STATE OF MICHIGAN

COURT OF APPEALS

JAMES H. CUMMINGS and JOYCE M. CUMMINGS,

Plaintiffs–Appellees

v

DUANE H. CUMMINGS, Individually and as Trustee for the DUANE H. CUMMINGS TRUST,

Defendant–Appellant,

and

DEPARTMENT OF NATURAL RESOURCES,

Defendant.

UNPUBLISHED

July 19, 1996

No. 179850
LC No. 92-012080

Before: Neff, P.J., and Fitzgerald and C.A. Nelson,* JJ.

PER CURIAM.

Defendant Duane H. Cummings, individually and as the trustee of the Duane H. Cummings Trust, appeals as of right the bench decision declaring plaintiffs the owners of certain real property located in Atlas, Michigan. We affirm in part and remand.

Horace and Nina Cummings, now deceased, at one time owned all of the farmland property at issue in this case. The Cummings had five sons, one of which is plaintiff James Cummings. In either 1976 or 1977, Horace agreed to allow James to build a retirement house on the property. According to James, he was to receive an acre of property from Horace if James could exempt the property that was under the authority of the Department of Natural Resources. Instead of requesting the exemption of a full acre, James requested and received an exemption for only a half-acre of property. James constructed a house on this property.

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* Circuit judge, sitting on the Court of Appeals by assignment.

In 1979, Horace's attorney, Dennis Karas, drafted deeds in the names of each of Horace's sons, with the exception of Duane, for four one-acre parcels of land located on Horace's property. The deed intended for James' included the half-acre parcel upon which James had constructed his home. The deeds were drafted and signed by Horace and Nina at Karas' office. James was the only son present at the signing of the deeds. It was disputed at trial whether Horace delivered the deed to James at that time. It was undisputed that Horace kept physical possession of the deeds.

In 1988, Horace transferred ownership of two pieces of the property known as the "vacant lot" and the "farmhouse lot" to his grandson, Jimmy. In 1990, Horace transferred all of the remaining property owned by him to a revocable trust in which Duane was named trustee.

In 1992, plaintiffs filed this cause of action seeking delivery of the deed to the one-acre parcel of property. Plaintiffs alleged that the deed had been delivered to James by Horace in 1979, but that Horace retained possession of the deed. Following a bench trial, the trial court concluded, based on Karas' testimony, that Horace had a present intent to deliver the 1979 deed to James. The trial court acknowledged that portions of the trust property behind and to the east of James' property may be inaccessible from Dutch Road, which ran north and south along the property. The trial court retained jurisdiction over James' one-acre parcel so that it could entertain a request by the trust for a necessary easement over James' property. The trial judge heard arguments from counsel concerning an easement and visited the property before concluding that an easement over James' property was impractical due to improvements and that the best solution to any accessibility problems would be solved by negotiation of the parties.

Defendant first claims that the evidence was insufficient to support the trial court's finding that Horace possessed an intent to deliver the 1979 deed to James. In reviewing the sufficiency of the evidence in a bench trial, this court must view the evidence in a light most favorable to plaintiffs and give them the benefit of every reasonable inference which can be drawn from the evidence. *Mull v Equitable Life Assurance Society of the United States*, 196 Mich App 411, 421; 493 NW2d 447 (1992), aff'd 444 Mich 508 (1994).

Delivery of a deed is required in order to pass title in real property. *Resh v Fox*, 365 Mich 288, 291; 112 NW2d 486 (1961) Delivery requires a present intent to convey an interest in the land. *Id.* Physical delivery of the deed to the grantee raises a presumption of intent to pass title which may be rebutted with other evidence. *Id.* at 291-292. The object of the delivery requirement is to indicate an intent by the grantor to give effect to the instrument. *McMahon v Dorsey*, 353 Mich 623, 627; 91 NW2d 893 (1958). In cases where the grantor makes a voluntary conveyance of land to grantees who are the natural subject of the grantee's bounty, Michigan courts are "strongly inclined" to carry out the intentions of the grantor unless to do so would be contrary to very convincing evidence or contrary to well-established legal principles. *Id.* at 626-627. A grantor's intent may be established by the statements of the grantor. *McMahon*, *supra*.

Viewed in a light most favorable to the plaintiffs, the evidence established that Horace possessed a present intent to deliver the 1979 deed to James. Not only was it Karas' understanding that Horace intended to deliver the deed to James in 1979, Horace physically handed the deed to James, which evidenced a present intent by Horace to deliver the deed. Therefore, the evidence was sufficient to support the trial court's finding that Horace intended to deliver the deed to James.

Defendant next claims that the trial court committed error when it failed to grant an easement over the James' property. Defendant claimed the remaining rear portion of the estate property was landlocked. However, the issue was not actually decided by the trial court and the parties failed to establish a record that would allow this Court to review the issue.[1] Consequently, this matter must be remanded to the trial court so that a record may be developed regarding the propriety of an easement over plaintiff's land.

Affirmed in part and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson

[1] The trial court apparently decided to discontinue jurisdiction over the property after a personal visit to the property and representations made by counsel during a hearing. The trial court opined that it would be impractical to build a road over James' property because of improvements to the land, but stated that it should be up to the parties to negotiate a solution.