

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE I. ANDERSON, Personal Representative of
the Estate of PAUL VERNON ANDERSON,
Deceased,

UNPUBLISHED
September 14, 1999

Plaintiff- Appellee,

v

No. 209030
Charlevoix Probate Court
LC No. 97-009877 CZ

MARY JAHNS and ROBERT JAHNS,

Defendants- Appellants.

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment declaring their legal ownership of certain real estate that had been held jointly by defendants and plaintiff's decedent spouse, but also recognizing plaintiff's equitable lien on this property. We affirm.

In November 1980, the decedent purchased by land contract the 2.5-acre parcel of property involved in this case. On June 19, 1981, the decedent, in an attempt to prevent his former wife and their children from acquiring rights in the property and as an apparent gesture of kindness for several favors defendants had performed for him, assigned defendants an interest in the land contract. The decedent and plaintiff married in 1982 and lived in one of two cabins located on the property. Plaintiff's testimony established that after their marriage, she and the decedent satisfied the outstanding land contract balance from funds to which both contributed. The land contract was discharged in 1987, at which time the land contract seller issued a warranty deed to the property in the names of the decedent, a married man, and defendants "as joint tenants with full rights of survivorship . . . and not as tenants in common." Between 1982 when they moved to the property and the decedent's death in 1996, plaintiff and the decedent both contributed money toward improving the property. These improvements included two garages, a steel roof, a paved driveway and some excavation work. Defendants acknowledged that they had never expended any money in either obtaining their rights to the property or in improving the property.

Defendants first contend that the equitable lien was not warranted because plaintiff knew of defendants' interest in the property and therefore did not improve the property based on a mistaken assumption. In an equity case, we review de novo the trial court's dispositional ruling, while reviewing the court's findings of fact for clear error. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997). A trial court's findings are considered clearly erroneous where this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

In Michigan, a plaintiff may seek affirmative equitable relief when mistakenly, but in good faith, he has improved the land of another to the unjust enrichment of the latter, and when the title owner had full knowledge of the improvement as it was being made. *Ollig v Eagles*, 347 Mich 49, 61; 78 NW2d 553 (1956). Plaintiff testified that she became aware that defendants' names appeared on the title to the property approximately one or two years after she and the decedent married. Plaintiff recounted discussions between she and the decedent in which he had expressed his intention to add her name to the title and had reassured plaintiff that the house would be hers even if her name were not added to the title. According to plaintiff, these discussions occurred both before and after the land contract was discharged. Plaintiff explained that she would not have been in favor of the improvements had she thought that the property would not be hers in the event the decedent died. Additionally, she indicated that the decedent had always treated the property as belonging to both of them. That plaintiff knew defendants' names appeared on the title, alone, does not indicate that she was fully aware of defendants' ownership rights, as defendants argue, nor does it preclude a finding that she misunderstood her own rights to the property. No evidence showed that plaintiff had any experience with real estate matters. Importantly, defendants had knowledge of and acquiesced in all the improvements undertaken by plaintiff and the decedent.¹ Furthermore, we note that the land contract language, "Paul Anderson, a single man," was changed to, "Paul Anderson, a married man," in the deed. It is plausible that someone unfamiliar with the law could assume that this language might reserve certain rights to the decedent's spouse. We therefore conclude that, in light of plaintiff's unchallenged testimony, the trial court did not clearly err in finding that plaintiff was operating under a mistaken but good faith belief that she would eventually receive an interest in the property when she used her own and the marital resources to pay off the land contract and improve the property.²

Defendants also maintain, citing *Dehn v Dehn*, 170 Mich 407; 136 NW 453 (1912), that a court of equity is not empowered to "create" a lien. Although the *Dehn* Court observed that "[a] court of equity cannot create a lien," it also clarified that a court may "only declare [a lien] where the testimony equitably establishes an implied contract." *Id.* at 413. The *Dehn* Court expressed the same general rule applied in the instant case: that a lien may arise where a party innocently and in good faith, under a mistake as to the condition of title, renders services or makes improvements that are permanently beneficial to another. *Id.* The *Dehn* Court found that the plaintiff had not based his claim on any mistake or honest misunderstanding concerning the title to the property. *Id.* The plaintiff in *Dehn* had made improvements to his parents' home, along with his siblings and his parents, all of whom shared the residence. The Court found that the plaintiff's contributions were impliedly gratuitous in the absence of any understanding to the contrary. *Id.* Thus, there was no factual basis on which to base a claim for an equitable lien.

Defendants further argue that the trial court should have denied plaintiff's claim because plaintiff failed to comply with the filing rule of MCR 3.411(F). That rule provides as follows:

(1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.

MCR 3.411(A) explicitly states that MCR 3.411 "applies to actions to determine interests in land under MCL 600.2932; MSA 27A.2932." Even assuming the applicability of this rule to the instant case, subsection (F)(1) would not operate to bar plaintiff's equitable lien claim because plaintiff did not file her claim for this relief more than twenty-eight days after "the finding of title." The court's finding of title occurred at the same time the court recognized plaintiff's equitable lien.

Lastly, defendants challenge the trial court's calculation of plaintiff's equitable lien as amounting to \$43,760.95, arguing that there was insufficient proof at trial to establish that plaintiff individually contributed to the named expenses and insufficient documentation of the cost of the improvements. Defendants suggest that, to the extent plaintiff is entitled to recover for some improvements paid for with joint marital funds, the trial court erred in failing to limit her recovery to 50% of these costs.³

We note preliminarily that the trial court did not find that plaintiff contributed solely and individually to the acquisition and improvement of the property. The court did find that during their marriage plaintiff and the decedent pooled their incomes to meet monthly land contract installments, the land contract payoff, and the improvements to the property. The court also found that defendants never contributed money toward any of these payments, even though they had knowledge of the improvements. The trial court arrived at the \$43,760.95 equitable lien figure by adding together (a) \$13,000 for sixty-five land contract payments made from 1982 through 1987, (b) \$14,260.95 for the land contract payoff, (c) \$8,500 for two garages erected on the property, (d) \$5,000 for driveway paving work, and (e) \$3,000 for roof repair. These findings were not clearly erroneous. The \$8,500 for the garages was substantiated by plaintiff's testimony that the first garage was built in 1984 and cost \$4,000 and that the second was constructed in 1994 at a cost of \$4,500. The \$5,000 paving work was likewise established by plaintiff's testimony. Defendants did not refute, cross-examine or otherwise challenge plaintiff's testimony regarding these improvements. With respect to the amounts of land contract payments and other improvements, plaintiff testified and introduced a number of exhibits to substantiate her claims. A land contract amortization schedule documented the total payments made on the contract as well as the payoff amount. A proposal from Bob's Roofing and Exteriors documented plaintiff's claim of \$3,000 for roof repair that was done in 1993. Defendants did not object to the admission of these documents, nor did they produce any evidence to counter plaintiff's claims.¹ The

¹ Plaintiff also introduced into evidence a statement for \$1,500 in excavating work that was allegedly done in conjunction with the driveway paving. Plaintiff asks this Court to correct the trial court's oversight in failing to include the \$1,500 for paving work among the equitable lien. Plaintiff did not, however, file a cross-appeal. In the absence of a cross-appeal, plaintiff is limited to the issues raised by the defendants. See *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993).

court declined to consider plaintiff's estimated real estate tax payments over the years because she did not produce evidence of specific payments for the relevant periods. We conclude that the trial court's calculation of the equitable lien amount was adequately supported by the record.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

¹ Compare *Snider v Dunn*, 11 Mich App 39; 160 NW2d 619 (1968). The plaintiff made various repairs on property he was negotiating to purchase. After these negotiations failed, the plaintiff claimed entitlement to an equitable lien for the improvements he had made. This Court affirmed the trial court's denial of the equitable lien request, noting that the defendant property owners had not acquiesced in the purchase negotiations and therefore did not have knowledge of the plaintiff's repairs. While the court concluded that the plaintiff did not innocently make the improvements and that "[t]here is no equitable basis for granting [the] plaintiff the lien he seeks as to [the defendants] when [the] plaintiff knew at the time he commenced repairs of the record title interest of [the defendants]," the plaintiff had thirty years of experience as an attorney involved in real estate transactions and subsequently entered the real estate business, purchasing and reconditioning residential property for resale. *Id.* at 43, 45.

² Defendants also argue that *Whitehead v Barker*, 288 Mich 19; 284 NW 629 (1939), should control the instant case's outcome. In *Whitehead*, the Supreme Court set aside a decree awarding the plaintiff an equitable lien as compensation for improvements the plaintiff made to the property over a period of twelve years. The Court reasoned that the plaintiff never made any claim of title, nor occupied the premises under color of title. *Whitehead* is distinguishable from the instant case, however, because the *Whitehead* Court specifically found that the plaintiff/improver "had no expectancy of title" and that the plaintiff's "wife was not the owner, and had no title to give by deed or will." *Id.* at 23. "[T]he improvements were not upon the wife's property, but upon the property of a third person, plaintiff's wife appearing to have only a right of occupancy." *Id.* at 25. By contrast, as noted above, plaintiff's spouse did hold title to the instant property and the trial court found that plaintiff contributed to the improvements with the good faith understanding that she would own an interest in the property after the decedent's death. This understanding supplies the "expectancy of title" missing in the *Whitehead* case.

³ Defendants have cited no authority supporting their assertion that, "[a]t best, the Plaintiff/Appellee might be entitled to 50% credit on the theory that joint, marital funds were used." Therefore, defendants have failed to sufficiently present this argument for this Court's consideration. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).