

STATE OF MICHIGAN
COURT OF APPEALS

JOY ANN DECKER,

Plaintiff-Appellant,

v

JAMES E. DECKER,

Defendant-Appellee.

UNPUBLISHED

April 25, 2006

No. 266446

Wayne Circuit Court

LC No. 05-516521-CZ

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

In this property case involving a consent judgment in a divorce, plaintiff appeals as of right from the trial court's grant of defendant's motion for summary disposition pursuant to MCL 2.116(C)(7) (action barred by prior judgment). We reverse and remand.

I. FACTS

Defendant, James E. Decker, filed a complaint for divorce against plaintiff Joy Ann Decker in 2003. On August 3, 2004, plaintiff and defendant appeared before Judge Lita Masini Popke (the trial court) to participate in their divorce settlement conference. On August 10, 2005, both parties placed the terms of their settlement on the record and on August 12, 2005, the trial court entered the consent judgment of divorce ("consent judgment").

The terms of the comprehensive consent judgment included the disposition of custody of the parties' two minor children and the children's place of residence, parenting time, child and spousal support, health care expenses, and the division of property. The dispute in this appeal concerns the plaintiff's right to rental income generated by a parcel of property owned (pursuant to the consent judgment) by plaintiff and defendant. The parcel of land at issue is located in Warren, Michigan ("property"), and includes a factory building. The factory building is occupied by the John Christian Company, a third party lessee of the land and building. The property division in the consent judgment awarded plaintiff "joint tenancy with rights of survivorship" in the property, to be shared equally with defendant.

On January 31, 2005, nearly five months after the trial court entered the consent judgment, plaintiff sent a letter directly to defendant reiterating plaintiff's status as joint tenant of the property. Plaintiff asserted that her status as a joint tenant entitled her to one half of the rental income generated by the property. Plaintiff further stated that she had not received any

financial information relating to the rental income generated by the property, nor had plaintiff received any rental income since the judgment was entered. Defendant responded by return letter on February 4, 2005, claiming that the status quo agreed to in the consent judgment did not include a stipulation that plaintiff would receive one-half of the rental income generated from the property. Defendant further argued that plaintiff acquiesced that the consent judgment did not include rental payments by waiting to file the claim until January of 2005.

On May 31, 2005, plaintiff filed a complaint against defendant, which included an “action for money had and received pursuant to MCL 554.138” to recover one-half rental payments generated by the property. Plaintiff additionally sought an accounting of the rents and profits derived from the property. Plaintiff filed this action in Wayne Circuit Court before Judge Susan Borman. On June 24, 2005, defendant answered plaintiff’s complaint, seeking dismissal of plaintiff’s complaint and further seeking sanctions plaintiff pursuant to MCR 2.114 (D)(E) & (F).

On July 25, 2005, plaintiff sent interrogatories to defendant, seeking details on the rental income and profits derived from the property. On August 12, 2005, the parties appeared before Judge Borman on the action for rent and accounting, but Judge Borman transferred the matter to Judge Popke, stating that “[t]his [issue] belongs before the judge who did the divorce.” On September 12, 2005, plaintiff filed a motion to compel discovery pursuant to the original complaint for rental income and accounting. On September 14, 2005, defendant filed a motion for summary disposition on plaintiff’s action for rental income and accounting. Defendant then filed a response to the motion to compel discovery on September 22, 2005. In the response to the motion to compel discovery, defendant argued that plaintiff’s “efforts to secure discovery in the new lawsuit” is barred because the consent judgment already established plaintiff’s rights related to the property. Defendant further argued that the consent judgment did not include any express stipulation of rental payments to be made to plaintiff. Additionally, defendant argued that the doctrines of res judicata and collateral estoppel barred plaintiff from filing the action for rental income and accounting.

On September 23, 2005, the parties appeared before the trial court to argue plaintiff’s motion to compel documentation, admissions, and answers to interrogatories related to the action for rental income and accounting. The trial court noted that “it doesn’t make any sense to spend any time arguing any motions . . . until the Court rules on the motion for summary.” The trial court further noted, “I don’t see how I can rule on [the discovery requests] without ruling on whether the case stays. Because if the case falls, then everything falls.” The trial court stated that she was “ready to rule” on the motion for summary disposition. However, the trial court ultimately set a future date at which the parties would argue the motion for summary disposition to allow the plaintiff to properly respond.

On October 4, 2005, plaintiff submitted a response to defendant’s motion for summary disposition, and on October 24, 2005, the parties argued the motion for summary disposition before the trial court. The trial court noted that at the settlement hearing for the consent judgment, both parties were asked specifically whether they understood what the status quo settlement entailed. In response to the assertion that the consent judgment specifically states, “joint tenants with rights of survivorship,” the trial court noted that “I know what it says. . . . And I know what the law says. And I know what rights the law gives a joint tenant. But I see bad faith. That’s what I see.” The trial court noted that the parties never contemplated rental

payments in the consent judgment. Specifically, the trial court noted that defendant included an affidavit with the motion for summary disposition, where defendant stated that he use the rent received from the John Christian Company as part of the income to support the family's expenses.

The trial court ultimately granted defendant's motion for summary disposition on the grounds that the claim should not have been filed as a separate action and that there is no substantive basis for the claim based on the content of the pleadings. The trial court further noted that the action should have been brought as an ancillary claim to the divorce action and that the action would be barred under MCR 2.116(C)(7) by prior judgment. The trial court further awarded attorneys fees in the amount of \$8,812.50 pursuant to MCR 2.114 finding that filing a separate action violated the court rule's requirement that the action be well-founded in fact or law.

II. CONSENT JUDGMENT

Plaintiff first argues that the trial court erred by granting summary judgment on plaintiff's statutory claim for rent as a joint tenant with rights of survivorship. We agree.

A. Standard of Review

A motion under MCR 2.116(C)(7) is governed by the following standards:

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).

If the pleadings or other documentary evidence fail to establish a genuine issue of material fact, the court must decide as a matter of law whether the claim is barred. *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

B. Joint Tenancy with Rights of Survivorship

Plaintiff argues that the consent judgment entitles her to monthly rental payments as a joint tenant with rights of survivorship under MCL 554.138. Here, the consent judgment plainly states that "[t]he Wife is awarded the following real and personal property: . . . (c) *Joint tenancy with rights of survivorship* in the Husband's factory building located at 21950 Hoover Road, Warren, Michigan . . ." (emphasis added). The creation of a joint tenancy in realty requires an express declaration of joint tenancy in a written instrument of conveyance, which will produce unity of time, title, interest, and possession. *Weiler v Heuple*, 4 Mich App. 654, 658; 145 NW2d 352 (1966). Under Michigan law, a settlement agreement, such as a stipulation of a property settlement in a divorce, is construed as a contract. *MacInnes v MacInnes*, 260 Mich App. 280, 284; 677 NW2d 889 (2004). Further, Courts are bound by property settlements reached through

negotiations by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress. *Calo v Calo*, 143 Mich App 749, 753-54; 373 NW2d 207 (1985). Consent judgments are binding, final orders; they do not have less force than a judgment entered following trial. *Staple v Staple*, 241 Mich App 562, 564; 616 NW2d 219 (2000) Indeed, “public policy demands finality of litigation in the area of family law to preserve [the] surviving family structure.” *Id.* at 564-565, quoting *McGinn v McGinn*, 126 Mich App 689, 693; 337 NW2d 632 (1983). See also *Mixon v Mixon*, 237 Mich App 159, 167; 602 NW2d 406 (1999).

Defendant was represented by counsel throughout the negotiation of the judgment and the terms of the written judgment are plain and unambiguous. Settlements arrived at by the parties and placed on the record in open court in the presence of counsel are entitled to a high degree of finality. *Tinkle v Tinkle*, 106 Mich App 423, 428; 308 NW2d 241 (1981). Nevertheless, “[t]he primary goal in the construction or interpretation of any contract is to honor the intent of the parties.” *Mikonczyk v Detroit Newspapers*, 238 Mich App 347, 349-350; 605 NW2d 360 (1999), quoting *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). If there is no meeting of the minds on all material facts, there is no valid contract. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992).

While it is true that trial courts are given broad discretion in fashioning its rulings in divorce cases, *Sparks, supra* at 158-159, this case is now a matter of contract interpretation. Here the consent judgment plainly states that plaintiff and defendants are joint tenants with rights of survivorship. “[A] joint tenant or tenant in common . . . may maintain an action for money had and received, against his co-tenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.” MCL 554.138. Pursuant to MCL 554.138, joint tenants are required to share rents generated by the property where the property is occupied by a third party. *Sullivan v Sullivan*, 300 Mich 640, 644; 2 NW2d 799 (1942).

Courts must discern the parties' intent from the words used in the contract and must enforce an unambiguous contract according to its plain terms. *Mahnick v Bell Co*, 256 Mich App 154, 159; 662 NW2d 830 (2003). “If the contract language is clear and unambiguous, then its meaning is a question of law for the court to decide.” *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999). There is nothing on the record to indicate that the parties intended that the term “joint tenant” have any other meaning than its plain legal definition. We find that the trial court erred when it granted defendant’s motion for summary disposition under MCR 2.116(C)(7) because plaintiff’s claim was not barred by the consent judgment.

Therefore, plaintiff may bring a claim to enforce her statutory right as a joint tenant for her half of the rents paid by the John Christian Company, the current third-party occupant of the Hoover Road property.

III. GRANT OF SUMMARY JUDGMENT BEFORE COMPLETION OF DISCOVERY

Plaintiff next argues that the trial court erred by granting summary disposition before allowing plaintiff to discover financial information related to rental income received by defendant from the property. We agree.

A. Standard of Review

Summary judgment is premature if granted before discovery on the disputed issue is complete. *Kortas v Thunderbowl*, 120 Mich App. 84, 87; NW2d (1982) (citing *Durkee v Cooper of Canada, Ltd.*, 99 Mich App. 693, 700; 298 NW2d 620 (1980)). Before granting summary judgment, the court must give the benefit of every reasonable doubt to the party opposing the motion and must be satisfied that it is impossible for the claim to be supported at trial because of some deficiency which could not be overcome. *Id.* (citing *Rizzo v Kretschmer*, 389 Mich 363, 374; 207 NW2d 316 (1973) *Peeples v Detroit*, 99 Mich App. 285, 293; 297 NW2d 839 (1980)). The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then available to it. *Id.* at 87 (citing *Rizzo v Kretschmer*, 389 Mich 363, 374; 207 NW2d 316 (1973)).

Here, given that plaintiff has a statutory right to claim rent as a joint tenant under MCL 554.138, a decision on the motion for summary judgment should have been postponed until defendant answered plaintiff's interrogatories.

IV. SANCTIONS

Plaintiff finally argues that the trial court erred in granting defendant's motion for sanctions under MCR 2.114. We agree.

A. Standard of Review

In *Contel Systems Corp v Gores* 183 Mich App 706, 711, 455 NW2d 398, 400 (1990), this Court set forth the standard of review for this Court's review of a trial court's imposition of sanctions under MCR 2.114:

Since the imposition of a sanction under MCR 2.114 is mandatory upon the finding that a pleading was signed in violation of the court rule, or a frivolous action or defense had been pled, there is no discretion for the trial court to exercise in determining if a sanction should be awarded. Rather, the relevant inquiry is whether the trial court erred in finding that the court rule had been violated and, therefore, that the imposition of a sanction was required. Since this involves a finding of fact by the trial court, that finding must be reviewed to determine if it is clearly erroneous. MCR 2.613(C). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Tuttle v Dep't of State Hwys*, 397 Mich 44, 243 NW2d 244 (1976). Our decision that the clearly erroneous standard is the appropriate standard to apply to this case is consistent with this Court's decision in *Porter v United Shirt Distributors, Inc*, 176 Mich App 145, 148, 438 NW2d 893 (1989). [*Id.*]

B. Analysis

MCR 2.114 provides for sanctions when a document is signed without the attorney's belief that "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 "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in

the cost of litigation." Here, however, plaintiff was a joint tenant who followed the proper procedure to collect rents on her property. Thus, plaintiff's lawsuit was neither factually nor legally unfounded. The trial court clearly erred in awarding defendant sanctions in this matter.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Bill Schuette

/s/ Stephen L. Borrello