

STATE OF MICHIGAN
COURT OF APPEALS

DAVID E. NATHAN,

Plaintiff/Counterdefendant-
Appellant,

v

LARRY CRENSHAW,

Defendant/Cross-defendant,

and

REGINALD SMITH,

Defendant/Counterplaintiff/Cross-
plaintiff-Appellee.

UNPUBLISHED

May 12, 2005

No. 260219

Wayne Circuit Court

LC No. 03-314222-CZ

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff David Nathan entered into an agreement with defendant Larry Crenshaw to purchase rental property from Crenshaw, who executed a quitclaim deed as part of that agreement. Nathan characterizes this agreement as a land contract. Nathan did not complete the payments required by the agreement. Crenshaw subsequently conveyed the property to defendant Reginald Smith by warranty deed on the same day that Nathan recorded the earlier quitclaim deed. Nathan thereafter filed this action to quiet title against Crenshaw and Smith and also alleged counts of conversion, fraudulent misrepresentation, and unjust enrichment against Crenshaw. The trial court granted Nathan's motion for a default judgment against Crenshaw for \$52,000, but then granted Smith's motion for summary disposition, quieting title of the property in favor of Smith. Nathan now appeals as of right, arguing that title should have been quieted in his favor because he recorded his deed before Smith. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court also reviews de novo actions to quiet title, which are equitable in nature. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

Nathan argues that his “recorded deed should have been the dispositive fact.” He relies on MCL 565.25(4), which states:

The instrument shall be considered as recorded at the time so noted and shall be notice to all persons except the recorded landowner subject to subsection (2), of the liens, rights, and interests acquired by or involved in the proceedings. All subsequent owners or encumbrances shall take subject to the perfected liens, rights, or interests.

Nathan asserts that because he recorded his deed first, Smith cannot rely on MCL 565.29, which provides:

Every conveyance of real estate within the state hereafter made, which shall *not* be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, *whose conveyance shall be first duly recorded.* . . . [Emphasis added.]

We agree with Nathan that MCL 565.29 does not entitle Smith to judgment as a matter of law. Smith was “the subsequent purchaser,” but his conveyance was not the first duly recorded. Smith argues that Nathan cannot take advantage of the statute because he did not “record in good faith.” However, the statute does not refer to recording in good faith. It applies where a second conveyance is recorded before an earlier one, which is not what occurred in this case.

Nonetheless, Nathan does not adequately address Smith’s challenge to the effectiveness of the quitclaim deed received by Nathan, i.e., whether the conveyance was invalid because the deed was not effectively delivered.

“Delivery, in its legal and technical connotation, is a vital part of the execution of a deed and is essential to the operation and validity of the conveyance.” *McMahon v Dorsey*, 353 Mich 623, 626; 91 NW2d 893 (1958) (citation and internal quotation marks omitted). Delivery in this context does not refer to physical transfer of the document; the controlling factor is the intention of the grantor to *give effect to the instrument and convey a present interest* in the land. *Id.*; *Resh v Fox*, 365 Mich 288, 291; 112 NW2d 486 (1961). Physical delivery to the grantee raises a presumption of intent to pass title, but the presumption may be rebutted. *Id.*, pp 291-292. The recording of a deed also creates a rebuttable presumption of delivery. *Havens v Schoen*, 108 Mich App 758, 761; 310 NW2d 870 (1981); *Energetics, Ltd v Whitmill*, 442 Mich 38, 53; 497 NW2d 497 (1993).

In the present case, Nathan’s position concerning the nature of his agreement with Crenshaw is incompatible with a claim that Crenshaw intended to give present effect to the quitclaim deed. Crenshaw executed a quitclaim deed, purporting to release all of his interest in the property. But Nathan has essentially acknowledged that he and Crenshaw did not intend that the instrument would have that immediate effect. According to Nathan, his agreement with Crenshaw was a land contract. A land contract is an executory contract in which the seller retains legal title to the premises until the buyer performs all the obligations of the contract. *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999). Legal title transfers when the purchaser performs all of the obligations of the contract; only equitable title passes to the

buyer at the time of execution of the contract. *Id.*; see also *Hooper v Van Husen*, 105 Mich 592, 597; 63 NW 522 (1895). By acknowledging that his agreement with Crenshaw was a land contract and that the quitclaim deed was executed to memorialize that agreement, Nathan has effectively admitted that Crenshaw did not intend to give present effect to the quitclaim deed. The evidence, viewed in light of Nathan's own contentions, therefore indicates that there was no delivery of the quitclaim deed. Thus, despite Nathan's recording of the quitclaim deed, he failed to show that there was a genuine issue of material fact with respect to delivery. Accordingly, under the circumstances, Nathan has not shown that the trial court's ruling granting summary disposition to Smith and quieting title in his favor was in error.

We decline to address Nathan's challenge to the trial court's order regarding rents and expenses because the issue is not included in his statement of the question presented as required by MCR 7.212(C)(5); *Preston v Dep't of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991). Further, the issue is inadequately briefed in the two sentences that Nathan has devoted to it. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter