

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE M. SCHULTZ and SHARON
SCHULTZ,

UNPUBLISHED
May 3, 2011

Plaintiffs-Appellants,

v

No. 294109
Bay Circuit Court
LC No. 08-003453-CH

JULIE SCHULTZ, Successor Trustee for the
WALTER W. SCHULTZ TRUST and the GRACE
M. SCHULTZ TRUST, and the Personal
Representative for the Estate of WALTER W.
SCHULTZ,

Defendant-Appellee.

Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendant's motion for summary disposition in this land contract dispute, as well as an order awarding sanctions to defendant in the amount of \$20,570. We affirm.

The Walter W. Schultz Trust and the Grace M. Schultz trust each owned an undivided half interest in a 93-acre parcel of farmland that was located adjacent to an 84-acre parcel. Plaintiffs had earlier filed an action in probate court seeking to clarify language found in the trusts, established by the parties' parents, Walter W. Schultz ("Walter") and Grace M. Schultz ("Grace"). In that case, plaintiffs asked the probate court to quiet title to the 93-acre parcel pursuant to a land contract with Walter, and to hold that payment for the 84-acre parcel referenced in the trusts was satisfied, thus giving them title to that property as well. The probate court agreed to quiet title to the 93 acres in favor of plaintiffs, but held that, pursuant to the trust documents, plaintiffs would need to pay \$150,000 to Dale Schultz (the parties' brother) to acquire title to the 84-acre parcel.

Prior to the probate court's decision in the trust case, plaintiffs filed the present complaint in circuit court seeking reformation of the land contract to include the 93-acre parcel, or in the alternative, rescission of the land contract. In the section of the complaint labeled "general allegations," after discussing the trust instruments, plaintiffs asserted that "the intent was that the 93 acre [sic] and 84 acres always be treated as a single property together," and furthermore,

Walter, Grace, and plaintiff Wayne Shultz all intended that plaintiffs would receive the 84-acre parcel at the time of Walter's death. In the section of the complaint labeled "reformation and/or rescission," plaintiffs alleged that "the transfer of the deed defeated the intent of the trust and should be rescinded." Plaintiffs further asserted "a mutual mistake existed because Wayne . . . believed that if he paid for the 93 acres during Walter's life, then at the time of Walter[s] . . . death, Wayne . . . would receive the entire 84 acres free and clear. This was also the intention of Walter." Plaintiffs' complaint conceded that an additional amendment was added in Walter's trust which affected the 84 acre parcel, but the complaint alleged that "Walter was not competent to make decisions regarding his financial affairs at that time and/or unduly influenced."¹

On defendant's motion, the case was removed to probate court, at which time defendant filed a motion for summary disposition, applicability of the incontestability clause, and imposition of sanctions. Defendant argued that, inter alia, plaintiffs' claims were barred by res judicata, collateral estoppel, and the applicable statute of limitations. In their response to defendant's motion for summary disposition, plaintiffs repeated the allegations made in the complaint and further argued that complaint incorporated allegations of breach of contract.

The probate court disagreed and granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The court found that (1) there was no genuine issue of material fact regarding whether there had been a breach of the land contract because the contract "clearly and unequivocally conveys the 93 acres only to the plaintiff for the purchase price of \$150,000"; (2) plaintiffs' cause of action for reformation failed as a matter of law because plaintiffs relied on extrinsic evidence, and (3) with respect to rescission, plaintiffs failed to plead a mutual mistake, i.e., the complaint did not allege that the land contract mistakenly omitted 84 acres, but rather, it focused on "the interpretation of the trust[s], and the actions taken by the trustee and the estate."

Plaintiffs first argue on appeal that the probate court erred in granting defendant's motion for summary disposition because, in the original trust action, the court refused to hear evidence regarding Wayne's intent with respect to the land contract. Further, according to plaintiffs, they filed the instant action based on this error by the probate court and properly pleaded claims for rescission, reformation, and breach of contract. Plaintiffs conclude that there was a question of fact regarding what happened at the time Wayne and Walter entered into the land contract and the court should have decided whether there was a mistake of fact or an outright breach of the agreement by Walter. We disagree.

"This Court reviews de novo a trial court's summary disposition ruling." *Alpha Capital Mgmt v Rentenbach*, 287 Mich App 589, 599; 792 NW2d 344 (2010). A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the allegations of the pleadings alone. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that

¹ The probate court, in the original trust case, specifically rejected the claims of undue influence.

there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A question of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

With respect to plaintiffs' claim for reformation, "[c]ourts will reform an instrument to reflect the parties' actual intent where there is clear evidence that both parties reached an agreement, but as the result of mutual mistake, or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties." *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 24; 592 NW2d 379 (1998). A mutual mistake of fact means "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). "[T]he burden of proof is upon one seeking reformation of a written instrument." *Theophelis v Lansing General Hospital*, 430 Mich 473, 492; 424 NW2d 478 (1988). "If the asserted mutual mistake is with respect to an extrinsic fact, reformation is not allowed, even though the fact is one which would have caused the parties to make a different contract, because courts cannot make a new contract for the parties." *Dingeman v Reffitt*, 152 Mich App 350, 358; 393 NW2d 632 (1986). For purposes of reformation, parol evidence can be used to determine whether a mutual mistake existed and to establish the true intentions of the parties. *Scott v Grow*, 301 Mich 226, 239; 3 NW2d 254 (1942). Similarly:

A contract may be rescinded because of mutual mistake of the parties. However, such rescission is an equitable remedy, which will be granted only in the sound discretion of the trial court. Thus, for a mistake to mandate rescission, several hurdles must be cleared. First, there must have been a belief by one or both of the parties not in accord with the facts. . . . Second, the erroneous belief must relate to a basic assumption of the parties upon which the contract is made and which materially affects the agreed performances of the parties. [*Shell Oil Co v Estate of Kert*, 161 Mich App 409, 421-422; 411 NW2d 770 (1987).]

In this case, plaintiffs failed to plead a mutual mistake of fact, and therefore, failed to state a claim for either rescission or reformation. As the probate court observed when granting defendant's motion for summary disposition, plaintiffs failed to state a claim for reformation because the mutual mistake, if there was one, concerned an extrinsic fact, specifically, how the 84-acre parcel would be transferred pursuant to the trusts. *Dingeman*, 152 Mich App at 358. More importantly, regarding the claims for both reformation and rescission, we agree with the probate court that "plaintiffs' complaint fails to allege that the land contract mistakenly omitted 84 acres. Rather, [plaintiffs] focus on the interpretation of the trust[s], and the actions taken by the trustee and the estate." In other words, plaintiffs did not allege that, under the language of the land contract they were entitled to the 84-acre parcel. Rather, plaintiffs alleged that, under the language of the trusts, the 84-acre parcel would be transferred to them, without additional

payment, upon Walter's death. Thus, summary disposition was proper on these issues pursuant to MCR 2.116(C)(8).

Finally, regarding the breach of contract claim, as the probate court observed, the language of the land contract is clear. It identifies the land to be sold² and the price to be paid (\$150,000). There is no genuine issue of material fact regarding whether plaintiffs received the 93-acre parcel as provided for in the land contract. The land contract, however, does not address the 84-acre parcel. Thus, summary disposition on this issue was proper pursuant to MCR 2.116(C)(10). At best, plaintiffs' claim is essentially one for a breach of promise to transfer land. Under the statute of frauds, this claim cannot succeed without a writing to support it. MCL 566.132.

We further conclude, as did the probate court, that summary disposition was warranted under the preclusionary doctrine of res judicata.³ MCR 2.116(C)(7). The doctrine of res judicata bars a second lawsuit when "(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007). "The doctrine of res judicata is applied broadly. It includes issues which the parties sought to have adjudicated as well as every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at that time." *Martino v Cottman Transmission Sys*, 218 Mich App 54, 57-58; 554 NW2d 17 (1996) (internal punctuation and citation omitted). "The test for determining whether two claims are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two claims." *Huggett v Department of Natural Resources*, 232 Mich App 188, 197-198; 590 NW2d 747 (1998).

In this case, despite the different characterization of the respective actions (an action to interpret the trusts in the first case and an action to rescind or reform the land contract in the second), the issue in both lawsuits was whether Walter intended that plaintiffs acquire ownership of both the 93-acre parcel and the 84-acre parcel for a total expenditure of \$75,000. The probate court specifically rejected this position in the order entered in the original trust action, when it stated:

This land contract transaction took place outside of the trusts. However, [the contract's] existence was acknowledged by Walter Schultz in Amendment C to

² The contract identifies the land as follows: "That part of the Northeast ¼ of the Northwest ¼ lying west of the Michigan Central Railroad right of way and the West ½ of the Northwest ¼, Section 35, Town 16 North, Range 4 East." The parties do not dispute that this refers to the 93-acre parcel.

³ The probate court did not provide its reasoning, but simply stated that, if it were to address res judicata, as well as collateral estoppel and the statute of limitations, it would find that res judicata applied to plaintiffs' arguments.

his trust, dated 11-27-00. This lends credibility to the fact that Walter Shultz was aware that the 84 acres remained in both trusts, with a conditional payment of \$75,000 to Dale for *each* trust's ½ share, still intact. [Emphasis added.]

Further, in the trust case, Wayne testified at length regarding the land contract. While Wayne did testify that his father had indicated that the 84-acre parcel would come to him free and clear upon his father's death, Wayne also acknowledged that the land contract only covered the 93-acre parcel and there was nothing in writing to memorialize the alleged agreement regarding the 84-acre parcel. Moreover, Wayne testified that he leased the 84-acre parcel from 1997 through 2007 and recognized that the trust owned the property. Thus, the issue of whether the land contract was intended to include the 84-acre parcel and whether the failure to do so was a mutual mistake has already been litigated.⁴

Finally, plaintiffs argue that the present action was not frivolous and did not merit the award of sanctions. We disagree.

A trial court's determination whether an action is frivolous is reviewed for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A decision is clearly erroneous when, although there may exist evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *Id.* at 661-662.

MCR 2.114(E) requires imposition of an "appropriate sanction" when a document has been signed in violation of the court rule that sets forth that a party's or an attorney's signature constitutes a certification that "to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law," and is not "interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 2.114(D). Under MCR 2.114(F), "a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2)," which in turn mandates the imposition of sanctions pursuant to MCL 600.2591. Section 2591(3)(a) defines "frivolous" to mean one of the following:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying the party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

⁴ Given resolution of this issue, we need not address plaintiffs' third issue on appeal, namely, that the case should be sent to a different judge on remand.

Whether a claim is frivolous within the meaning of MCR 2.114(F) and MCL 600.2591 depends on the facts of the case. *Kitchen*, 465 Mich at 662. Moreover, the determination whether sanctions are appropriate under MCL 600.2591 requires a reviewing court to evaluate a claim “at the time the lawsuit was filed.” *In re Attorney Fees & Costs*, 233 Mich App 694, 702; 593 NW2d 589 (1999).

In this case, probate court found that sanctions were warranted because “plaintiffs’ action simply seeks to relitigate the issues that were previously decided by this court in an attempt to get a more favorable result from a different court. The plaintiffs’ actions have resulted in a delay of distributions, as well costing the defendant a considerable amount of money in attorney fees.” Plaintiffs’ sole argument, however, is that their claim cannot be considered frivolous because it was filed at the direction of the probate court. In support of this position, plaintiffs refer to statements made by the probate court at a hearing prior to the bench trial in the original action. That hearing was held on a petition seeking clarification on how the 84-acre parcel was going to be treated pending resolution of any question of ownership. While the parties and the probate court were discussing whether Wayne would lease the farmland for the growing season, plaintiffs’ counsel indicated that plaintiffs should not have to abide by the terms of the lease previously entered into because they were the equitable owners of the property. The probate court responded, “this isn’t a court of equity.” Plaintiffs assert that, pursuant to this direction, the present action was filed in circuit court. We disagree.

When viewed in context, the probate court was not conveying a belief that it lacked jurisdiction to decide matters of equity, and that plaintiffs must seek such equitable relief in circuit court. The court’s statement, although erroneous, was in response to plaintiffs’ assertion that they had equitable claims regarding *a lease* for the 84 acres; plaintiffs were not referencing the land contract (which transferred the 93 acres). Plaintiffs did not actually raise any equitable issues regarding the land contract at that hearing. Moreover, plaintiffs do not dispute that, in the first case, the probate court used its equitable powers when it entered an order quieting title to the 93-acre parcel. Thus, the probate court was merely indicating that, at that moment, it was addressing the request for clarification and would not address any assertion of a claim of equitable ownership in the 84-acre parcel. Therefore, the trial court did not abuse its discretion in determining that the current action, which sought to relitigate the issues previously decided, was frivolous.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Kurtis T. Wilder