

STATE OF MICHIGAN
COURT OF APPEALS

ALETA P. STRICKLAND,

Plaintiff-Appellee,

v

WALTER MOORE and LORI MOORE,

Defendants-Appellants.

UNPUBLISHED

May 16, 2006

No. 258506

Barry Circuit Court

LC No. 04-000173-CH

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order reforming a deed to property purchased by them on land contract, so as to reflect a life estate in a portion of the property in plaintiff. We affirm.

Defendants first argue that the trial court erred when it reformed the deed because there was no mutual mistake or unilateral mistake induced by fraud. We disagree.

Reformation of a deed is equitable in nature and is thus reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993). Deference is given, however, to the trial court's factual findings, which "will not be reversed unless the findings are clearly erroneous or the reviewing court is convinced that it would have reached a different result had it occupied the position of the trial court." *Walch v Crandall*, 164 Mich App 181, 191; 416 NW2d 375 (1987).

In *Schmalzriedt v Titsworth*, 305 Mich 109, 119-120; 9 NW2d 24 (1943), our Supreme Court explained the rule applicable to mistakes of law in deeds and contracts:

"There are two well-defined classes of mistakes of law in contracts: first, a mistake in law as to the legal effect of the contract actually made; and, *second, a mistake in law in reducing to writing the contract, whereby it does not carry out or effectuate the intention of the parties.* In the former, [. . .] the contract actually entered into will seldom, if ever, be relieved against unless there are other equitable legal features calling for the interposition of the court; *but in the second class, where the mistake is not in the contract itself, but terms are used in or omitted from the instrument which give it a legal effect not intended by the parties, and different from the contract actually made, equity will always grant*

relief unless barred on some other ground, by correcting the mistake so as to produce a conformity of the instrument to the agreement.” [quoting 10 RCL, p 315 (emphasis added).]

In the present case, the mistake alleged by plaintiff falls into the latter category of mistakes described above. Indeed, as found by the trial court, the record indicates that the parties intended to have a deed created that reflected retention of a life estate by plaintiff in a portion of the subject property, and there is no evidence that plaintiff intended to fully terminate her life estate. When the deed was reduced to writing, however, it failed to reflect the parties’ intent because it terminated plaintiff’s life estate *in toto*. This mistake of law allowed the trial court to reform the deed to reflect the true intention of the parties. *Titsworth, supra*.

In reaching this conclusion, we reject defendants’ assertion that because there is no ambiguity in the terms of the deed, it must be enforced as written and reformation is, therefore, inappropriate. In *Farabaugh v Rhode*, 305 Mich 234, 240; 9 NW2d 562 (1943), our Supreme Court recognized that although “[t]he general rule is that courts will follow the plain language in a deed in which there is no ambiguity,” where “there is an ambiguity, *or if the deeds fail to express the obvious intention of the parties, the courts will try to arrive at the intention of the parties* and in accordance therewith grant or deny the relief asked for.” (Emphasis added). Defendants do not dispute that the deed at issue here was intended to be drafted so as to reflect plaintiff’s life estate in the subject property, and plaintiff testified that she did not intend to terminate her life estate. Thus, because the deed is not reflective of the parties’ intent, reformation was appropriate. *Id.*

Defendants also argue that the trial court erred when it admitted evidence that plaintiff was told by representatives of Chicago Land and Title Company that she would retain a life estate in the property under the terms of the deed drafted by the company. Defendants argue that such testimony was inadmissible hearsay. We do not agree. “A trial court’s ruling regarding the admission of evidence is reviewed for an abuse of discretion.” *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003).

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c). In the present case, the trial court determined that the challenged testimony was not hearsay because it was not being offered to prove the truth of the matter asserted but, rather, to show that plaintiff did not intend to fully relinquish her life estate. Because the trial court’s assessment of the purpose for admitting the challenged evidence is supported by the record, we agree that the evidence is not by definition hearsay and, therefore, was properly admissible.

Defendants next argue that the trial court erred when it refused to allow defendant Walter Moore to testify at trial regarding the parties’ intent and understanding of a settlement reached in an earlier action for maintenance of the property, in which it was agreed that plaintiff would retain a life estate in a portion of the property. Defendants assert that this testimony would have shown that the parties agreed to “a different life estate to the property other than what was in the land contract,” and was admissible under MRE 801(d)(2), MRE 803(3), and MRE 613(b). The trial court, however, refused to allow the testimony, stating that it called for a legal conclusion that the witness was not qualified to make and was not relevant because it was not helpful to an

interpretation of the document at issue. We find no abuse of discretion in the trial court's decision to exclude such evidence. *Lewis, supra*.

Even if the evidence was admissible under the rules cited by defendant, the trial court properly excluded the testimony as irrelevant. Under MRE 402 only relevant evidence is admissible. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Defendants do not dispute that they agreed at the settlement to allow plaintiff to retain a life estate in a portion of the property. Therefore, whether the parties' intended or otherwise believed this to be an estate separate from that granted in the land contract had no bearing on whether reformation was appropriate. *Id.*; see also *Titsworth, supra*.

Defendants next argue that the trial court erred when it allowed plaintiff to be questioned on direct examination by use of leading questions. We do not agree. A trial court's decision to allow leading questions is reviewed for an abuse of discretion. *Dehring v Northern Michigan Exploration Co, Inc*, 104 Mich App 300, 318-319; 304 NW2d 560 (1981).

In *In re Susser Estate*, 254 Mich App 232, 239; 657 NW2d 147 (2002), this Court addressed whether the trial court erred in allowing an elderly witness to be questioned using leading questions during direct examination:

Initially, we note that a trial court may allow a fair amount of leeway in asking questions of elderly and infirm witnesses, see, e.g., *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001), and, in this case, petitioner's questioning of June was no more leading than necessary given the age and physical condition of the witness. Accordingly, we find no abuse of discretion in the trial court's decision to permit the use of leading questions. [(Footnote omitted).]

In the present case, plaintiff was 91 years old at the time of trial and testified from counsel's table because she was physically unable to move to the witness stand. Although plaintiff answered questions regarding where she lived and to whom she sold the property without issue, she had some difficulty with more complex questions.

An abuse of discretion occurs when "an unprejudiced person, considering the facts on which the trial court acted, would say that there is no justification or excuse for the ruling made." *Roulston v Tendercare (Michigan), Inc*, 239 Mich App 270, 282; 608 NW2d 525 (2000). Applying this standard to the present case, we find no abuse of the trial court's discretion to allow plaintiff to be questioned through the use of leading questions. *In re Susser Estate, supra*.

Defendants' final argument on appeal is that the trial court erred when it allowed parol evidence to contradict the clear and unambiguous language of the deed. Again, we disagree.

With regard to the use of parol evidence to reform a deed that did not conform to the intent of the parties, our Supreme Court stated the following in *Scott v Grow*, 301 Mich 226, 239-240; 3 NW2d 254 (1942):

Parol evidence would be admissible, not to vary the terms of the deed, but to show the alleged mutual mistake and the true intention of the parties. In *Clark v Johnson*, 214 Mich 577, 581[-582; 183 NW 41, 43 (1921)], we said:

“It is elementary that when, because of a mistake in fact, an instrument does not express the agreed intention of the parties, equity will correct such mistake unless the rights of third parties intervene. As applied to the allegations in plaintiffs’ bill of complaint, the rule is thus stated in 34 Cyc, p 910:

‘Wherever an instrument is drawn with the intention of carrying into execution an agreement previously made, but which by mistake of the draftsman or scrivener, either as to law or fact, does not fulfill the intention, but violates it, there is ground to correct the mistake by reforming the instrument.’

Whether or not such a mistake was made is a subject of inquiry open to parol testimony. *Labranche v Perron*, 209 Mich 239[; 176 NW 438 (1920)], and cases therein cited.

Again, defendants do not dispute that the parties agreed that plaintiff would retain a life estate in a portion of the property. Therefore, the deed does not reflect the intention of the parties and, based on the holding in *Scott, supra*, and the cases cited therein, parol evidence was admissible to show such fact. The trial court did not, therefore, abuse its discretion when it admitted evidence in that regard.

Affirmed.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey