

[Cite as *Culp v. Culp*, 2010-Ohio-4263.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TERESA M. CULP

Plaintiff-Appellant

-vs-

ELVIN CULP, et al.

Defendants-Appellees

JUDGES:

Hon. Julie A. Edwards, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. CT2010-0009

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. CC2009-0647

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 8, 2010

APPEARANCES:

For Plaintiff-Appellant

JACQUELINE TRESL
1500 Cowden Road
New Concord, Ohio 43762

For Defendants-Appellees

SCOTT EICKELBERGER
DAVID J. BARBERT
50 North Fourth Street
Zanesville, Ohio 43701

Wise, J.

{¶1} Appellant Teresa M. Culp appeals the decision of the Court of Common Pleas, Muskingum County, which granted summary judgment in favor of Appellees Elvin and Frances Culp in a dispute over ownership of certain residential property. The relevant facts leading to this appeal are as follows.

{¶2} On February 16, 2000, the Muskingum County Recorder accepted a deed wherein Appellees Elvin and Frances Culp, husband and wife, granted a life estate to Appellant Teresa M. Culp in approximately .9 acres on Norfield Road in Muskingum County. In addition, on November 29, 2001, the Recorder accepted a mortgage deed evincing a home installment loan between First National Bank of Zanesville (lender) and Appellees Elvin and Frances Culp and Appellant Teresa M. Culp (borrowers).

{¶3} Appellant thereafter invested her time and money (nearly \$50,000.00) in repairing and remodeling the one-bedroom house on the Norfield property. Furthermore, appellant paid all of the property taxes and insurance on the property after 2000. At some point in 2008 or 2009, appellant looked into selling the property, despite the legal ramifications of holding a life estate only.

{¶4} On September 8, 2009, appellant filed a complaint for promissory estoppel and intentional misrepresentation against appellees, claiming that appellees had led her to believe that she individually owned the Norfield property.

{¶5} Appellees filed an answer on October 13, 2009, including, inter alia, raising a defense based on the statute of frauds.

{¶6} On November 17, 2009, appellees filed a motion for summary judgment, attaching therewith copies of the aforesaid deeds and affidavits by appellees denying

they had misled appellant concerning ownership of the property. Appellant filed a brief in opposition to summary judgment on December 1, 2009, attaching her affidavit to the contrary. Appellees filed a reply on December 17, 2009.

{¶7} On February 5, 2009, the trial court issued a judgment entry granting summary judgment in favor of appellees.

{¶8} On February 22, 2010, appellant filed a notice of appeal. She herein raises the following sole Assignment of Error:

{¶9} “I. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT SINCE THERE EXISTS A GENUINE ISSUE OF MATERIAL FACT THAT REASONABLE MINDS CAN COME TO MORE THAN ONE CONCLUSION.”

I.

{¶10} In her sole Assignment of Error, appellant contends the trial court erred in granting summary judgment concerning misrepresentation and promissory estoppel in favor of appellees. We disagree.

{¶11} Civ.R. 56(C) provides, in pertinent part:

{¶12} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * * A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being

entitled to have the evidence or stipulation construed most strongly in the party's favor.

* * *

{¶13} As an appellate court reviewing summary judgment issues, we must stand in the shoes of the trial court and conduct our review on the same standard and evidence as the trial court. *Porter v. Ward*, Richland App.No. 07 CA 33, 2007-Ohio-5301, ¶ 34, citing *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 506 N.E.2d 212.

{¶14} As an initial matter, appellant does not dispute that the statute of frauds, codified in Ohio under R.C. 1335.04, requires appellees' assignment to appellant to be in writing. Appellant's Brief at 5. The issue before us thus boils down to whether promissory estoppel should equitably override the statute, in light of appellant's claim that appellees repeatedly led her to believe the property was solely hers.

{¶15} Promissory estoppel is an equitable doctrine for preventing the harm resulting from reasonable reliance upon false representations. *GGJ, Inc. v. Tuscarawas Cty. Bd. of Commrs.*, Tuscarawas App.No. 2005AP070047, 2006-Ohio-2527, ¶ 11, citing *Karnes v. Doctors Hosp.* (1990), 51 Ohio St.3d 139, 142, 555 N.E.2d 280. The party asserting promissory estoppel bears the burden of proving, by clear and convincing evidence, all of the elements of the claim. *In re Estate of Popov*, Lawrence App. No. 02CA26, 2003-Ohio-4556, ¶ 30.

{¶16} The elements necessary to establish a claim for promissory estoppel are: (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be reasonable and foreseeable; and (4) the party claiming estoppel must be injured by the reliance. *Schepflin v. Sprint-United*

Telephone of Ohio (April 29, 1997), Richland App.No. 96-CA-62-2, citing *Stull v. Combustion Engineering, Inc.* (1991), 72 Ohio App.3d 553, 557.

{¶17} Upon review of the record in the case sub judice, we find appellant's reliance on appellee's alleged misrepresentations as to the nature of appellant's interest in the land cannot be deemed as reasonable. The deed and mortgage are clearly written, and a person in appellant's position must be expected to question why landowners who had supposedly conveyed their entire interest would still be involved as signatories to a mortgage deed executed more than a year later.

{¶18} “ ‘In every case, the formality [required by rules such as the statute of frauds] means that unless the parties adopt the prescribed mode of manifesting their wishes, they will be ignored. *** .’ ” *Olympic Holding Company LLC v. ACE Ltd.*, 122 Ohio St.3d 89, 95, 2009-Ohio-2057, quoting Kennedy, *Form and Substance in Private Law Adjudication* (1976), 89 Harv.L.Rev. 1691, 1692. Under the circumstances of the case before us, we hold the trial court did not err in upholding the validity of the life estate under the statute of frauds and granting summary judgment to appellees on appellant's claim of misrepresentation and promissory estoppel.

{¶19} Appellant's sole Assignment of Error is overruled.

{¶20} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Muskingum County, Ohio, is affirmed.

By: Wise, J.

Edwards, P. J., and

Delaney, J., concur.

JUDGES

JWW/d 726

