

STATE OF MICHIGAN
COURT OF APPEALS

JEANETTE MEYER,

Plaintiff/Counter Defendant-
Appellant,

v

ESTATE OF CHARLES BROCK,

Defendant/Counter Plaintiff-
Appellee.

UNPUBLISHED
December 28, 2006

No. 263261
Livingston Circuit Court
LC No. 01-018788-CH

Before: Meter, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court’s order of no cause of action on her quiet title claim against defendant.¹ We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On March 1, 1994, a quit claim deed was witnessed and notarized that purported to convey to defendant a one-half interest in a parcel of property owned by plaintiff. Plaintiff contended at trial that she never signed the deed and had no intention of ever conveying an interest in the property to defendant.

On appeal, plaintiff claims the lower court erred in finding that her purported signature was not forged and in holding for defendant based on this finding. We disagree.

We review a trial court’s findings of fact for clear error. *Westlaw Transport, Inc v Public Service Comm*, 255 Mich App 589, 611; 662 NW2d 784 (2003). An action to quiet title is an equitable action; therefore, we review the lower court’s holding de novo. *Killips v Manisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

¹ Defendant Charles Brock died during the course of the proceedings. His estate was substituted as defendant in this case. For ease of reference, the term “defendant” will be used interchangeably to refer to both Charles Brock and his estate.

A trial court's finding of fact is clearly erroneous "where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003). When undertaking this review, we grant deference to the lower court's findings. *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 222; 707 NW2d 353 (2005). Moreover, we give deference "to the trial court's superior ability to judge the credibility of the witnesses who appeared before it." *Rellinger v Bremmeyer*, 180 Mich App 661, 665; 448 NW2d 49 (1989).

In this case, the trial court did not clearly err in finding that plaintiff's signature was not forged. Plaintiff testified she had not signed the quit claim deed at issue and had never intended to give defendant an interest in the disputed property. Moreover, plaintiff entered into evidence the report of a handwriting expert who concluded that the signature on the quit claim deed was not plaintiff's. However, the trial court considered a good deal of evidence to the contrary. First, there was the testimony of three current and former bank employees who witnessed and notarized the quit claim deed. Although each woman admitted she did not have a specific recollection of the date the deed was signed, all testified they would not have signed or notarized the deed if they had not seen plaintiff sign it. The trial court found the testimony of these witnesses the most "impressive," reasoning that they had little to no reason to lie. Granting deference to the lower court's superior ability to assess the credibility of the witnesses, *Rellinger, supra*, 665, we do not find that the trial court clearly erred in finding them to be the most credible.

Moreover, after a thorough review of the record, we are not left with a definite and firm conviction that the trial court erred in holding for defendant. Although the trial court appears to have given the most weight to the evidence presented by the three bank employees, it did not rest its determination entirely on their testimony. The court also had before it evidence that plaintiff and defendant had been in a personal and perhaps professional relationship for 14 years. In addition, there was evidence that plaintiff had deeded other property to defendant in the past, and that defendant had constructed a pole barn on the property in dispute in this case. Finally, the court had before it an "Affidavit for Homestead Exemption from Some School Property Taxes" that was signed and dated by plaintiff. The Affidavit stated that plaintiff and defendant were co-owners of the disputed property, and plaintiff did not deny she had signed it the day before the quit claim deed giving defendant a one-half interest in the same property had been witnessed and notarized. Based on this evidence, and giving deference to the lower court, we are not left with a definite and firm conviction the lower court made a mistake in this case.

Plaintiff argues that the fact that the defense did not proffer a handwriting expert indicates that another expert would come to the same conclusion as plaintiff's expert. However, the record does not support plaintiff's contention and plaintiff points to no specific evidence or supporting legal authority for her contentions. We have often noted that "[a] party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *In re Coe Trusts*, 233 Mich App 525, 536-537; 593 NW2d 190 (1999). Therefore, we need not address an argument that plaintiff has given only cursory consideration. *Meagher v Wayne State Univ*, 222 Mich App 700, 716; 565 NW2d 401 (1997).

Finally, plaintiff contends that Michigan law requires that the date of the Indenture by the grantor of a deed to be the date of the acknowledgement by the notary, and urges us to consider

the issue as one of first impression. We find that plaintiff has not preserved this issue for appellate review.

Generally, an issue is not properly preserved if it is not raised before and addressed and decided by the trial court. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). “The purpose of the appellate preservation requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice.” *People v Mayfield*, 221 Mich App 656, 660; 562 NW2d 272 (1997). However, appellate consideration of an issue raised before the trial court but not specifically decided by the trial court is not precluded. *Pro-Staffers, Inc v Premier Mfg Support Services, Inc*, 252 Mich App 318, 324; 651 NW2d 811 (2002). Specifically, appellate review may be granted if consideration of the issue is necessary to a proper determination of the case, or if the question is one of law concerning which the necessary facts have been presented. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002). In addition, an exception to the general rule of non-preservation exists if it is necessary to prevent a miscarriage of justice. *People v Snow*, 386 Mich 586, 591; 194 NW2d 314 (1972).

In this case, appellate review of this issue is inappropriate. Plaintiff did not brief this issue for the lower court. The only mention plaintiff made of the issue at trial was during rebuttal closing argument when plaintiff’s counsel mused:

The other curious thing is I have never seen a deed, and I don’t think the Court has — and this is going back in years — where the indenture date is different than the notary date because the indenture date is the date you sign it. The notary is to be saying (sic) that you signed it on that date not later, which would in itself shows (sic) us that very possibly the witnesses didn’t recall. Long time ago. One said I can’t remember. That maybe it was done, as we suspect it was, without casting guilt on those employees which I certainly will not do.

The trial court did not specifically address the issue and did not base its holding for defendant on a determination that the date of indenture need not be the date of notarization. Rather, the lower court relied on the evidence before it at trial — especially the testimony of the three bank employees — as discussed *supra*. Because plaintiff failed to present any discussion regarding the basis of the trial court’s decision as it relates to this issue and did not cite supporting authority with respect to this claim, plaintiff’s argument is not properly before us. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Moreover, resolving the issue is not necessary to a proper resolution of the case, nor is this an issue of law for which the necessary facts have been presented to us. As discussed above, there was more than enough evidence before this Court to affirm the lower court’s decision. In addition, because plaintiff has failed to present legal authority or factual basis to this Court in support of its claims, the facts necessary to resolve this issue are not before us. Plaintiff may not merely announce a position on an issue and leave it to this Court to discover and rationalize the basis for the claim. *In re Coe Trusts*, *supra*, 536-537. Consequently, the issue whether the dates of indenture and notarization must be the same is waived so we need not address it.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis