S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

SEYED HASSAN TEHRANISA,

Plaintiff-Appellant/Cross-Appellee

v

SEYED MOHSEN TEHRANISA,

Defendant-Appellee/Cross-Appellant

UNPUBLISHED
July 25, 2006

No. 267889
Oakland Circuit Court
LC No. 05-068490-CK

Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

PER CURIAM.

I. Facts and Procedural History

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10). Defendant cross-appeals, arguing plaintiff's claim is frivolous under MCL § 600.2591. We affirm the grant of defendant's summary disposition motion and deny defendant's cross-appeal.

Plaintiff and defendant are brothers, originally from Iran, now residing in Michigan. Their dispute concerns the estate of their younger brother, Seyed Majid Tehranisa, a/k/a/ Michael Teranisa (Michael), who was living in California until he died on April 30, 2003 of a heart attack at the age of 43. Michael's will, probated in California, left all of his estate to defendant and named defendant executor. Plaintiff asserts the estate is valued at about two million dollars, while defendant says it is closer to one million. Plaintiff challenges the validity of the will and alleges that Michael was unduly influenced by defendant, and further claims that Michael had indicated he would include plaintiff in a future will. Defendant asserts that Michael was completely estranged from plaintiff as a result of an ongoing argument about the disposition of their late father's estate, of which plaintiff was executor, and claims that Michael intentionally disinherited plaintiff.

Prior to the will being probated, plaintiff contacted two attorneys in California to assess his prospects in a will contest, and he claims that he and defendant made an agreement to split the estate equally in exchange for plaintiff's agreement not to pursue the proposed challenge. Defendant denies any such oral agreement was made. The parties' mother has provided an affidavit backing up defendant's claims, while their aunt has provided an affidavit backing up

plaintiff's claims.[1] Ghazaleh Rashad, a woman plaintiff asserts was Michael's fiancée but who defendant asserts was Michael's former girlfriend,[2] has sworn in a statement that Michael was unduly influenced by defendant and that he intended to change his will. Rashad is not mentioned in the probated will. The probated will was properly witnessed and executed in California on March 29, 2002. It was identical to the prior version, properly witnessed and executed in California on August 22, 2000, except that the 2002 will left everything to defendant, while the 2000 will devised a piece of real property to Jeannie T. Hoang, described in that will as Michael's fiancée.

Plaintiff asserts that after the time had expired during which he could have challenged the probate of Michael's will in a California state court, defendant told him he would not share the estate as promised. Plaintiff then filed the instant action in Michigan state court, claiming breach of contract, promissory estoppel, unjust enrichment, and misrepresentation, and requesting the court to establish a constructive trust, order an accounting of the estate's assets, and grant an injunction preventing defendant from taking any action with respect to the assets. Plaintiff also filed a motion for a temporary restraining order to prevent defendant from "transferring, selling, dissipating, or removing" any of the estate's assets; this motion was granted, and then the parties agreed to a preliminary injunction enjoining defendant from taking action with no less than $550,000 of the assets.

Defendant filed a motion for summary disposition under MCR 2.116(C)(8), arguing that plaintiff had failed to state a claim upon which relief could be granted because plaintiff had no standing to contest his brother's will in California, and therefore forbearing to bring such a contest was not legally valid or sufficient consideration for the alleged oral contract to split the estate. Defendant also claimed plaintiff's complaint was legally frivolous under MCR 2.114(E), (F). The trial court noted at the start of the hearing on defendant's motion that although the motion specified only MCR 2.116(C)(8), "it appears to be a (C)(10) motion as well."

While the trial court did consider documentary evidence and appeared to determine no genuine issues of material fact remained, the court also concluded that plaintiff's claim failed as a matter of law because plaintiff lacked standing to bring a will contest in California and therefore the alleged contract failed for lack of consideration. The trial court concluded the hearing on defendant's motion by stating:

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[1] We note that the affidavits of the mother, the aunt, and Ms. Rashad do not appear to meet the authentication requirements of MCL 600.2102. See *Apsey v Memorial Hospital*, ___ Mich App ___; ___ NW2d ___ (2005) slip op at 11-12 ("In other words, MCL 565.262 governs notarial acts, including the execution of affidavits, in general, to which MCL 600.2102 adds a special certification requirement when the affidavit is to be read, meaning officially received and considered, by the judiciary.")

[2] Rashad stated in her sworn statement: "Majid and I had a deep, personal, and close relationship. We spoke and saw each other often. In fact, Majid and I were deeply in love and we were seriously planning to get married in the near future."

> Now, on the face of it you would say that there's a lot of factual questions here that may beg granting of the summary disposition. I'm going to grant the summary disposition. Plaintiff has tried to raise every ghost that could possibly be raised. This is foolishness at its height. I think, in fact, it may in fact be frivolous, but I'm not going to go that far at this point in time.
>
> He didn't contest the will out there. He was not an heir at law. He had no right to expect anything. It's obvious from what occurred in connection with this his brother disinherited him, he didn't want to give him anything. And I'm not going to upset it.
>
> And so as far as I'm concerned, I'm going to let the California ruling on the probate stand. I think that we really have nothing here whatsoever to justify proceeding with this case and, therefore, will grant summary disposition for the defendant in this matter.

After brief responses from the parties, the trial court added, "[a]nd if it's pursued, . . . I will look at the frivolous section, just so we're quite clear. . . . And let the Court of Appeals decide that."

Plaintiff filed this appeal, arguing that summary disposition should not have been granted because there was sufficient consideration given to support the oral contract; because the trial court should not have used a (C)(10) standard when defendant filed the motion under (C)(8) only; and because the court did not provide any basis for dismissing plaintiff's alternative claims of promissory estoppel, unjust enrichment, and misrepresentation. Defendant cross-appealed, seeking a determination that plaintiff's claim is frivolous and costs and fees under MCL § 600.2591.

II. Standard of Review

This Court reviews summary disposition determinations de novo.[3] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and may only be granted if, after accepting as true and construing in the light most favorable to the non-moving party all well-pleaded factual allegations, the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* at 119 (citation omitted). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim, and may be granted only if, after reviewing all evidence in the light most favorable to the non-moving party, the court determines that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* at 119-120 (citation omitted). In deciding a (C)(10) motion the court

[3] Because the parties are Michigan residents and made their contract in Michigan, Michigan law applies to the contract, but because the will was probated in California, California law applies to the question of plaintiff's standing to bring a will contest.

considers all documentary evidence, while for a (C)(8) motion the court considers only the pleadings. *Id.*

III. Standing to Contest the Will in California

Plaintiff first argues the trial court erred in granting defendant's summary disposition motion because plaintiff demonstrated sufficient consideration to support the oral agreement to divide the estate.

The critical question is that of standing to bring a will contest. It is well settled that "legatees under a will, and persons having such an interest in the estate as to entitle them to contest the instrument, may make valid agreements to forbear a contest, and such contracts are favored by the law when made in good faith." *Sellers v Perry*, 191 Mich 619, 627; 158 NW 144 (1916). And a good faith promise to forbear contesting a will is sufficient consideration to support a contract. *Conklin v Conklin*, 165 Mich 571, 580; 131 NW 154 (1911). But it is also true that "a positive agreement to endeavor. . . to procure the probate of a will which [plaintiffs] believed, and had good reason to believe, was not entitled to probate, in order to secure a disposition of property" is a contract that "cannot stand" because it violates public policy. *Id.* at 581-582. Plaintiff has asserted that he has "good reason" to believe the probated will was superseded by a later will that included him, but he has also asserted that he made an agreement to allow the challenged will to be probated in exchange for a share in the estate. We note as a threshold matter that if both claims were proved true, the contract would have to be evaluated on public policy grounds.

We find, however, that plaintiff lacked standing to contest his brother's will in California, with the consequence that no valuable consideration was given to support the alleged oral agreement, and that plaintiff's claims therefore fail as a matter of law. The California Probate Code, Section 48, provides that "interested person" includes "[a]n heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding." Plaintiff argues that this provision has been broadly construed in the California courts, finding that indirect beneficiaries and persons with contingent interests qualify. Plaintiff cites a series of cases to support this argument, but each is factually distinguishable from this case.

Plaintiff cites *Estate of Miller*, 230 Cal App 2d 888, 898 (1964) for the proposition that a contingent beneficiary may be an interested party. In that case, unlike this one, plaintiff was a contingent beneficiary of a trust by the specific terms of decedent's will. Plaintiff cites *Bridge v Kedon*, 163 Cal 493, 502 (1912) to argue that a contingent right to inherit from a still living ancestor is a valuable interest that may be assigned. In that case, the heir apparent had assigned his rights in his expectant interest in his mother's estate while she was living, and after her death sought to keep the inheritance and the money borrowed against it; the court determined that equity allowed a finding that the expectant interest had been validly assigned.

Plaintiff argues *Estate of Plaut*, 27 Cal 2d 424, 430 (1945) stands for the claim that a contingent or residual beneficiary is an interested party and may contest a will. Inapposite to this case, the court noted in that case, "petitioner is at least a possible beneficiary under a plan of

devolution established by the testator himself. Although she may never take any part of his estate, any part that she takes as a remainderman will come to her by the testator's will, not by succession to a beneficiary under that will."

Plaintiff relies on *Estate of O'Brien*, 246 Cal App 2d 788, 793 (1966) for the idea that a person may contest a will without having shown that impairment of their interest is a certainty, suggesting that a prima facie case of interest is made if such impairment is possible. In that case, the court found plaintiff was an interested party because plaintiff was a named beneficiary in a holographic will that had been written subsequent to the will being probated; plaintiff's interest in the probate of the earlier will was obvious and her right to challenge therefore upheld by the court.

Finally, plaintiff cites *Estate of Munfrey*, 61 Cal App 2d 565, 568 (1943) for the proposition that "the will relied upon by the contestants to establish their interest need not be produced by them and offered for probate as a condition to their right to contest the validity of the later will." In that case, however, the court specifically ruled that because defendants had not denied the plaintiffs' allegations that a prior will had included them, the existence of that will would be presumed. There is no indication here that defendant either admitted or failed to deny the existence of a later will.

Plaintiff claims he has "good reason" to believe the decedent had included him in a will executed subsequent to the will that was probated. However, the only support plaintiff has produced for this claim is his own statement that his brother told him he would revise his will, and the statement of Ghazaleh Rashad that leaving his entire estate to one brother was not "his real intention" and that he was "going to change that soon." It bears repeating that Rashad received nothing under the will or from decedent's other assets, and that there is ambiguity as to whether she was his fiancée, girlfriend, or former girlfriend. Plaintiff's allegations about what his brother had told him, even coupled with Rashad's statement, are of questionable value. See *King v Luyckx*, 280 Mich 117, 123; 273 N.W. 414 (1937) ("where the admission is that of one deceased the caution should deepen into suspicion for reasons that are obvious and without corroboration is of little value.")

Plaintiff also argues he was unable to produce the later will because, as he puts it, "[i]mmediately after Majid's death, and before the funeral, Defendant took control over all of Majid's records, in a secretive fashion. In the middle of the night, Defendant and his wife took possession of all of Majid's documents and records including lock boxes, computer files, and legal papers." This allegation is also unsupported. Plaintiff adds that defendant failed to give their mother, decedent's heir at law, proper notice of the probate proceedings because he mailed her notice to decedent's California address rather than to her actual address in Iran. This may be accurate, but the parties' mother has not brought any claim on her own behalf, and in her affidavit specifically stated that Michael had told her he intended to give his entire estate to defendant and defendant's children, and that she had refused to contest the will even though plaintiff encouraged her to do so.

We find that plaintiff was neither a beneficiary in the will nor an heir at law, and had no cognizable property interest in his brother's estate, and that because plaintiff therefore had no standing to contest the will in California, foregoing a contest does not serve as consideration for

the alleged oral contract to divide the estate. Plaintiff's claim fails as matter of law, and summary disposition was properly granted under MCR 2.116(C)(8).

IV. The Trial Court's Use of MCR 2.116 (C)(8) and (C)(10) Standards

Plaintiff argues that the trial court should not have converted defendant's MCR 2.116(C)(8) motion to a (C)(10) motion, and that the court should not have granted a (C)(10) motion prior to the close of discovery, citing *Adair v State*, 470 Mich 105, 130-131; 680 NW2d 386 (2004) and *Colista v Thomas*, 241 Mich App 529, 538; 616 NW2d 249 (2000) in support of this argument. Again, plaintiff's case citations are off the mark. *Adair v State*, 470 Mich 105, 130; 680 NW2d 386 (2004) does state that "[i]f defendants had argued under a C(10) motion, plaintiffs would have been obliged to provide evidentiary support for their claims. However, under a C(8) motion, no such support is required." But the court neither says nor implies that this distinction precludes a court from considering one where a motion includes only the other. And *Colista v Thomas*, 241 Mich App 529, 538; 616 NW2d 249 (2000) actually says that "summary disposition before the close of discovery is appropriate if there is no reasonable chance that further discovery will result in factual support for the nonmoving party." The trial court apparently found that to be the situation here, and considered defendant's motion under both subrules.

Plaintiff also claims that summary disposition was inappropriate under MCR 2.116(C)(10) because questions of fact remain, arguing that the trial court even recognized that fact issues remain, but chose to believe defendant's facts rather than plaintiff's. Plaintiff asserts the court did not consider the affidavits of the aunt and the fiancée in the light most favorable to the non-moving party.

Plaintiff may be correct that questions of fact persist, but they are not genuine issues of material fact that could affect the outcome of this proceeding. Essentially, the documentary evidence stacks up as plaintiff's statement, the aunt's statement, and the fiancée's statement on one side, with defendant's statement, the mother's statement, and the will on the other side. The discrepancies between the two versions of the truth leave open questions of fact. However, resolution of these fact questions in plaintiff's favor would not create a basis for his claims. The fiancée's statement that the decedent had intended to change his will is not evidence that he in fact changed his will, and the lack of a new will belies it. The aunt's statement that the brothers made an agreement is contradicted by the mother's statement that they did not, but neither one provides support for plaintiff's claim of standing to challenge the will contest.

In addition, although the trial court considered evidence outside the pleadings, which suggests a (C)(10) standard was applied, the court concluded that plaintiff lacked standing to bring a will contest in California and therefore the alleged contract failed for lack of consideration, which supports grant of summary disposition on a (C)(8) standard, failure as a matter of law. Where "the trial court did not specifically state whether it was granting defendant's motion for summary disposition on the basis of subrule (C)(8) or (10)," the court will review under the rule that appears appropriate from the record. *Spiek v DOT*, 456 Mich 331, 338; 572 NW2d 201 (1998). "This Court will not reverse where the right result is reached for

the wrong reason." *Phinney v Verbrugge*, 222 Mich App 513, 532; 564 NW2d 532 (1997). Assuming without deciding that the trial court granted the motion under MCR 2.116(C)(10), we would affirm on the basis of (C)(8), and if the court granted the motion under (C)(8), we would simply affirm.

V. Plaintiff's Equitable Claims

Plaintiff argues that the trial court erred by disposing of his equitable claims without considering them. The trial court did not comment at all on plaintiff's equitable claims, so it is unclear whether they were considered and rejected, or not considered at all.

As to the unjust enrichment claim, the law will imply a contract "to prevent unjust enrichment, which occurs when one party receives a benefit from another the retention of which would be inequitable." *Martin v East Lansing School Dist.,* 193 Mich App 166, 177; 483 NW2d 656 (1992). We find that because plaintiff lacked standing to contest the will in California, plaintiff conferred no benefit on defendant and there is no inequity in preserving the distribution of the decedent's estate as directed by his will. Plaintiff may find it unfair, but the law cannot find it inequitable.

As to the promissory estoppel claim, the conditions are: a promise; that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee; which in fact produces reliance or forbearance of that nature; under circumstances such that the promise must be enforced if injustice is to be avoided. *Id.* at 178. Here we have plaintiff's assertion that a promise was made, contradicted by defendant's assertion that it was not, and the aunt's belief that a promise was made, again contradicted by the mother's assertion that it was not. We find that absent a valid claim to contest the will, plaintiff's reliance on any promise that might have been made was not reasonable, and no injustice results from leaving the parties in the relative positions their brother's will put them in.

VI. Defendant's Cross-Appeal

Defendant argues on cross-appeal that plaintiff's claim is frivolous and that defendant should be awarded costs and fees. Defendant cites the trial judge's statement "I think, in fact, it may in fact be frivolous, but I'm not going to go that far at this point in time," and his conclusion that the inquiry into the frivolity of the claim should be pursued if the claim were pursued on appeal. A trial court's decision as to whether a claim is frivolous is reviewed for clear error. *Cvengros v Farm Bureau Ins.,* 216 Mich App 261, 266; 548 NW2d 698 (1996). In this case, the standard is difficult to apply, because the trial court did not rule that the claim was not frivolous; rather the trial court essentially said that if plaintiff elected to appeal, then at that point the claim would become frivolous.

A claim is frivolous if any of these conditions are met:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

MCL § 600.2591(3). If a court finds a claim is frivolous, sanctions are mandatory: "the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party." MCL § 600.2591(1).

Plaintiff asserts that the two California attorneys he consulted told him he had a good case, but since the documents related to those consultations were redacted almost entirely when plaintiff produced them during discovery, that assertion is unsupported by documentary evidence. The fact that his Michigan attorney throughout the brief on appeal cited California cases for propositions that they really did not support, each time leaving out the relevant fact that distinguished the case from these facts, suggests some awareness that the claim is without legal merit, but the phrase "arguable legal merit" does leave room for unsuccessful arguments if made in good faith. The trial court did not find the claim frivolous, even though the judge strongly hinted that he was very close to so finding. Solely because of the high threshold of the clear error standard that we must apply, we do not find the claim frivolous.

The bottom line here is that the assertions of each party are self-serving and generally unsupported by competent documentary evidence. The tie-breaker is the will itself, which favors defendant. As reviewed above, plaintiff lacked standing to contest the will in California as he was neither a beneficiary nor an heir at law. His only potentially viable claim for standing is his assertion that the decedent might have executed another will. However plaintiff's contention that the decedent had told him he would change the will is to be viewed with suspicion. See *King v Luyckx*, 280 Mich 117, 123; 273 N.W. 414 (1937) ("where the admission is that of one deceased the caution should deepen into suspicion for reasons that are obvious and without corroboration is of little value."). Plaintiff's argument is weak, but it is an argument, and it precludes a definite and firm conviction that a mistake was made in the lower court where the judge did not find the claim frivolous.

VII. Conclusion

We find that the trial court was correct in finding that while plaintiff had more or less tried every argument possible, no factual development could support the allegations in his complaint. We affirm the grant of defendant's summary disposition motion and deny defendant's cross-appeal.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ Jessica R. Cooper