

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Ronald Blausey, et al.

Court of Appeals No. OT-13-011

Appellants/Cross-Appellees

Trial Court No. 10-CV-279H

v.

Richard Van Ness, et al.

DECISION AND JUDGMENT

Appellees/Cross-Appellants

Decided: December 20, 2013

* * * * *

Gary O. Sommer, Kevin A. Heban, R. Kent Murphree and
John P. Lewandowski, for appellants/cross-appellees.

Alan R. McKean and Martin D. Carrigan, for appellees/cross-
appellants.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas, which granted summary judgment to appellees on the underlying unjust enrichment and constructive trust claims set forth in appellants' complaint. On cross-appeal, appellees/cross appellants restated their specific defenses against the complaint.

Although the summary judgment ruling was in their favor, the specific assertions underlying the cross-assignments of error were not referenced, incorporated or subsumed into the disputed summary judgment ruling. For the reasons set forth below, this court affirms the judgment, in part, reverses the judgment, in part, and denies the cross-appeal as not properly before this court.

{¶ 2} Appellants/cross-appellees, Ronald and Jean Blausey, set forth the following assignment of error:

No. 1. The Trial Court erred by granting appellees/cross-appellants' Motion for Summary Judgment.

{¶ 3} On cross-appeal, appellees/cross-appellants, Richard and Verna Van Ness, set forth the following six cross-assignments of error:

1. THE LOWER COURT ERRED BY NOT GRANTING APPELLEES/CROSS-APPELLANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUND OF RES JUDICATA.

2. THE LOWER COURT ERRED BY NOT GRANTING APPELLEES/CROSS-APPELLANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUND THAT THE STATUTE OF LIMITATIONS PRECLUDED THE APPELLANT'S CLAIMS.

3. THE LOWER COURT ERRED BY NOT GRANTING APPELLEES/CROSS-APPELLANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUND OF LACK OF FRAUD.

4. THE LOWER COURT ERRED BY NOT GRANTING APPELLEES/CROSS-APPELLANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUND OF LACK OF STANDING.

5. THE LOWER COURT ERRED BY NOT GRANTING APPELLEES/CROSS-APPELLANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUND OF PUBLIC NOTICE AND A LEGAL REMEDY EXISTED.

6. THE LOWER COURT ERRED BY NOT GRANTING APPELLEES/CROSS-APPELLANTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUND OF CONTRACT CONSTRUCTION.

{¶ 4} We note at the outset that the underlying facts and circumstances surrounding this case are exceptionally voluminous given the protracted history of this case. Accordingly, we will confine our recitation of the facts in this matter to those that are most relevant in the context of the summary judgment ruling presently before us on appeal.

{¶ 5} This case stems from an ongoing dispute regarding the transfer of a valuable 80-acre parcel of real estate located in Graytown, Ohio, to appellees subsequent to the June 16, 2008 death of Verna Blausey. The disputed property transfer occurred pursuant to a 2001 transfer on death deed naming appellees as the parties to whom the parcel would automatically transfer upon the passing of the decedent. The crux of the underlying dispute arises from the unequivocal falling out that occurred between

decedent and appellees prior to her death. Decedent became convinced that appellees had been talking adversely about her behind her back and she was upset after appellees deposited a check of decedent without notifying decedent they had done so. These events triggered a falling out.

{¶ 6} Subsequent to the falling out, decedent decisively revoked her previously executed last will and testament and power of attorney estate documents in favor of appellees and executed a new last will and testament and power of attorney estate documents in favor of appellants, Ronald and Jean Blausey. Decedent later passed away with no surviving spouse and no children. Appellants are related to decedent by marriage. Appellees were neighbors and former friends of decedent.

{¶ 7} Despite the falling out with appellees prior to her death which prompted her to convey to her attorney during an in-person meeting, occurring while decedent was hospitalized pending surgery, that she wanted appellees removed from her will and other estate documents and that she wanted the Blauseys to, “get everything,” (culminating in the execution of new estate documents removing appellees from the equation), a new transfer of deed on death document in favor of the Blauseys to supersede the existing transfer of deed on death in favor of appellees on the Graytown acreage was not prepared or executed. Accordingly, upon her death, decedent’s 80-acre parcel in Graytown, the sole subject of the transfer of deed on death in favor of appellees, did culminate in title to the property being transferred from decedent directly to appellees.

{¶ 8} Whether or not the transfer of the Graytown acreage to appellees under the facts and circumstances of this case is subject to any compelling and legitimate legal basis through which that disputed property transfer could be modified or reversed represents the entire underlying basis that is driving the contentious, ongoing litigation between these parties.

{¶ 9} In 2009, appellants filed a complaint against appellees to quiet title to the Graytown acreage. On March 5, 2010, that complaint was dismissed due to a lack of standing. On April 12, 2010, appellants filed a second complaint against appellees. The 2010 complaint upon which this appeal is based set forth allegations of unjust enrichment and constructive trust against appellees with respect to their obtaining title and sole beneficial interest in the Graytown acreage.

{¶ 10} On May 10, 2010, appellees filed a Civ.R. 12(B)(6) motion to dismiss the complaint against them on res judicata grounds. It was granted. On September 16, 2011, this court reversed the disputed Civ.R. 12(B)(6) dismissal on the basis that res judicata was not a proper basis of the dismissal. The 2010 complaint was remanded to the trial court for further proceedings. *Blausey v. Van Ness*, 6th Dist. Ottawa No. OT-10-041, 2011-Ohio-4680.

{¶ 11} Upon remand to the trial court, the case did not proceed to trial. On December 15, 2011, appellees filed for summary judgment. On January 3, 2012, appellants filed a brief in opposition. On August 15, 2012, the trial court granted summary judgment to appellees determining in pertinent part that, "Plaintiffs cannot meet

the first element of unjust enrichment. Further, since the unjust enrichment claim fails, the claim for a constructive trust must also fail.” Although appellees argued the six defenses which constitute their current cross-assignments during summary judgment briefing, there is no indicia that the trial court incorporated or ruled upon those specific arguments in the course of reaching the disputed summary judgment decision. This appeal ensued.

{¶ 12} In their first assignment of error, appellants contend that the trial court erred in granting summary judgment to appellees on the unjust enrichment and constructive trust claims. Appellate review of summary judgment determinations is conducted on a de novo basis, applying the same standard as that utilized by the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment shall be granted when there remains no genuine issue of material fact and, when considering the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 13} Pending before this court on appeal is a disputed August 15, 2012 summary judgment ruling finding appellees entitled to judgment as a matter of law on appellants’ unjust enrichment and constructive trust claims regarding title to the Graytown acreage having been transferred to appellees upon decedent’s death despite decedent’s falling out with appellees and her execution of a new last will and testament and power of attorney

before passing away naming appellants in lieu of appellees. These confines establish the proper scope of review by this court.

{¶ 14} With respect to the unjust enrichment claim, it is well-established in Ohio that the elements of unjust enrichment require the showing of a benefit conferred by a plaintiff upon a defendant, knowledge by the defendant of the benefit, and retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Hammill Mfg. Co. v. Park-Ohio Industries, Inc.*, 6th Dist. Lucas. No. L-12-1121, 2013-Ohio-1476.

{¶ 15} With respect to the constructive trust claim, it is well-established in Ohio that in order to determine whether a constructive trust should be deemed to exist it must be determined whether the party against whom the constructive trust is sought, “in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice.” *Est. of Cowling v. Est. of Cowling*, 109 Ohio St.3d 276, 2006-Ohio-2418, 847 N.E.2d 405, ¶ 18.

{¶ 16} We have carefully reviewed and considered this matter. The record clearly reflects pursuant to an affidavit submitted by counsel for the decedent conceding an oversight in his handling of the matter that the disputed deed transfer occurred in the context of several critical underlying facts. The record reflects that the decedent indicated to her attorney while she was hospitalized for surgery after her falling out with appellees that she wanted appellees out of her will and other estate documents and

wanted the Blauseys to “get everything.” The record reflects that in accordance with this directive from his client, counsel for the decedent prepared a new last will and testament and power of attorney removing appellees and substituting the Blauseys. However, the record further shows that a new transfer of deed upon death covering the Graytown acreage deleting appellees and naming the Blauseys was mistakenly not prepared and executed. Lastly, the record reflects no actions by appellees subsequent to their falling out with decedent demonstrating any intent by appellees to facilitate the disputed outcome in their favor regarding the Graytown acreage.

{¶ 17} All of the aforementioned events taken together demonstrate that it is conceivable that the transfer of title on death deed through which appellees took title to the disputed property remained in effect at the time of decedent’s death through oversight and mistake on the part of counsel for decedent rather than constituting a reflection that it somehow remained the intent of decedent for appellees to take title to the Graytown acreage on her death despite the falling out.

{¶ 18} Given these unique facts and circumstances of great relevance to the summary judgment ruling in favor of appellees on the unjust enrichment and constructive trust claims, we first find that reasonable minds can only conclude that there is nothing in the record that could constitute appellants conferring a benefit upon appellees in connection to this matter. As such, we find that portion of the summary judgment ruling finding in favor of appellees on the unjust enrichment claim to be proper. However, we further find that reasonable minds could differ as to whether given the very unique facts

and circumstances of this case, in which the decedent had a significant falling out with appellees prior to her death so as to declare her intent to her counsel that the Blauseys “get everything,” such that new estate documents were thereafter executed excluding appellees, and where there is accompanying compelling indicia in the record that appellees took title and legal rights and benefits to the Graytown acreage through an oversight by counsel for decedent in failing to prepare a new transfer of deed upon death in favor of the Blauseys on the Graytown acreage, appellees could be found to, in a way that is against equity and good conscience, hold and enjoy the legal rights to the Graytown acreage. As such, we find that portion of the summary judgment ruling finding in favor of appellees on the constructive trust claim to be improper.

{¶ 19} Based upon these findings, the summary judgment ruling is hereby affirmed, in part, and reversed, in part. As such, this case must be remanded to the trial court so that appellants’ remaining constructive trust claim against appellees may proceed before the trial court. Appellants’ sole assignment of error is found well-taken in part.

{¶ 20} With respect to appellees’ cross-assignments of error, we note that they track and are a recitation of the procedural defenses asserted by appellees in the course of this matter and argued by appellees in support of their summary judgment motion. Significantly, we note that the disputed summary judgment ruling that serves as the basis of the cross-assignments of error was granted in favor of appellees in its entirety. We further note that there is no indicia reflecting that any of the cross-assignment arguments were considered or ruled upon by the trial court in the course of the August 15, 2012

summary judgment ruling. Accordingly, upon remand to the trial court for litigation of the constructive trust claim, those additional arguments set forth as cross-assignments likewise remain pending before the trial court for potential determination in connection to the remaining constructive trust claim. We find the cross-assignments of error not properly before us in the instant matter and not well-taken.

{¶ 21} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is hereby affirmed in part, reversed in part, and remanded to the trial court for further proceedings consistent with this ruling. The cross-appeal is denied. Appellants and appellees are ordered to split the costs of this appeal equally pursuant to App.R. 24.

Judgment affirmed in part,
and reversed in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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