Hence, the provision was “collateral to the contract for the deed.” *Mueller v Bankers’ Trust Co of Muskegon*, 262 Mich 53, 58; 247 NW 103 (1933).

The record indicates that, when the 1985 deed was recorded, the HCRC was still using the gravel pit for gravel purposes; the property had not reverted back to defendants. Consequently, at the time the 1985 deed was recorded, defendants could not fully perform their agreement to convey the property to plaintiff in the event that the property reverted back to them. Because the 1985 deed did not constitute full performance of the land contract, the execution of the 1985 deed did not operate as satisfaction and discharge of the terms of the land contract. *Chapdelaine, supra* at 171-172. Thus, the provisions in the land contract concerning the conveyance of the gravel pit to plaintiff, were not merged into the 1985 deed. *Greenspan v Rehberg*, 56 Mich App 310, 320; 224 NW2d 67 (1974). The fact that the 1985 deed did not mention defendants’ promise to convey the gravel pit to plaintiff, in the event that the property reverted back to them, was not fatal to plaintiff’s claim. “The purpose of a deed is to convey title to land, not to describe the terms of a preceding contract under which the land was sold.” *Goodspeed, supra* at 316.

It is undisputed that the HCRC conveyed the gravel pit to defendants after it ceased using the gravel pit for gravel purposes. It is also undisputed that plaintiff fulfilled the terms of the land contract. This is evidenced by the 1985 deed, which states that it was “given in fulfillment of a certain land contract dated March 28, 1977” Thus, under the terms of the land contract, defendants were obligated to convey the gravel pit to plaintiff.

Plaintiff also contends that the trial court erred in dismissing his action on the grounds that defendants' right to terminate the HCRC's interest in the gravel pit expired 30 years after the interest was created and, therefore, after June 1998, plaintiff no longer had an enforceable interest in the property. Statutory interpretation is a question of law that this Court reviews de novo. *In re McEvoy*, 267 Mich App 55, 59; 704 NW2d 78 (2005). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004) (citation omitted). "Statutory exceptions operate to restrict the general applicability of legislative language and are strictly construed." *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 194; 590 NW2d 747 (1998).

MCL 554.62 provides that "[i]f the specified contingency does not occur within 30 years after the terminable interest is created, the right of termination by reason of the specified contingency shall be unenforceable." However, "[t]his act does not apply . . . [i]f the terminable interest is held for public, educational, religious or charitable purposes." MCL 554.64(c). MCL 554.64 does not define "public purpose." In construing a statute, this Court gives the terms of the statute their plain and ordinary meaning and, in doing so, may consult dictionary definitions. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Black's Law Dictionary (8th ed) defines a "public purpose" as "[a]n action by or at the direction of a government for the benefit of the community as a whole." Michigan courts have held that where property is used to serve the general public, the property is held for a public purpose. See *Sommers v Flint*, 355 Mich 655, 662-663; 96 NW2d 119 (1959); *Cleveland v Detroit*, 324 Mich 527, 538-539; 37 NW2d 625 (1949); *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 250-252; 701 NW2d 144 (2005). Cf. *Ludington*, *supra* at 40.

In this case, the HCRC held a terminable interest in the gravel pit. MCL 554.61(a); *Ditmore v Michalik*, 244 Mich App 569, 580 n 3, 581; 625 NW2d 462 (2001). The terminable interest was created when the 1968 deed was recorded. The "specified contingency" in this case was the HCRC's ceasing to use the gravel pit "for gravel purposes." MCL 554.61(b). We conclude that the HCRC held the terminable interest for public purpose and, thus, defendants' right to terminate the HCRC's interest in the gravel pit, in the event that the HCRC ceased using the gravel pit for gravel purposes, did not expire in 1998. Presumably, the HCRC used the gravel that it extracted from the gravel pit in constructing and maintaining public roadways. Because the construction and maintenance of public roadways benefits the community as a whole, we hold that the HCRC held that terminable interest for public purposes. Other jurisdictions have reached similar conclusions. See, e.g., *State v Rawson*, 210 Or 593, 608; 312 P2d 849 (1957); *Hallock v State of New York*, 32 NY2d 599, 604; 300 NE2d 430 (1973); *Kendig v Comm'rs of Greene Co*, 82 Ohio St 315, 324; 92 NE 469 (1910); *City of Somerville v City of Waltham*, 170 Mass 160, 161; 48 NE 1092 (1898).

The trial court determined that the terminable interest was not held for public purposes because the 1968 deed did not explicitly state that the gravel pit was conveyed for public purposes or public use. In support of this conclusion, the court cited *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996). The trial court's reliance on *Kraus* was misplaced. Shirley conveyed the gravel pit to the HCRC for the sum of \$5,000. Hence, the conveyance did not involve a common law or statutory dedication to the public. See *City of*

Kentwood v Estate of Sommerdyke, 458 Mich 642; 581 NW2d 670 (1998); *Backus v Detroit*, 49 Mich 110; 13 NW 380 (1882). Therefore, *Kraus*, *supra*, is inapposite.

Because the terminable interest was held by the HCRC for public purposes, the 30-year limitation set forth in MCL 554.62 did not apply. MCL 554.64. Therefore, when the HCRC ceased using the property for gravel purposes, the property reverted back to defendants under the terms of the 1968 deed. Accordingly, defendants were obligated, under the terms of the land contract, to convey the gravel pit to plaintiffs.

We reverse and remand this case to the probate court for entry of a judgment in favor of plaintiff. See MCR 7.216(A)(7). We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kurtis T. Wilder