

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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IRMA JONES,

Plaintiff-Appellant,

v

OPTION ONE MORTGAGE CORPORATION,

Defendant-Appellee.

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UNPUBLISHED  
March 22, 2011

No. 295875  
Wayne Circuit Court  
LC No. 08-108817-CH

Before: K. F. KELLY, P.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right a final order in favor of defendant in this quiet title action. On appeal, plaintiff argues that (1) the trial court made inconsistent findings of fact, (2) several of the trial court's factual findings were clearly erroneous, and (3) the trial court's failure to determine whether the quitclaim deed from plaintiff to Cherrhonda Jones was valid requires this Court to remand for further findings. Because we conclude the trial court made no errors requiring reversal or remand, we affirm.

**I. BASIC FACTS & PROCEDURAL BACKGROUND**

This case involves an allegedly fraudulent conveyance of the property at 20172 Stotter in Detroit, Michigan. There are several pertinent conveyances and recordings listed on the Wayne County Register of Deeds for the property. On November 15, 1999, Marie Orłowski conveyed the property to plaintiff by quitclaim deed. On April 12, 2000, the deed was recorded. On October 28, 2002, plaintiff conveyed the property to Cherrhonda Jones by quitclaim deed. Plaintiff alleged in her complaint that this quitclaim deed from plaintiff to Cherrhonda Jones was fraudulent because plaintiff did not sign the deed and did not know Cherrhonda Jones.

At the same time, according to the Wayne County Register of Deeds, a deed, recorded on May 30, 1995, conveyed the property from Marie Orłowski to Guilio Badia and Concetta Badia. On March 18, 2003, the Badias conveyed the property to Cherrhonda Jones by quitclaim deed. On April, 18, 2003, Cherrhonda Jones obtained a loan secured by a mortgage on the property to defendant in the amount of \$61,500. Proceeds from the mortgage went to pay around \$6,000 of taxes owed on the property to the city of Detroit and Wayne County. An additional \$8,000 from the mortgage went to Fairweather Builders for work completed on plaintiff's other properties. The rest of the mortgage was disbursed in the following way: Toyota Motor Credit received

\$16,004 for an outstanding car loan, Zenith Mortgage received \$3,710, and Cherrhonda Jones received \$25,948.70.

The quitclaim deed from plaintiff to Cherrhonda Jones was recorded on April 29, 2003. On that same day, April 29, 2003, the quitclaim deed from the Badias to Cherrhonda Jones was also recorded. The mortgage from defendant to Cherrhonda Jones was also recorded on April 29, 2003. On August 8, 2007, upon default on the mortgage, defendant foreclosed on the property by advertisement, and it subsequently purchased the property at the sale. The Sheriff's Deed conveying the property to defendant was recorded on August 21, 2007.

On April 7, 2008, plaintiff filed a complaint against defendant and Cherrhonda Jones, seeking declaratory relief to quiet title to the property located at 20172 Stotter and declare the deeds to Cherrhonda Jones and the mortgage from defendant to Cherrhonda Jones null and void, and alleging a slander of title claim against defendant for the recording of false deeds and a mortgage, foreclosing on the mortgage, and instituting summary proceedings against plaintiff. Plaintiff failed to timely serve Cherrhonda Jones. On April 24, 2008, plaintiff and defendant entered into a stipulated order for a preliminary injunction enjoining the summary eviction proceedings filed by defendant against plaintiff pending a final judgment in this case. On May, 29, 2008, defendant filed an answer generally denying plaintiff's allegations.

On March 18, 2009, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10). On May 1, 2009, plaintiff filed a separate complaint against Cherrhonda Jones alleging the same claims as the present case. She also moved for substituted service, to consolidate the second suit against Cherrhonda Jones and the present suit and to join Cherrhonda Jones as a necessary party.

On June 3, 2009, the trial court entered an order that dismissed the claim for slander of title against defendant, consolidated the two suits, dismissed all claims without prejudice against Cherrhonda Jones due to lack of service, and adjourned defendant's motion for summary disposition on the quiet title count. On July 10, 2009, the trial court entered an order permitting service of Cherrhonda Jones by publication. On September 4, 2009, the court filed an order denying defendant's March 18, 2009, motion for summary disposition.

On December 7, 2009, the trial court held a bench trial. During the bench trial, the trial attorneys elicited testimony from several witnesses that shed more light on the conveyances and recordings surrounding the property at 20172 Stotter. Upon the close of plaintiff's case, defendant moved for a directed verdict on the ground that plaintiff's requests to admit were not signed, notarized, or timely. The trial court denied the motion. After the bench trial was concluded, the trial court made its findings of fact and conclusions of law on the record and dismissed plaintiff's claim. Specifically, the trial court stated:

Okay. Here's what I have. The Court is satisfied, the Plaintiff has to come forward with clear and convincing evidence that that was fraud, and for purposes of that fraud, to set the property back in her name. Actually the Defendant is counter saying if that is a fraud, it's on the part of the Plaintiff, or Cherrhonda Jones, who may be in cahoots.

The Court is satisfied that the only fraud was against Cherrhonda [Jones], [plaintiff's] mother, [Neil] Winnie and [plaintiff].

[Plaintiff] received a tax benefit as a result of the loan that Cherrhonda [Jones] took out. She thinks nothing of that. She cannot remember her brother's wives name. Cherrhonda [Jones]'s mail is going to [plaintiff]'s address, but she cannot remember, that and/or she didn't know about that. The Badia deed was not prepared by Curtis Winnie, but in fact was at the bottom, was identified as drafted by Cherrhonda Jones, at 20166 Stotter. Miss Blanks is [plaintiff]'s friend from work. The Court is satisfied, she's not credible.

Mr. Winnie, who is working for a true personal benefit defaulted or helped her with the default of the Phillips and Evanson property, and Fairmont Realty got a shake. So they all seem to be the part of the same loan fraud.

[Plaintiff] can't provide a simple driver's license, ever, ever. But does admit to using a different name for some bizarre unknown reason.

The Court is satisfied that [plaintiff] is not credible. Therefore, the Court is going to dismiss Plaintiff's claim against [defendant]. [Defendant] will continue to have - - continue to have title to the property.

On December 17, 2009, the trial court entered an order dismissing the complaint, entering judgment in favor of defendant, setting aside the temporary restraining order, and setting aside the stipulated order for preliminary injunction. Plaintiff now appeals.

## II. FACTUAL FINDINGS

Plaintiff raises several issues disputing the trial court's factual findings. We review the trial court's findings of fact for clear error. *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 286; 761 NW2d 761 (2008). In a bench trial, the trial court must find the facts and state separately its conclusions of law regarding contested matters. MCR 2.517(A)(1); MCR 6.403. Factual findings are sufficient as long as it appears that "the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation." *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995).

Plaintiff argues that the trial court's judgment for defendant must be reversed or remanded because its factual findings were inconsistent with its conclusion. Plaintiff's argument turns on the trial court's statement that it found "that the only fraud was *against* Cherrhonda [Jones], [plaintiff's] mother, [Neil] Winnie, and [plaintiff]" (emphasis added). We conclude that plaintiff's argument is without merit.

The trial court made its findings on the record. It began by stating that plaintiff has the burden of proving fraud by clear and convincing evidence. The trial court also noted that defendant alleged fraud by plaintiff and Cherrhonda Jones. The trial court then stated, "This Court is satisfied that the only fraud was against Cherrhonda [Jones], [plaintiff's] mother, [Neil] Winnie, and [plaintiff]." Plaintiff is correct in asserting that this statement, standing alone,

conflicts with the order entered by the trial court dismissing plaintiff's claim. However, when viewed in the context of the entire ruling, it is clear that the statement was a misstatement or transcription error. Following this statement, the trial court explained its reasons for finding that the named parties (Cherrhonda Jones, Neil Winnie, and plaintiff) committed fraud. Specifically, the trial court points out that plaintiff received a tax benefit from the mortgage loan obtained by Cherrhonda Jones from defendant. It notes that Cherrhonda Jones's mail was going to plaintiff's address. The trial court also found that Neil Winnie benefited from the loan Cherrhonda Jones received from defendant. The trial court then restated that, "they (Cherrhonda [Jones], plaintiff, and Neil Winnie) seem to be the part of the same loan fraud."

We hold that a review of the transcript and record demonstrates that the statement, "This Court is satisfied that the only fraud was against Cherrhonda [Jones], [plaintiff's] mother, [Neil] Winnie, and [plaintiff]," reflects nothing more than a misstatement, if not a transcription error, and does not warrant reversal or remand.<sup>1</sup> It is clear from the context of the entire statement that the trial court was aware of the issues in the case and correctly applied the law. Appellate review would not be facilitated by requiring further explanation by the trial court because it is clear that the trial court's statement was either a clerical error or misstatement. *Triple E Produce Corp*, 209 Mich App at 176-177.

Plaintiff also argues that the trial court's finding that Sharon Blanks was not credible should be set aside because there is no evidence in the record to give the court reason to discredit her testimony. We disagree. In this case, Blanks testified that her name appeared on the deed as a notary, but she testified that the signature was not hers and it was a forgery. Blanks testified that she knew plaintiff since 2001. According to Blanks, plaintiff was her coworker and the two saw each other daily and frequently conversed. This is sufficient to support a finding that Banks and plaintiff had some sort of friendship. Blanks also stated that she notarized several documents for plaintiff. Blanks testified that her commission expired March 18, 1995; however, on cross-examination, she changed her testimony asserting that her commission expired on April 18, 2005. Blanks's conflicting testimony coupled with plaintiff's knowledge that Blanks was a notary, may have lead the trial court to infer that Blanks was not credible and even an active participant in the fraud. Giving deference to the trial court's superior opportunity to judge the credibility of the witnesses who appear before it, we conclude that the trial court's finding regarding Blanks's credibility was not clearly erroneous. MCR 2.613(C).

Plaintiff argues that the trial court's finding that Curtis Winnie did not prepare the Badia deed was clearly erroneous. She argues that the trial court, in making its factual finding, failed to consider Concetta Badia's testimony that the signature and address on the deed, purporting to transfer any interest in the property from the Badias to Cherrhonda Jones, were not hers. The

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<sup>1</sup> We note that the possibility that the transcript contains a typographical error is supported by the fact the neither plaintiff nor defendant asked for clarification when the court apparently misstated that the fraud was *against* the named parties rather than *by* the named parties. Furthermore, having reviewed the transcript, we note that it is fraught with errors.

fact that the trial court may not have mentioned certain portions of plaintiff's evidence does not mean that the trial court failed to consider plaintiff's evidence. The trial court need not comment on every matter in evidence. *Sinicropi v Mazurek (On Remand)*, 273 Mich App 149, 180; 729 NW2d 256 (2006). Further, we note that there was no evidence that Curtis Winnie prepared the deed. In fact, Neil Winnie testified that the signature on the deed did not appear to be Curtis Winnie's signature. Therefore, plaintiff's argument in this regard is without merit.

Still, plaintiff contends that the trial court's finding that Cherrhonda Jones drafted the Badia deed was clearly erroneous. Despite plaintiff's argument, the trial court only noted that the deed was identified as being drafted by Cherrhonda Jones. Specifically, the court found that the Badia deed was "not prepared by Curtis Winnie . . . but . . . was identified as drafted by Cherrhonda Jones." This finding was supported by the record. The Badia deed was admitted into evidence during the bench trial, and the document contained the language, "drafted by Cherrhonda Jones." Accordingly, we hold that this finding of fact was not clearly erroneous because the deed submitted at trial served as evidence to support the court's finding.

Plaintiff next argues that the trial court erred in finding that the Badia deed was not prepared by Curtis Winnie because Curtis Winnie and his father, Neil Winnie, benefitted greatly from the loan received by Cherrhonda Jones from defendant. The Badia deed appeared to be signed by Curtis Winnie as the Notary Public and drafted by Cherrhonda Jones. There was also testimony that Curtis's signature on the deed was a forgery. Thus, the finding that Curtis Winnie did not draft the Badia deed is supported by the record and is not clearly erroneous.

Plaintiff contends that the trial court erred in failing to consider plaintiff's handwriting expert's testimony, who concluded that the signature on the quitclaim deed was not plaintiff's signature. However, as stated *supra*, the trial court need not comment on every matter in evidence. *Sinicropi*, 273 Mich App at 180. Therefore, plaintiff's argument is without merit.

### III. VALIDITY OF THE QUITCLAIM DEED

Finally, plaintiff argues that the trial court failed to make an essential finding of fact regarding whether the quitclaim deed from plaintiff to Cherrhonda Jones was a valid deed. Plaintiff further contends that such the failure to make a determination whether the deed from plaintiff to Cherrhonda Jones was duly executed and delivered in accordance with Michigan law warrants a remand for further proceedings. We disagree. Actions to quiet title are equitable, and we review the trial court's holdings de novo. *Gorte v Dep't of Transp*, 202 Mich App 161, 165; 507 NW2d 797 (1993). Again, we review the trial court's findings of fact for clear error. *Univ Rehab Alliance, Inc v Farm Bureau Ins Co of Mich*, 279 Mich App 691, 693; 760 NW2d 574 (2008).

A deed to transfer realty is presumed valid if it is in writing, signed by the grantor, witnessed, and notarized. MCL 565.47; MCL 565.152. It is also presumed that the signatures affixed to a deed are accurate and valid. *Boothroyd v Engles*, 23 Mich 19, 21 (1871). However, such a presumption of validity may be overcome by establishing clear and convincing proof that the deed was fraudulently executed. *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 414; 751 NW2d 443 (2008). In general, fraud will not be presumed and must be proved. *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996); *Groth v Singerman*, 328

Mich 615, 619; 44 NW2d 155 (1950). The party claiming fraud has the burden of proof. *Id.* Although clear and convincing evidence is required to establish fraud, circumstantial evidence may be sufficient. *Foodland Distrib*, 220 Mich App at 458.

Plaintiff contends that the trial court failed to make a factual determination that the deed was valid thereby requiring this Court to remand. Contrary to plaintiff's argument, the trial court is not required to make such a determination because the quitclaim deed presented at trial was presumed valid given that it met all the statutory requirements. Specifically, the quitclaim deed from plaintiff to Cherrhonda Jones contained the required language, was signed by both parties and two witnesses, and was acknowledge by plaintiff before a notary public. Accordingly, a presumption arose that the quitclaim deed was valid and the trial court was not required to make such a finding. We also note that the trial court need not engage in an elaborate discussion, but rather, brief, definite and pertinent findings of fact and conclusions of law are sufficient. MCR 2.517(A)(2).

At the bench trial, following the conclusion of each party's proofs, the trial court found that the presumption of validity was not rebutted by plaintiff. That is, the trial court found that plaintiff failed to provide clear and convincing proof that the quitclaim deed was false and fraudulent. Instead, the trial court implied that it was plaintiff and Cherrhonda Jones who perpetrated the fraud. Nonetheless, a review of the record supports the trial court's conclusion that plaintiff had not established her fraud claim. Defendant claims that the deed was presumptively valid since it was in writing, signed by plaintiff, witnessed, and notarized. Plaintiff presented evidence to rebut defendant's claim and demonstrate that the deed was fraudulently executed through her testimony that she did not sign the deed. While there was testimony from plaintiff that she did not sign the deed, the trial court found her testimony dubious. The trial court noted that several facts called into question her credibility. First, she received a tax benefit from the loan obtained by Cherrhonda Jones since the property's delinquent taxes were paid from the loan. Second, she is unable to recall her brother's wives' names. Third, plaintiff was unable to provide the court with a simple driver's license. Granting deference to the lower court's superior ability to assess the credibility of the witnesses, we hold that the record supports the trial court's conclusion that plaintiff failed to provide clear and convincing proof that the quitclaim deed was false and fraudulent.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello  
/s/ Amy Ronayne Krause