

STATE OF MICHIGAN
COURT OF APPEALS

ERIKA MARIE FICK,

Plaintiff-Appellee,

and

AMERIQUEST MORTGAGE COMPANY,

Intervenor-Appellee,

and

JOSEPH C. FICK,

Defendant-Appellant.

UNPUBLISHED

August 14, 2008

No. 274284

Roscommon Circuit Court

LC No. 05-725257-CH

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

PER CURIAM.

In this action to quiet title, defendant, Joseph Fick, appeals the trial court's judgment for plaintiff, Erika Fick. For the reasons set forth below, we affirm.

Defendant argues that plaintiff failed to set forth sufficient factual allegations to support her fraud claim, and failed to prove by clear and convincing evidence that defendant transferred the marital home by fraud or that, due to her mental incapacity, plaintiff did not understand the consequences of signing the deed.¹

¹ When a party alleges fraud or mistake, "the circumstances constituting fraud or mistake must be stated with particularity." MCR 2.112(B)(1); *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995). Defendant also claims that he should have been granted summary disposition under MCR 2.116(C)(7), release of claim, but he fails to explain how plaintiff released her claim. We therefore deem this issue abandoned. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). In any event, defendant fails to submit any evidence that plaintiff executed a release.

Defendant's arguments overlook that undue influence is a recognized species of fraud. *In re Jennings' Estate*, 335 Mich 241, 247; 55 NW2d 812 (1952); *Adams v Adams*, 276 Mich App 704, 710; 742 NW2d 399 (2007).² In 1994, plaintiff and defendant married and, in 1996, plaintiff sustained a closed head injury that caused physical and cognitive impairments. Plaintiff asserted in her complaint that she suffers from severe brain trauma. Her allegations also indicate that defendant deceived her about the nature of the transactions he induced her to enter. Plaintiff stated that she "signed the Mortgage as a result of fraud," or, in the alternative that "Defendant was in a fiduciary relationship with her and exercised undue influence over her to procure her signature on the Mortgage." Plaintiff also alleged that defendant fraudulently induced her to execute the quitclaim deed and mortgage, and that he was attempting to force her eviction by claiming that she was a tenant, and not an owner, of the marital home. These allegations are sufficiently particular to establish that defendant was plaintiff's fiduciary, and that he used this role as an opportunity to influence her to enter into transactions that were to his advantage and her disadvantage.³

Defendant does not dispute that there existed a fiduciary relationship between defendant and plaintiff after plaintiff's accident. Indeed, defendant acknowledged his wife's state of dependency and testified that he decided to divorce her because she had become more like a daughter than a wife. Defendant did not extract himself from his role as plaintiff's fiduciary when he divorced her. He concealed the divorce from her, and continued to live in the marital home, controlled her finances, and collected insurance payments for providing care. Plaintiff also presented ample evidence that defendant exploited the fiduciary relationship to enrich himself at her expense. Plaintiff testified that she relied on defendant, as her husband, to manage financial matters because her accident left her unable to do so. She stated that she signed documents at his request, without knowing what they were. She denied that defendant told her about the divorce, although she recalled that he brought her to the courthouse and had her sign papers that he partly covered with his hand. She also denied having any memory of signing mortgage documents or a quitclaim deed.

² To establish undue influence, a plaintiff must show that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will. *In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003); *In re Estate of Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

³ Defendant asserts that plaintiff was never subjected to a guardianship or conservatorship, and was never found to be legally incompetent to manage her affairs. However, in *Seeley v Price*, 14 Mich 541 (1866), our Supreme Court recognized that persons with limited mental capacity are entitled to protection from undue influence by those in a position of trust. Furthermore, MCL 750.174a(1) and 750.145m(u)(i) reflect a public policy to protect all dependent persons from the encroachments of predators without limiting that protection to persons subjected to a guardianship or conservatorship. Plaintiff showed that her injuries rendered her vulnerable, she had reason to trust, not distrust, her husband, and that defendant unscrupulously breached the marital trust by exploiting his wife's vulnerability.

The objective evidence of defendant's conduct of these transactions revealed numerous irregularities that corroborate plaintiff's claim of undue influence. Defendant failed to deliver the quitclaim deed for the marital home to plaintiff as required by the divorce judgment. He falsely represented that he and plaintiff were still married when he applied for a mortgage on the house, and he failed to obtain plaintiff's signature on the promissory note. Defendant also borrowed far more money than was necessary to pay off the land contract, and he used a significant portion of the loan proceeds for his sole benefit. The quitclaim deed that conveyed plaintiff's interest in the marital home to defendant contained discrepancies in the date. Although defendant testified that he structured these transactions in order to pay off the land contract, make home repairs, and enable plaintiff to continue living in the marital home, he failed to plausibly explain why he failed to comply with the divorce judgment, why he falsely represented his marital status, why he borrowed far in excess of the amount necessary to pay off the land contract, why he spent more than \$20,000 of the loan proceeds for himself, or why the quitclaim deed listed inconsistent dates.⁴

All these circumstances clearly and convincingly establish undue influence. The evidence overwhelmingly supports the inference that defendant preyed on plaintiff's dependency and induced her to act against her inclination and against her best interests by jeopardizing her well-being for defendant's benefit. The trial court did not err in finding that defendant's irrational and inadequate explanations were not credible.

Defendant also argues that the trial court erred in ordering judgment for plaintiff because she failed to prove that she lacked mental capacity to enter into a contract. Defendant relies on the fact that plaintiff was able to describe a mortgage as "[a] loan taken out on a house," and she understood that the loan must be repaid. This argument is erroneous both factually and legally. Plaintiff's ability to accurately describe a mortgage three years after the events that gave rise to this lawsuit does not prove that she reasonably understood the "nature and effect" of the mortgage transaction that defendant induced her to enter into in 2003. There is no factual basis for finding that plaintiff understood that defendant was borrowing far more than the amount owed on the land contract, that he was falsely representing his marital status to plaintiff and the lender, or that he was using loan proceeds to buy himself costly items of personal property. Moreover, there is no evidence that plaintiff understood what she was doing when she quitclaimed her interest in the marital home to defendant. Plaintiff testified that she did not know what a quitclaim deed is; furthermore, the irregularity with the names and dates on the quitclaim deed establishes defendant's fraudulent intent.

Moreover, defendant's argument equating undue influence with lack of mental capacity is erroneous on the merits. Undue influence and lack of mental capacity to contract are distinct

⁴ We also note that defendant attempted to sell the marital home to Judy Harshman, the mother of a woman defendant dated following the divorce. Harshman then offered to let plaintiff stay in the house only if she paid rent of \$500 per month.

legal theories.⁵ Accordingly, plaintiff was not obligated to prove that she lacked mental capacity to enter into a contract in order to prove her claim of undue influence. Because the evidence overwhelmingly established that defendant violated his fiduciary obligations to plaintiff by preying on her weakness and inducing her to jeopardize her interests for his benefit, the trial court did not err factually or legally in entering judgment for plaintiff.⁶

⁵ Michigan case law on undue influence focuses on the fiduciary's exercise of influence or coercion against the grantor, not the grantor's capacity to understand the transaction in circumstances where there was no influence or coercion. In *Erickson, supra* 202 Mich App 329, this Court separately addressed the questions of whether the grantor acted according to undue influence, or whether he lacked capacity to contract, when he changed the beneficiaries on six annuity contracts. *Id.* at 330-332.

The distinction between the two theories has been more clearly delineated in other jurisdictions. See *Liebelt v Liebelt*, 118 Idaho 845; 801 P2d 52 (1990) and *Dillin v Alexander*, 281 Or 679, 683-684; 576 P2d 1248 (1978); See also 1 Restatement Contracts, 2d § 177(1), p 490, defining undue influence as “unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that the person will not act in a manner inconsistent with his welfare.”

⁶ Defendant also argues that plaintiff's failure to submit a timely response to his request for admissions entitled him to judgment. MCR 2.313(A) permits a party to serve on another party a written request for the admission of the truth of assertions relating to permissible areas of discovery. A party's failure to submit a timely objection or answer to an opposing party's request for admissions constitutes an admission that the assertion is true. MCR 2.313(B)(1). However, MCR 2.312(D)(1) provides:

A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdrawn an admission. The court may condition amendment or withdrawal of the admission on terms that are just.

The trial court did not directly address this matter when defendant raised it in his trial brief and before trial. However, by deciding this case on the merits, based on the evidence presented at the bench trial, the trial court implicitly accepted plaintiff's belated response as timely. This implicit decision does not constitute an abuse of discretion where the delay was likely attributable to plaintiff's mental limitations, which impede her ability to comprehend legal proceedings and act in her own best interests. See *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003) (trial court's discovery decision is reviewed for abuse of discretion).

To the extent that the trial court erred in failing to make explicit findings and an explicit ruling pursuant to MCR 2.312(D)(1), the error was harmless. MCR 2.613(A) provides that “anything done or omitted by the court . . . is not ground for granting a new trial . . . or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.” Excusing plaintiff's delay in responding to the request for admissions is not inconsistent with substantial justice, especially in view of plaintiff's cognitive impairments.

Affirmed.

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