

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CATHERINE BEHRENDTS,

Plaintiff/Counter Defendant-  
Appellant,

v

GARY A. STUPYRA, DANIEL R. LUCAS,  
JENNIFER LUCAS and DYAMI HUNT CAMP,  
LLC,

Defendants/Counter Plaintiffs-  
Appellees.

UNPUBLISHED  
October 9, 2012

No. 307551  
Newaygo Circuit Court  
LC No. 11-019637-CH

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Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this real property dispute, plaintiff Catherine Behrends appeals as of right the trial court's opinion and order granting summary disposition to defendants Gary Stupyra, Daniel Lucas, Jennifer Lucas, and Dyami Hunt Camp, LLC (collectively "Dyami"), and dismissing Behrends's quiet title action. We affirm.

**I. FACTS**

Behrends and Dyami own parcels of land that are in close proximity to each other. This action stems from a 2007 judgment that resulted from prior litigation between the parties concerning "Parcel B." At that time, Parcel B was titled only in the names of Stupyra and Lucas. In the first suit, the trial court quieted title of Parcel B to Stupyra and Lucas, and granted Behrends an appurtenant easement across it. The trial court also granted Behrends "a 'first right of refusal' to purchase Parcel B, at market value, in the event Defendant [Stupyra] and Daniel R. Lucas effect an intention to sell any portion of Parcel B[.]" The trial court further granted Stupyra, Lucas, and six other members of their recreational hunt club an in-gross foot easement. The trial court later extinguished the foot easement after Behrends purchased it from the club. Finally, the trial court ordered Stupyra and Lucas to sell Behrends a "buffer parcel," and that her possession of the buffer parcel was to not be disturbed by "Daniel R. Lucas, Jennifer Lucas, and Gary A. Stupyra, their successors, assigns, agents, and club members."

In May 2010, Lucas and Stupyra executed a deed that quitclaimed their interest in Parcel B to Dyami, with a stated consideration of \$10. Dyami recorded the deed on May 18, 2010.

Behrends then filed a complaint that asserted that the deed was evidence of a sale, and thus it triggered her right of first refusal. Dyami responded that no sale occurred, that Dyami was merely Lucas and Stupyra's assignee, and that Lucas and Stupyra had only held the property in trust for the hunt club members' joint venture. Dyami further stated that original order clearly referenced the eight members of Dyami, and contemplated that Lucas and Stupyra might assign their interests in Parcel B. Dyami explained that Lucas and Stupyra were the only members on the title because they had been the only members to attend the closing. Dyami filed a counterclaim against Behrends for attorney fees, alleging that her claim was frivolous. Behrends amended her complaint against Dyami, also seeking attorney fees.

Both parties filed motions for summary disposition. Behrends asserted that Lucas and Stupyra sold Parcel B as matter of law, because Lucas and Stupyra transferred the property for consideration; thus, the deed triggered her right of first refusal. Dyami asserted that Lucas and Stupyra had not intended to sell the property because the members of Dyami were the eight original members of the hunt club, were referenced in the original order, and had all purchased the land equally. Dyami attached financial records to its motion, which showed that the club members contributed equally to purchase Parcel B. Dyami asserted that the stated \$10 consideration was merely a part of the quitclaim form deed from LegalZoom.com, and was never paid. Dyami submitted the affidavit of Sharon Baily of LegalZoom.com, in which she stated that all deeds from LegalZoom.com contain "standard \$10.00 considerations hardcoded into the form[.]" Finally, Dyami submitted a notice of assessment from the township assessor, which indicated that the township assessor did not consider the transfer to be a sale.

After hearing the motion, the trial court determined that only a sale or intent to sell would trigger Behrends's right of first refusal under the judgment. It reasoned that the quitclaim deed from Lucas and Stupyra to Dyami was not a sale, and did not show their intent to sell the property. The trial court further reasoned that Lucas and Stupyra had not intended to sell Parcel B because the financial records indicated that all Dyami's members contributed equally to its purchase, and thus all the transferees had an equitable interest in the property. The trial court concluded that the deed was not a sale and did not trigger Behrends's right to first refusal, and dismissed Behrends's claims. The trial court denied both parties' requests for attorney fees.

Behrends argues on appeal that (1) the trial court improperly granted summary disposition because it engaged in impermissible judicial construction of the first judgment and used parol evidence to reach its conclusions, and (2) the trial court improperly determined that Dyami was an equitable owner of the property.

## II. ANALYSIS

### A. STANDARD OF REVIEW

This Court reviews de novo a trial court's ruling on a motion for summary disposition.<sup>1</sup> As an initial matter, we note that the trial court did not clearly state which subdivision of MCR

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<sup>1</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

2.116(C) it granted summary disposition under. However, the trial court's ruling clearly relied on the documents that Dyami attached to its motion for summary disposition. When the trial court relies on documents outside the pleadings, we review the motion as though it were granted under MCR 2.116(C)(10).<sup>2</sup>

Summary disposition is appropriate under MCR 2.116(C)(10) if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.<sup>3</sup> A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue.<sup>4</sup> The moving party has the burden to show issues on which there is no genuine issue of material fact; then, the nonmoving party must show that there is indeed an issue.<sup>5</sup>

Courts should interpret the terms in a trial court's judgment in the same manner as courts interpret contracts.<sup>6</sup> This Court reviews de novo issues of contractual interpretation.<sup>7</sup>

## B. LEGAL STANDARDS

The primary goal of contractual interpretation is to determine the parties' intent, as evidenced by the contract's language.<sup>8</sup> If the contract's language is not ambiguous, courts must enforce its terms as written.<sup>9</sup> Similarly, a deed's language is generally the best evidence of the parties' intent, and we will not allow a party to contradict that language with parol evidence.<sup>10</sup> However, the parol evidence rule does not apply to a deed's recital of consideration.<sup>11</sup> The recital does not prove that a property was actually sold for value.<sup>12</sup>

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<sup>2</sup> *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007).

<sup>3</sup> MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

<sup>4</sup> *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

<sup>5</sup> MCR 2.116(G)(4); *Maiden*, 461 Mich at 120-121.

<sup>6</sup> *Smith v Smith*, 278 Mich App 198, 200; 748 NW2d 258 (2008); *Beason v Beason*, 435 Mich 791, 799; 460 NW2d 207 (1990).

<sup>7</sup> *Trader v Comerica Bank*, 293 Mich App 210, 215; 809 NW2d 429 (2011); *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003).

<sup>8</sup> *Trader*, 293 Mich App at 215-216.

<sup>9</sup> *Id.* at 216.

<sup>10</sup> *In re Rudell Estate*, 286 Mich App 391, 409; 780 NW2d 884 (2009).

<sup>11</sup> *Id.* at 407; *Gardner v Gardner*, 106 Mich 18, 21; 63 NW 988 (1895).

<sup>12</sup> *In re Rudell Estate*, 286 Mich App at 406, 408; *Gardner*, 106 Mich at 21.

### C. ANALYSIS

Behrends argues that the trial court improperly construed the deed to include unnecessary restrictions. We disagree. A “sale” is “[t]he transfer of property or title *for a price*.”<sup>13</sup> Generally, “[t]he right of first refusal simply gives an adjoining landowner the right to take the seller’s interest at the same price the seller could secure from another purchaser *whenever the seller desires to sell*.”<sup>14</sup> The court’s original judgment grants Behrends “a ‘first right of refusal’ to purchase Parcel B, at market value, in the event Defendant [Stupyra] and Daniel R. Lucas effect an intention to sell any portion of Parcel B,” and is thus by its language conditioned on an actual sale or intent to sell. Therefore, we conclude that the trial court did not engage in improper judicial construction when it considered whether there was a genuine issue of material fact on the intent to sell the property. This consideration was directly pertinent to whether the quitclaim deed triggered Behrends’s right of first refusal.

We also conclude that the trial court did not err when it considered parol evidence to determine whether there was a genuine issue of material fact concerning a sale. A deed’s recital of consideration does not prove that a property was actually sold for value, and the trial court can use other evidence to determine whether a transfer was a sale or some other transfer.<sup>15</sup> In this case, although the deed indicates \$10 was paid, Dyami presented documentary evidence that Dyami never paid the \$10 consideration. Dyami also presented further documentary evidence of the parties’ intent not to sell the property—namely that, although Stupyra and Lucas transferred the title of the property, the property remained under the control of the same eight people that were mentioned in the original judgment. Thus, Dyami presented evidence that there was no genuine issue of material fact whether the quitclaim deed triggered Behrends’s right of first refusal. Behrends presented no evidence that Lucas and Stupyra actually transferred Parcel B for a price, or intended to sell Parcel B. We conclude that the trial court did not err when it determined that the deed did not trigger Behrends’s right of first refusal because there was no genuine issue whether Lucas and Stupyra sold or intended to sell the property.

Behrends also asserts that the trial court erred when it reasoned that Dyami had an equitable interest in the property because, although title was in two members’ names, all members contributed equally to its purchase. We conclude that Behrends has abandoned this issue. We need not consider an issue if it was not the basis of the trial court’s decision.<sup>16</sup> Behrends’s argument entirely pertains to whether principles of equitable estoppel are applicable when the statute of frauds also applies. However, the trial court reasoned that Dyami had an equitable interest in the property because of their monetary contributions and status as a joint venture—not because of any theory of equitable estoppel. Thus, because Behrends has not addressed the basis of the trial court’s decision, we will not consider the issue.

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<sup>13</sup> Black’s Law Dictionary (9th ed) (emphasis supplied).

<sup>14</sup> *Randolph v Reisig*, 272 Mich App 331, 339 n 3; 727 NW2d 388 (2006) (emphasis supplied).

<sup>15</sup> *In re Rudell Estate*, 286 Mich App at 406, 409-410; *Gardner*, 106 Mich at 21.

<sup>16</sup> *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 381; 689 NW2d 145 (2004).

Further, that Dyami had an equitable interest in the property was merely one of several factors the trial court used to determine that there was no genuine issue of material fact. Even had the trial court erred on this point, we may not reverse an order on the basis of a harmless error.<sup>17</sup> Dyami presented the documentary evidence above to establish that there was no genuine issue of material fact. Behrends did not provide any evidence that there was an issue of fact concerning whether Lucas and Stupyra actually sold the property to Dyami, and thus did not meet her burden under the court rule.<sup>18</sup> Therefore, we conclude that Behrends has not shown that error warrants reversal on this issue.

Dyami asserts that the trial court erred in dismissing its counter-complaint for sanctions. Dyami did not file a cross-appeal. A party must file a cross-appeal for this court to render a decision more favorable to the appellee than that reached by the trial court.<sup>19</sup> We will not consider the appellee's assertion that the trial court erred in denying it fees and costs when the appellee has failed to cross-appeal that order.<sup>20</sup> Therefore, we will not consider this issue.

We affirm.

/s/ Henry William Saad  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly

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<sup>17</sup> MCR 2.613(A); see *Barnett v Hidalgo*, 478 Mich 151, 174-175; 732 NW2d 472 (2007).

<sup>18</sup> MCR 2.116(G)(4); *Maiden*, 461 Mich at 120-121.

<sup>19</sup> *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 221; 625 NW2d 93 (2000); see MCR 7.207.

<sup>20</sup> *Mossing v Demlow Products*, 287 Mich App 87, 94; 782 NW2d 780 (2010).