2014 IL App (5th) 130522-U

NO. 5-13-0522

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JUNE GILL, a/k/a M. June Gill,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Saline County.
	)	
v.	)	No. 10-CH-64
	)	
RALPH EDWARDS and JANICE EDWARDS,	)	Honorable
	)	Joseph M. Leberman,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: Where issues of material fact remain, summary judgment was improper. We reverse and remand the court's order.

¶ 2 The trial court granted summary judgment to the defendants. At issue was a mineral rights lease to property that June Gill sold to the Edwardses in 1998. The court held that June Gill's attempt to reserve the mineral rights was ineffective and granted the Edwardses' motion for summary judgment. We reverse and remand.

¶ 3 FACTS

¶ 4 June and Eugene Gill purchased the real estate at issue in June 1970. Twenty years later, they entered into a mining lease with the Kerr-McGee Coal Corporation and

leased their property for a 20-year term. Kerr-McGee paid the Gills an annual rental payment until mining began. After Kerr-McGee began mining the land, it paid the Gills royalties for the coal extracted. Eugene passed away in 1997. June then became the sole owner of the land and the mineral rights lease.

¶ 5 June decided to sell the land in 1998. She signed a real estate listing contract with Century 21 Home Finders Realty in Benton, Illinois. This contract was a standard form contract and was signed by June as the seller and Marce Brooks as the Century 21 broker. The Century 21 contract listed the property address. The multiple listing service (MLS) residential input form and listing agreement addendum listed two property tax identification numbers. In the remarks section of the MLS form, the following is noted: "Growing crops do not pass with sale. All mineral rights do not pass with sale." The listing advertisement also indicated that the mineral rights were not included with the sale of this property.

¶ 6 The defendants, Janice and Ralph Edwards, were interested in buying property in southern Illinois. They contacted the same Century 21 real estate agency in Benton that listed the Gill property. Using a different agent, the Edwardses looked at the Gill property, and signed a purchase contract on the same date–May 30, 1998. The purchase contract by which the Edwardses offered to purchase June's property contained the same two property tax identification numbers.

¶ 7 June accepted the contract and sold the property to the Edwardses. The warranty deed indicated that the deed was "subject, however to all valid outstanding easements, rights of way, mineral leases, mineral reservations and mineral conveyances of record."

¶ 8 Saline County continued to bill June for the property taxes on the mineral rights over the next 10 years, and June paid all of these tax bills.

¶ 9 The Edwardses became aware of the coal mining operation in 2009. An American Coal Company representative (assignee of Kerr-McGee Corporation) approached Ralph and Janice Edwards about an open oil well on their land that needed closing. Ralph became aware of the mineral lease associated with the property while he was working with the American Coal Company representative to locate the oil well on his land. Ralph's knowledge of the mineral lease led to the discovery that June had a coal-mining lease.

¶ 10 Although not detailed in the record, June somehow discovered that the warranty deed was incorrect in June 2010. There were two errors. The first error involved the mineral rights, and the second error involved a one-acre tract that was not included in the original warranty deed. The Edwardses met with June and her legal guardian. June's guardian, Barbara Thompson, asked Ralph and Janice to sign a corrected warranty deed that would convey the one-acre tract to the Edwardses, and exclude the mineral rights from the real estate. The Edwardses refused to sign the document. June filed this action in December 2010 asking the court to reform the deed on the basis that there was a mutual mistake. The mistake alleged was that the warranty deed did not contain the agreed-to mineral rights reservation.

¶ 11 Both sides filed motions for summary judgment. June argued that the Edwardses had actual and constructive notice of the mineral rights exclusion. She cites the MLS document and advertisement for the property that contains this exclusion. She submitted

an affidavit of her real estate agent, Marce Brooks. Marce Brooks testified that when a client reserves mineral rights, it is her custom and practice to advise potential buyers of all exclusions. Finally, June argued that the fact that the warranty deed only included tax identification numbers connected to the land, and did not include the tax identification number for the mineral rights, supported her intention to exclude the mineral rights. The trial court agreed that June clearly reserved the mineral rights in the MLS document, but determined that the document did not prove that the Edwardses knew they would not receive the mineral rights. The court focused on what Ralph and Janice Edwards intended to purchase. In deposition testimony, they testified that they did not agree to buy the real estate without its mineral rights–essentially that they assumed that the purchase included everything. The court found that the tax identification number was not determinative of the issue of intent. The court commented that even though Ralph and Janice testified that mineral rights were not of interest to them, the *lack of interest* in the mineral rights did not equate to a *lack of intent* to purchase the rights. The court stated that Illinois law places the burden to reserve mineral rights on June and that if she did not reserve the rights, they automatically pass with the land. The court held that June failed to establish that the failure to reserve the mineral rights in the warranty deed was a mutual mistake of fact. The court entered judgment in favor of the Edwardses. June appeals.

¶ 12 LAW AND ANALYSIS

¶ 13 On appeal, June claims that the trial court erred in granting the Edwardses' summary judgment, because there are outstanding issues of material fact. She also

argues that the trial court erred in not granting her motion for summary judgment. She contends that the court's analysis should have been limited to the intent expressed within the sales contract, of which Ralph and Janice Edwards had constructive and imputed knowledge.

¶ 14 Under section 2-1005(c) of the Code of Civil Procedure, a party is entitled to summary judgment as a matter of law when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." 735 ILCS 5/2-1005(c) (West 2012). In considering a summary judgment motion, the court need only decide if a question of fact exists. *Koziol v. Hayden*, 309 Ill. App. 3d 472, 476, 723 N.E.2d 321, 323 (1999).

¶ 15 "Summary judgment is a drastic remedy that should be granted only where the movant's right to it is clear and free of doubt." *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill. App. 3d 351, 357, 726 N.E.2d 1171, 1176 (2000). In determining whether to grant or deny a request for summary judgment, the trial court strictly construes all evidence in the record against the moving party and liberally in favor of the opponent. *Purtill v. Hess*, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986); *Koziol*, 309 Ill. App. 3d at 476, 723 N.E.2d at 323. The court must consider all pleadings, depositions, admissions, and affidavits on file to decide if there is any issue of material fact. *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 72, 587 N.E.2d 494, 497 (1992). If reasonable people could draw divergent inferences from the undisputed material facts or if a material fact remains in dispute, then the trial court should deny the

motion. *Koziol*, 309 Ill. App. 3d at 476, 723 N.E.2d at 323. On appeal, courts review summary judgment orders *de novo*. *Myers*, 225 Ill. App. 3d at 72, 587 N.E.2d at 497.

¶ 16 We first review what a party must establish in order to obtain reformation of a written document. Reformation is simply the insertion of omitted language in a written document so that the document conforms to the original agreement between the parties. *Schaffner v. 514 West Grant Place Condominium Ass'n*, 324 Ill. App. 3d 1033, 1034, 756 N.E.2d 854, 864 (2001). The purpose of reformation is not to change the parties' understanding of the agreement, but to change the written agreement that fails to reflect that understanding. *Id.*

¶ 17 At trial, June would be required to prove the existence of a mutual mistake by clear and convincing evidence. *La Salle National Bank v. 850 De Witt Condominium Ass'n*, 257 Ill. App. 3d 540, 543, 629 N.E.2d 704, 706-07 (1994). A unilateral mistake is not sufficient to reform a written document. *Jonas v. Meyers*, 410 Ill. 213, 225, 101 N.E.2d 509, 514 (1951). Evidence necessary to reform a warranty deed must be "satisfactory *** equivalent to an admission by both parties that a mistake was made." *Anderson v. Stewart*, 281 Ill. 69, 77, 117 N.E. 743, 746 (1917).

> "[T]he quantum of evidence required to reform a written instrument is substantial. A preponderance of the evidence will not suffice. Rather, the evidence must 'leav[e] no reasonable doubt as to the mutual intention of the parties.' " *Department of Conservation v. Nevois*, 234 Ill. App. 3d 227, 229, 600 N.E.2d 91, 93 (1992) (quoting *Pulley v. Luttrell*, 13 Ill. 2d 355, 358, 148 N.E.2d 731, 733 (1958)).

¶ 18 We have reviewed the exclusive right to sell agreement used by June and her broker in this case. We find that there is no question that the real estate agreement explicitly listed June's reservation of mineral rights. The MLS listing agreement also expressly excluded the mineral rights from any sale. The court can review the contracts as parol evidence. In *Schaffner v. 514 West Grant Place Condominium Ass'n*, 324 Ill. App. 3d 1033, 1045, 756 N.E.2d 854, 865 (2001), the court stated that when a party is seeking to reform a legal document on the basis of mutual mistake or fraud, " 'parol evidence is admissible to show the true intent and understanding of the parties.' " *Id.* (quoting *Ballard v. Granby*, 90 Ill. App. 3d 13, 16, 412 N.E.2d 1067, 1070 (1980)). Therefore, the court should consider the sales contract language as part of the evidence of intent.

¶ 19 The drafter of the warranty deed in this case failed to include the mineral rights reservation language. Ralph and Janice Edwards both testified that they had no real concern about whether or not they obtained mineral rights, and do not remember whether or not mineral rights were discussed. The Edwardses wanted this piece of real estate and did not negotiate on price, offering June the full listing amount. When pressed, they testified that they were unaware of the mineral rights reservation, were unaware that the mineral rights had a separate property tax identification number, and assumed the land included mineral rights. In essence, the Edwardses are claiming that they were *bona fide* purchasers of the mineral rights, and are free of June's claim.

¶ 20 A *bona fide* purchaser receives an interest in property free and clear of all competing or contrary claims so long as the purchaser has no notice of the contrary

claims. *La Salle National Bank v. 850 De Witt Condominium Ass'n*, 211 Ill. App. 3d 712, 718, 570 N.E.2d 606, 611 (1991). The type of notice that would defeat a *bona fide* purchaser status can be " 'actual or constructive and contemplates the existence of circumstances or facts either known to a prospective purchaser or of which he is chargeable with knowledge which imposes upon such purchaser the duty of inquiry.' " *Id.* at 719, 570 N.E.2d at 611 (quoting *Burnex Oil Co. v. Floyd*, 106 Ill. App. 2d 16, 21, 245 N.E.2d 539, 543 (1969)).

¶ 21 Notice is very much at issue in this case. Real estate documents drafted prior to the warranty deed contained specific written notice of the reservation of mineral rights. Both real estate agents had notice of this reservation. We have an affidavit of one of the two agents, who acknowledges that she knew about the mineral rights reservation and that it would have been her practice to advise the Edwardses about the reservation. We do not have an affidavit or deposition testimony from the Edwardses' agent, but we know that this agent worked for the same real estate agency and was on specific notice that mineral rights were reserved. Furthermore, both agents were present on the date when the Edwardses looked at the property for the first time and entered into the sales contract. The sales contract used is a standard form. The property June listed for sale, as identified by the property tax identification number (which did not include mineral rights), is the same property listed in the sales contract. The legal description in the sales contract does not include a property tax identification number for the mineral rights. Additionally, the Edwardses acknowledged having reviewed all seller disclosures and having seen the MLS listing, both of which included the reservation of mineral rights.

¶ 22 Having carefully reviewed the record, as well as the record and arguments on appeal, we do not agree with the trial court's holding that there were no material issues of fact outstanding at this stage of the case. This case had not yet reached trial. There was evidence that June intended to reserve the mineral rights of this property. There is evidence that a real estate agent likely informed the Edwardses about June's reservation of the mineral rights. Because this real estate agent likely told Ralph and Janice Edwards about the mineral rights reservation, their status as *bona fide* purchasers is in question.

¶ 23 We express no opinion on whether the trial court should reform the warranty deed based on mutual mistake of fact. Due to outstanding issues of material fact, we reverse the judgment of the court and remand for further proceedings.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we reverse and remand the judgment of the Saline County circuit court.

¶ 26 Reversed and remanded.