

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (3d) 160342-U

Order filed June 9, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

NANCY A. GARDNER and LESLIE M. ATWOOD,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiffs/Counter-Defendants/Appellees,)	
v.)	
DENISE ELLISON, as Trustee of 21505 W. BASSWOOD LANE TRUST,)	Appeal No. 3-16-0342 Circuit No. 15-L-403
Defendant/Counter-Plaintiff/Appellant,)	
and)	
21505 W. Basswood Lane Trust,)	Honorable
Defendant/Counter-Plaintiff.)	John Anderson, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly granted plaintiffs' motion for summary judgment when the undisputed facts established that the Illinois land trust was terminated by the primary beneficiary's execution of a quitclaim deed prior to her death, disposing of the only property held in the trust.

¶ 2 This lawsuit involves a 2015 action to quiet title to property purchased by plaintiffs, Nancy A. Gardner and Leslie M. Atwood, in Plainfield, Illinois. Plaintiffs claim, among other things, that they are *bona fide* purchasers of the property. Defendant, Denise Ellison, contends that she holds title to the property as successor trustee to the land trust. The parties filed cross-motions for summary judgment. The trial court granted plaintiffs’ motion for summary judgment and denied defendant’s motion for summary judgment. Defendant appeals.

¶ 3 **FACTS**

¶ 4 Julia Young owned a home located at 21505 W. Basswood Lane, Plainfield, Illinois (“the property”). On July 23, 2009, Young executed a trust agreement (“the trust”) deeding the property by quitclaim deed into a land trust from herself, as grantor, to herself, as the trustee of the land trust, and also naming herself as the life beneficiary of the trust. The trust designated Young’s son, Keith Ellison (Keith), as primary contingent beneficiary upon Young’s death. Denise Ellison (Denise) was designated as the next beneficiary in line, followed by Bruce V. Ellison (Bruce). Young recorded the deed in trust in the Will County Recorder’s Office on July 23, 2009.

¶ 5 On January 5, 2012, Young executed a quitclaim deed purporting to transfer the property out of the trust and to herself and Bruce as joint tenants. The record does not indicate that Young executed the 2012 quitclaim deed in her capacity as trustee. The Will County Recorder’s Office recorded the 2012 quitclaim deed on March 20, 2012. Young resided in the residence on the property until she passed away on February 18, 2013.

¶ 6 After Young’s death in 2013, Bruce and Keith listed the property for sale with Coldwell Banker Residential Brokerage. On February 2, 2014, Bruce and Keith, acting together, executed a real estate contract that transferred the property to plaintiffs by warranty deed in exchange for a

purchase price of \$171,000. Neither the listing agreement nor the real estate contract referred to the land trust. Burnet Title issued a title commitment documenting that Young originally quitclaimed the deed into the trust in 2009. The title commitment indicated that at the time of the sale in 2014, Bruce held title to the property as the surviving joint tenant based on the January 5, 2012, quitclaim deed Young executed.

¶ 7 The sale of the property closed on March 14, 2014. At the time of closing, Bruce executed both a warranty deed and a handwritten statement providing that Keith had no interest in the property. The Real Estate Settlement Procedure Act closing statement indicated that Bruce was the owner/seller of the property and that he alone would receive the proceeds from the sale. See 12 U.S.C. §§ 2601-2617. Consequently, Bruce received all of the proceeds from the sale. On March 14, 2014, plaintiffs executed a note and mortgage with the third-party defendant, Republic Mortgage Home Loans, LLC. Plaintiffs recorded the 2014 warranty deed with the Will County Recorder of Deeds on April 8, 2014.

¶ 8 After the 2014 closing, plaintiffs began occupying the property. Plaintiffs received notice from the Will County Assessor's Office that the grantor's name on the warranty deed did not match the taxpayer records. Consequently, plaintiffs filed a claim with Burnet Title and also filed the complaint in this case on December 11, 2014. Then, Keith appears to have claimed an interest in the proceeds of the 2014 sale of the property.

¶ 9 Following service of summons in this case, Keith passed away. Plaintiffs amended the complaint to name Keith's wife, Denise, as defendant based on her purported status as a successor trustee. Plaintiffs' first amended complaint, dated July 7, 2015, sought to quiet title, and requested specific performance of the 2014 real estate contract. The amended complaint

claimed the 2012 quitclaim deed executed by Young to herself and Bruce properly transferred the property out of the trust.

¶ 10 On August 10, 2015, Denise filed an answer to plaintiffs' first amended complaint, along with a counterclaim. The substance of Denise's answer and counterclaim argued the 2012 quitclaim deed was ineffective because Young did not execute the 2012 quitclaim deed in her capacity as trustee or in the name of the trust.

¶ 11 Denise's counterclaim requests that the 2014 warranty deed conveying the property from Bruce to plaintiffs be adjudged as invalid and void; that the mortgage naming plaintiff as borrowers, dated March 14, 2014, and recorded against the property in the Will County Recorder's Office on April 8, 2014, be deemed void and canceled; that the trust be granted immediate possession of the property; that plaintiffs be forcibly ejected from the property; and that Denise receive monetary damages arising out of plaintiffs' use of the property.

¶ 12 The parties filed cross-motions for summary judgment to quiet title. Plaintiffs' motion argued that they are entitled to quiet title as *bona fide* purchasers of the property. Further, plaintiffs' motion asserted that the 2012 quitclaim deed transferred the property out of the trust, and that Denise is estopped from claiming an interest in the title. Denise's motion asserted the 2012 quitclaim deed executed by Young in her individual capacity was ineffective and the property remains in the trust. Consequently, Denise argues that as successor trustee, she is the rightful holder of title to the property and is entitled to summary judgment in her favor.

¶ 13 On May 25, 2016, the trial court granted plaintiffs' motion for summary judgment and quieted title in favor of plaintiffs. Additionally, the trial court denied Denise's motion for summary judgment. Denise filed a timely notice of appeal on June 16, 2016.

ANALYSIS

¶ 14

¶ 15 On appeal, Denise claims the trial court erroneously denied her request for summary judgment in her favor on the counterclaim. Denise contends the trial court should have found the property remained part of the valid land trust at the time plaintiffs purchased the property.

¶ 16 Summary judgment is appropriate when all the pleadings, depositions, admissions, and affidavits demonstrate there is no genuine issue of material fact, and therefore, the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). This court reviews orders granting summary judgment *de novo*. *Machinery Transports of Illinois v. Morton Community Bank*, 293 Ill. App. 3d 207, 209 (1997). When, as here, the “parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record.” *Foley v. Godinez*, 2016 IL App (1st) 151814,

¶ 20. We may affirm a trial court’s grant of summary judgment on any basis in the record, irrespective of whether the trial court relied on that ground or whether the trial court’s reasoning was correct. *Allianz Insurance Co. v. Guidant Corp.*, 387 Ill. App. 3d 1008, 1026 (2008).

¶ 17 A quiet title action is an equitable proceeding in which a party seeks to remove a cloud on his title to the property. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 52 (2009). “A cloud on title is the semblance of title, either legal or equitable, appearing in some legal form but which is, in fact, unfounded or which it would be inequitable to enforce.” *Id.* Quiet title actions rest on the strength of the title held by the party bringing the action. *Smith v. Malone*, 317 Ill. App. 3d 974, 979 (2000). Although the plaintiff is not required to establish a perfect title, the plaintiff must establish title superior to the defendant’s title. *Id.*

¶ 18 The property in question involves an Illinois land trust. See 765 ILCS 405/1 (West 2014). In a conventional trust, the trustee holds the legal title and the beneficial owner holds the

equitable title. On the other hand, in an Illinois land trust, legal and equitable title lies with the trustee and the beneficiary retains only a personal property interest. *Paine/Wetzel Associates, Inc. v. Gitles*, 174 Ill. App. 3d 389, 393 (1988). With an Illinois land trust, most of the usual attributes of real property ownership are retained by the beneficiary under the trust agreement. *People v. Chicago Title & Trust Co.*, 75 Ill. 2d 479, 488 (1979). In fact, the trustee’s role is simply to act as bare titleholder for the property and the trustee can only act upon the direction of the beneficiary. *Id.*

¶ 19 For purposes of this appeal, Denise’s argument is twofold. Denise contends the 2009 land trust Young created was valid, but then argues the 2012 quit claim deed Young executed did not remove the property from the trust. Denise cannot prevail on appeal if we conclude the trust was invalid. Therefore, for the sake of argument, we will assume the land trust was properly formed and briefly discuss the case law supporting this assumption.

¶ 20 The general rule, stated long ago in *Wilson v. Harrold*, 288 Ill. 388, 391 (1919), provides that an individual cannot be the sole trustee and the sole beneficiary of the same identical interest. Yet, in *Farkas v. Williams*, the Illinois Supreme Court held that “the mere fact that the settlor in addition to making himself sole trustee also reserves a life interest and a power of revocation does not render the trust invalid as testamentary in character.” *Farkas v. Williams*, 5 Ill. 2d 417, 426 (1955). Later, in *Conley v. Petersen*, the Illinois Supreme Court recognized a trust will be deemed valid where “at the time of the conveyance to the trust, [the same person] was settlor, trustee, and *life* beneficiary.” (Emphasis added.) *Conley v. Petersen*, 25 Ill. 2d 271, 273 (1962).

¶ 21 In this case, the trust language named Young as the settlor, trustee, and *life* beneficiary with other named contingent beneficiaries that followed Young’s life estate. Based on the case law cited above, we assume, for the sake of this analysis, the 2009 land trust was valid.

¶ 22 Next, we consider Denise’s argument that Young’s 2012 quitclaim deed did not convey the property out of the land trust, which survived after Young’s death in 2013. In support of her argument, Denise emphasizes that the 2012 quitclaim names Young as grantor and does not make any reference to Young acting in her capacity as the trustee when she signed the 2012 quitclaim deed pertaining to the only property held in trust.

¶ 23 It is well settled that the beneficiary of an Illinois land trust cannot convey an interest in the real property held by the trust because a mere beneficiary does not typically hold legal or equitable title. *Paine/Wetzel Associates*, 174 Ill. App. 3d at 393. In most cases, when a beneficiary of a land trust deals with the property as if no trust exists and contracts, as owner, to sell the property, then the contract is void as being beyond the beneficiary’s power to act. *Nikolopoulos v. Balourdos*, 245 Ill. App. 3d 71, 78 (1993).

¶ 24 However, in this case, the trust agreement provides that Young’s rights, as primary beneficiary of this particular trust, included “the power of direction to deal with the title to said property.” The case law provides that an exception to the general rule arises when the trust agreement provides the beneficiary of the trust with the exclusive power to direct the trustee to convey title. *Paine/Wetzel Associates*, 174 Ill. App. 3d at 394; see also *In v. Cheng*, 232 Ill. App. 3d 165, 171 (1991); *Emerich v. Leviton*, 117 Ill. App. 3d 832, 835 (1983); *First National Bank of Barrington, Trust No. 11-1317 v. Oldenburg*, 101 Ill. App. 3d 283, 287 (1981); *Rizakos v. Kekos*, 56 Ill. App. 3d 404, 405 (1977). Moreover, a sole beneficiary of a land trust may contract as seller to cause title to be conveyed to a purchaser without specifically advising the purchaser of

the existence of the trust. See *Lampinen v. Hicks*, 73 Ill. App. 3d 376, 377-79 (1979) (explaining that “it is perfectly legal for a party to enter into an agreement, as seller, to sell property to which he does not presently have title”).

¶ 25 Under the unique circumstances of this case, Young wore two hats when she executed the 2012 quitclaim deed creating a joint tenancy with Bruce. Young, acting within her authority as the current life beneficiary of the trust, with the power of direction, was not required to formally direct herself in writing to act in her capacity as sole trustee, to convey the title to the property out of the trust. See, e.g., *Lambos v. Lambos*, 9 Ill. App. 3d 530, 535–36 (1972) (holding that conveyance was valid even though the beneficiary, who had the sole power of direction, did not give written direction to the trustee to convey the title as required by the trust agreement).

¶ 26 Based on this precedent, we conclude the trial court correctly determined the 2012 quitclaim deed effectively conveyed the only property out of the trust and into joint tenancy. Therefore, Bruce, as the surviving joint tenant, automatically held fee title to the property after Young’s death in 2013 and at the time he conveyed the property to plaintiffs by warranty deed in 2014.

¶ 27 For these reasons, we affirm the trial court’s order granting plaintiffs’ motion for summary judgment and denying defendant’s motion for summary judgment. Accordingly, the other ancillary issues on appeal are not outcome-determinative and will not be addressed.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Will County is affirmed.

¶ 30 Affirmed.