STATE OF MICHIGAN

COURT OF APPEALS

CHARLES H. LOCKHART, SR.,

Plaintiff-Appellant,

v

CHARLES H. LOCKHART, JR. and ROBIN M. GOULD,

Defendants-Appellees.

UNPUBLISHED
November 5, 2009

No. 289654
Schoolcraft Circuit Court
LC No. 08-004019-CH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant Gould. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The case concerns plaintiff's action to quiet title in a 13-acre parcel. At the time defendants divorced, plaintiff held a quitclaim deed to the parcel in his name, but the family court judge instead divided the parcel, awarding three acres including the house to plaintiff's son ("Lockhart, Jr.") and ten acres to Gould. After the judgment of divorce entered, plaintiff filed this suit, but the trial court held it had no authority to vacate or amend the judgment of divorce. That is the decision plaintiff here appeals.

In 1982, Lockhart, Jr. and his then-wife, Gould, bought the property on a land contract; it was paid off some time around 1989, and the deed was given only in Lockhart, Jr.'s name, even though they were married at the time. The deed was not recorded. The property included a house and a trailer home. Plaintiff and his wife lived in the house and Lockhart, Jr. and Gould lived in the trailer until 1985, when they moved off the premises and the trailer was sold. According to plaintiff, from 1982 to 1985 he paid half the land contract payments, taxes, and upkeep, and beginning in 1985 he made all the payments.

In 2005, plaintiff brought suit against Lockhart, Jr. and Gould to enforce an alleged oral agreement that made plaintiff fifty percent owner of the property. That case was dismissed without prejudice. Gould filed for divorce in 2006. On March 22, 2007, Lockhart, Jr. gave plaintiff a quitclaim deed to the property. Plaintiff recorded the deed the same day.

On July 12, 2007, the family court judge held a hearing and issued a final judgment. Gould was represented, Lockhart, Jr. was not, and plaintiff apparently was not present. In going over the marital property, the court noted that, not counting the real property, Gould was ending up with about $8,700 and Lockhart, Jr. about $22,000. Gould did not want the house and did not want to evict plaintiff and his wife from the house, but proposed splitting the property into one parcel of about three and one-half acres including the house, and one ten-acre parcel. Alternatively, Gould was willing to have her half-interest in the property be bought out. Lockhart, Jr. argued that he and Gould had agreed to let his parents live there for the rest of their lives, but Gould's attorney pointed out that he had already admitted it was marital property. She then argued that the family court had the authority to undo the conveyance from Lockhart, Jr. to plaintiff because it was done fraudulently to deprive Gould of marital property. The family court agreed, declaring the quitclaim deed void and splitting the property into two parcels as proposed by Gould. Plaintiff filed a motion to intervene on July 25, 2007, but that was denied, although the judgment was amended to give plaintiff the right of first refusal on both parcels. Plaintiff did not appeal this ruling, nor did either of the parties to the divorce appeal the divorce judgment.

This quiet title action, filed by plaintiff, followed. Plaintiff alleged that his property was taken without due process in the divorce proceeding because he was never allowed to present his side of the story. He also alleged that if the quitclaim deed was fraudulently conveyed then defendants owed him the money he paid for the land contract and taxes. Gould responded, asserting as an affirmative defense that any oral agreement between plaintiff and Lockhart, Jr. to convey the property violated the statute of frauds. Gould also raised as defenses expiration of the statute of limitations, laches, lack of consideration, and that the complaint was barred by res judicata because of the judgment of divorce.

The trial court denied plaintiff's motion for summary disposition and granted Gould summary disposition under MCR 2.116(I)(2). Lockhart, Jr. was present but did not file an appearance or any other pleading, and was held in default. The court gave its reasons from the bench during the hearing. It stated it did not have the authority to undo the divorce judgment, saying, "Too much water has gone over the dam." The court noted that plaintiff might have some other causes of action, such as accounting or adverse possession, but that was not before the court at that time.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Decisions in quiet title actions are also reviewed de novo, as are the trial court's legal conclusions; the trial court's factual findings are reviewed for clear error. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996); *Ambs v Kalamazoo Co Road Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003).

The trial court did not err in deciding in favor of Gould. The divorce judgment clearly awarded her a ten-acre parcel and awarded Lockhart, Jr. the remainder, including the house. The trial court did not have the authority to vacate, correct, or set aside that judgment. MCR 2.613(B). Plaintiff's remedy was to appeal the family court's denial of his motion to intervene or to pursue Lockhart, Jr. for breaching their alleged agreement by failing to tender a valid deed. *Yedinak v Yedinak*, 383 Mich 409, 414-415; 175 NW2d 706 (1970).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens