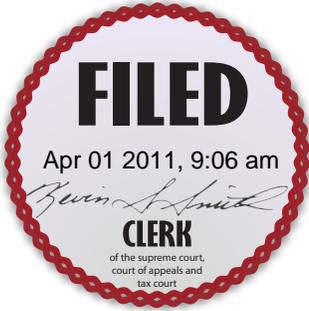


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

**KENNETH M. WILK**  
Highland, Indiana

**YOLANDA HOLDEN**  
Robert L. Lewis & Associates  
Gary, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

ACCREDITED HOME LENDERS, INC., )  
Plaintiff, )

vs. )

GLORIA M. MOORE, Personal Representative )  
of Estate of James Sedric a/k/a Sedric L. James, )  
Deceased, JOHN DOE, JANE DOE, and )  
MORTGAGE ELECTRONIC REGISTRATION )  
SYSTEMS, INC., as Nominee for HSBC Mortgage )  
Defendants, )

No. 45A03-1004-MF-229

\*\*\*\*\* )

CYRIL B. HUERTER, )  
Appellant/Intervenor/Cross Claimant, )

vs. )

ESTATE OF JAMES SEDRIC a/k/a SEDRIC L. )  
JAMES, Deceased, )  
Appellee/Cross Defendant. )

APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable William E. Davis, Judge  
Cause No. 45D05-0607-MF-212

**April 1, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Cyril Huerter (“Huerter”) intervened in a mortgage foreclosure action filed in Lake Superior Court between Accredited Home Lenders, Inc. and the Estate of James Sedric (“the Estate”). Huerter had sold the real estate at issue in the foreclosure action to James Sedric<sup>1</sup> (“Sedric”) before his death. In his complaint to quiet title, Huerter claimed that Sedric had not paid the \$100,000 sale price for the property. After a bench trial, the trial court concluded that Sedric had not breached the contract and entered a judgment in favor of the Estate. Huerter appeals the negative judgment. Concluding that sufficient evidence supports the trial court’s finding that Huerter received consideration under the contract, we affirm.

**Facts and Procedural History**

On October 23, 2004, Huerter and Sedric entered into a contract for the sale of real estate in Lake County, Indiana. Pursuant to the contract, Huerter agreed to sell the property to Sedric for \$100,000, and that amount was to be paid within ten days of the execution of the contract. Ex. Vol., Plaintiff’s Ex. 1. Huerter simultaneously transferred the property to Sedric via quit claim deed. The deed states that the property was transferred to S.J. Rehab, of which Sedric was a major shareholder and owner, for \$10 and “other valuable consideration, the receipt and sufficiency of which is hereby

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<sup>1</sup> The decedent is referred to as both James Sedric and Sedric James, and the record does not disclose the legal name of the decedent.

acknowledged[.]” Ex. Vol., Plaintiff’s Ex. 2. Sedric recorded the quit claim deed on November 10, 2004.

Shortly after entering into the contract, Sedric was diagnosed with cancer, and he died on November 5, 2005. Sedric’s Estate was opened in Cook County, Illinois, under Case No. 2005P008724, and Gloria Moore was appointed executrix of the estate. An estate was not opened in Indiana. Tr. p. 6.

On July 24, 2006, Accredited Home Lenders Inc. filed a petition for foreclosure of mortgage relating to the property Sedric purchased from Huerter in Lake Superior Court. The petition sought a judgment against Gloria Moore in her capacity as the personal representative of Sedric’s Estate.<sup>2</sup>

On February 8, 2007, Huerter filed a Petition to Intervene and Assert Claim and an “Answer to the Complaint, First Amended Complaint, and Second Amended Complaint on Note and to Foreclose Mortgage and Cross Claim.” Appellant’s App. p. 90. In that pleading, Huerter alleged that he

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<sup>2</sup> According to the Appellant’s Brief, “the claim of Accredited went to judgment and was resolved amongst and between the parties. The claim of Accredited does not affect or impact the matters at issue between” Huerter and Sedric’s Estate. Appellant’s Br. at 2. The pleadings between Accredited and Sedric’s Estate are not included in the record on appeal. However, the chronological case summary contains entries indicating that the property was possibly sold at sheriff’s sale. The last entry, dated February 26, 2008, states:

Lake Co. Shrf-Order of sale returned. Partly Satisfied. This writ came to hand on the 26th day of September 2007. And on the [blank] day of [blank] 2007, in pursuance of this order of sale I advertised the Real Estate herein described for the sale at the Court House door of Lake County, Indiana, on the [blank] day of [blank] 2007, by publication in the Star Shopping News a weekly newspaper of general circulation, printed and published in the City of Crown Point in the said County. And on the day of sale (Accredited Home Lenders) bid []\$126,000.00 Paid over to plaintiff per its receipt hereon \$125,987.00[.]”

Appellant’s App. p. 6.

asserts, maintains, and holds a legal and equitable interest in the real property in question, by way of land purchase and said realty between plaintiff and James Sedric a/k/a Sedric L. James, Deceased, which said interest must be determined and accounted in this proceeding.

Id. at 92. In his cross-claim, Huerter alleged that he “is entitled to have quiet title established in his name and against the Estate of James Sedric . . . for all ownership interest in the realty in question[.]” Id. On December 10, 2008, Huerter filed an additional count on his cross claim “to clarify and elaborate upon the relief that he seeks[.]” Id. at 96. Huerter alleged that Sedric had breached the contract because Huerter had not been compensated for the property at issue. Therefore, in the alternative to quieting title in his name, he requested a judgment from Sedric’s Estate in the amount of \$100,000. Id. at 99.

On December 3, 2009, a bench trial was held on Huerter’s cross claim. At the start of trial, Sedric’s Estate filed a Trial Rule 12(B)(1) motion to dismiss Huerter’s cross claim for lack of subject matter jurisdiction. The Estate argued that the trial court lacked jurisdiction because Huerter’s claim is a probate matter that must be raised in the Estate and not in a mortgage foreclosure action. Tr. p. 5. The trial court denied the motion to dismiss.

During the bench trial, Huerter testified that he “was looking for someone to help me to develop” the property at issue. Tr. p. 21. He was then introduced to Sedric “as a possible business partner for developing the property.” Tr. p. 22. After claiming that he never received the \$100,000 contract price from Sedric, Huerter was asked what steps he took to “encourage the receipt of the money.” Tr. p. 29. Huerter responded,

We were going to draw up a contract to develop the property between us. And that property –that \$100,000 was my contribution to the development. So I was supposed to get shares out of whatever was put together for the development of the property and to participate in that development with [Sedric].

Tr. pp. 29-30; see also Tr. p. 49 (stating the \$100,000 sale price “was either supposed to be paid within ten days” or “to be taken care of when we did the development[.]”). Huerter stated that he and Sedric intended to develop the property as soon as possible. Although he failed to produce any writing memorializing the alleged development agreement, Huerter testified that he and Sedric met with engineers and an attorney to draft a development agreement. Id. at 31. But shortly thereafter, Sedric’s health began to decline. Id. In response to Huerter’s arguments and testimony, Sedric’s Estate argued that Sedric likely paid the \$100,000 contract price within ten days of execution of the contract.

In his closing argument, Huerter asserted that the evidence established that the contract between the parties was void for lack of consideration, and requested that the trial court quiet title to the real estate at issue in his name. Specifically, he argued, “[s]o what we simply have here is a lack or failure of consideration, and so the contract is null and void and that’s the whole purpose of this Quiet Title, . . . is to void that contract and put the title back into the name of Cy Huerter.” Tr. p. 53; see also Tr. p. 56 (stating that Huerter “is entitled to have his property back”).

On January 27, 2010, the trial court issued its findings of fact and conclusions of law and granted judgment in favor of Sedric’s Estate. The trial court observed that Huerter “made no claim that Sedric failed to comply with the contract between October

23, 2004, and November 5, 2005.” Appellant’s App. p. 17. Further, the court found that “Huerter’s testimony that he has not received the purchase money for the sale of the property is in direct conflict with the language of the Quit Claim Deed that he acknowledges that he signed voluntarily.” Id. Ultimately, the court concluded that the parties had a valid contract and Huerter received adequate consideration. Id.

Shortly thereafter, Huerter filed a motion to correct error and argued that the trial court’s finding that Huerter received consideration for the real estate at issue was not supported by the evidence. Huerter argued that the trial court was required to determine “how much purported consideration was purportedly paid by the estate to [Huerter] and failed to determine how much was owed to [Huerter] and failed to award [Huerter] the difference owed to him.” Appellant’s App. pp. 101-02. The trial court denied the motion to correct error. Huerter now appeals.

### **Discussion and Decision**

Huerter claims that the trial court erred when it concluded that Huerter received adequate consideration for the sale of the property to Sedric. Specifically, he argues that there is no evidence that Sedric paid the \$100,000 contract price for the Lake County real estate at issue.

At trial, both Huerter’s action to quiet title and breach of contract claim were pending before the trial court. Appellant’s App. pp. 92-93, 98-99. In his closing argument, Huerter’s requested remedy was limited to asking the court to quiet title to the real estate at issue in his name. Huerter did not request a damage award. But in his motion to correct error and on appeal, Huerter’s only requested remedy is monetary

damages. Specifically, on appeal, Huerter argues that because Sedric was contractually required to pay \$100,000 for the real property,

and where the uncontradicted and unchallenged evidence is that said One Hundred Thousand Dollars (\$100,000.00) or any part thereof, were never paid, it should be determined that a breach of the contract occurred and that Huerter is due One Hundred Thousand Dollars (\$100,000.00) from the estate.

Appellant's Br. at 11. See also Appellant's App. p. 101 (requesting monetary damages in the motion to correct error).

First, we observe that Huerter's breach of contract claim was not properly before the Lake Superior Court, and it is not properly before us on appeal. Under the facts before us, Huerter's allegation that Sedric breached the parties' contract should have been filed as a claim against Sedric's Estate. See Polly v. Estate of Polly, 896 N.E.2d 350, 352 (Ill. Ct. App. 2008). Sedric's Estate was probated in Cook County, Illinois.<sup>3</sup> The definition of a "claim" under the Illinois Probate Code is broadly defined to include "any cause of action." Id. (quoting 755 ILCS 5/1-2.05 (West. 2002)) (stating that a cause of action for breach of contract must be raised as a claim against the decedent's estate). If Sedric had opened an estate in Indiana, we would also conclude that Huerter's breach of contract action would have to be filed as a claim in the estate.<sup>4</sup> See I.C. § 29-1-14-1; Keenan v. Butler, 869 N.E.2d 1284, 1288 (Ind. Ct. App. 2007).

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<sup>3</sup> Although the record does not disclose whether Huerter had actual notice that Sedric's Estate had been opened in Cook County, Huerter had actual knowledge of Sedric's death. See Tr. p. 31.

<sup>4</sup> Huerter's breach of contract action would classify as a claim under Indiana law. The term "claim" includes "liabilities of a decedent which survive, whether arising in contract or tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, and all inheritance taxes imposed under IC 6-4.1." Ind. Code § 29-1-1-3 (2010). In addition to this statutory definition, our court has repeatedly held that "claim" refers to a debt or demand of a pecuniary nature which could have been

Turning to Huerter’s quiet title action, we first observe that unlike a breach of contract action, a complaint to quiet title need not be filed in the Estate. See Apple v. Kile, 457 N.E.2d 254, 258 (Ind. Ct. App. 1983) (stating “neither administration of the estate nor the purported distribution of land could pass title which did not exist. A probate court may only determine who takes property owned by the decedent.”); Roush v. Richards, 116 Ind. App. 493, 501-02, 65 N.E.2d 507, 511 (1946) (“The St. Joseph Circuit Court, sitting as a Probate Court to act upon the administrator’s final report, had no power to determine any matter relating to the title of decedent’s real estate.”); Mason v. Roll, 130 Ind. 260, 29 N.E. 1135, 1136 (1892) (“Actions to quiet title do not involve the probate jurisdiction of the court, and this action might have been brought in the superior court, which has no probate jurisdiction whatever.”); see also State ex rel. Dean v. Tipton Circuit Court, 242 Ind. 642, 650, 181 N.E.2d 230, 234 (1962) (“The general rule is that actions affecting real estate must be brought in a court of competent jurisdiction in the county where the real estate is located.”).

Huerter bore the burden of proving by a preponderance of the evidence his right to have title quieted to the Lake County real estate at issue. Kruzick v. Kruzick, 124 Ind. App. 365, 118 N.E.2d 376 (1954). And Huerter’s argument is simply that he met his burden, and therefore, the trial court’s judgment is not supported by the evidence.

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enforced against the decedent in his lifetime and could have been reduced to a simple money judgment. Gatlin Plumbing & Heating, Inc. v. Estate of Yeager, 921 N.E.2d 18, 23 (Ind. Ct. App. 2010) (citing Cardwell v. Estate of Kirkendall, 712 N.E.2d 1047, 1049 (Ind. Ct. App. 1999) (citing Matter of Williams’ Estate, 398 N.E.2d 1368, 1370 (Ind. Ct. App. 1980))). See also Keenan v. Butler, 869 N.E.2d 1284, 1288 (Ind. Ct. App. 2007) (stating “a claim is an action against the gross assets of an estate, and the distribution by will or statute involves the remaining or net assets of the estate. In essence, a claim is an amount for which the decedent was indebted to another and if paid during his lifetime would have reduced the decedent’s lifetime assets.”).

In its findings of fact, the trial court found that prior to October 23, 2004, Huerter was the “exclusive owner in fee simple of the above described Hobart property.” The trial court also found:

5. The contract [] provides for the sale of the property in Hobart for \$100,000.00 to be paid to Huerter by Sedric within ten (10) days and Huerter would provide Sedric with a Quit Claim Deed.

6. The Deed [] states that the property in question was transferred from Huerter to Grantee, (S.J. Rehab), of Cook County, Illinois for (\$10.00) Dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Signed by Huerter and notarized October 23, 2004.

7. The Deed was recorded November 10, 2004.

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10. Huerter made no claim that Sedric failed to comply with the contract between October 23, 2004, and November 5, 2005.

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12. Huerter’s testimony that he has not received the purchase money for the sale of the property is in direct conflict with the language of the Quit Claim Deed that he acknowledges he signed voluntarily.

Appellant’s App. p. 17.

Huerter does not challenge these findings.<sup>5</sup> Huerter simply argues that these findings do not support the trial court’s conclusion that Huerter received consideration. See Appellant’s App. p. 17 (“The Parties had a valid contract and the Court finds that the consideration was received by Huerter.”). But in support of his argument, Huerter relies solely on his own testimony that he “never received the payment of One Hundred

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<sup>5</sup> The trial court made one finding stating that “Sedric and his estate have paid over \$10,000.00 for real estate taxes since the recording of the Deed.” Appellant’s App. p. 17. Citing this finding, Huerter argues that the trial court erred when it relied on the payment of property taxes to conclude that “Huerter had received consideration under the contract.” Appellant’s Br. at 8. But the trial court never indicated in its findings or conclusions of law that the court considered the Estate’s payment of property taxes to reach its conclusion that Huerter received consideration under the contract. Simply said, the trial court never equated the payment of property taxes with Huerter receiving consideration for the sale of the real estate to Sedric.

Thousand Dollars (\$100,000.00).”<sup>6</sup> Appellant’s Br. at 10. Further, Huerter claims that because the contract and the quit claim deed were executed on the same date, the trial court erred when it considered the fact that Huerter deeded the real estate to Sedric as evidence that the purchase price had been paid.

Where, as here, the trial court enters findings of fact and conclusions thereon, our standard of review is two-tiered. Bank One, Nat’l Ass’n v. Surber, 899 N.E.2d 693, 701 (Ind. Ct. App. 2009), trans. denied. “First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions.” Id. “The trial court’s findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them.” Tompa v. Tompa, 867 N.E.2d 158, 163 (Ind. Ct. App. 2007). “A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made.” Id. We do not reweigh the evidence or assess the credibility of witnesses, and we

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<sup>6</sup> Sedric’s Estate failed to object to Huerter’s competence as a witness pursuant to Indiana Code section 34-45-2-4, i.e. “the Dead Man’s Statute,” and therefore, the estate waived the protection provided by that statute. See Estate of Hann v. Hann, 614 N.E.2d 973, 977 (Ind. Ct. App. 1993) (stating “the estate may waive the protection of the Dead Man’s statute and render a witness competent by . . . failing to object when the adverse party calls himself to testify on his own behalf[.]”).

The Dead Man’s Statute establishes as a matter of legislative policy that claimants to the estate of a deceased person should not be permitted to present a court with their version of their dealings with the decedent. In re Estate of Neu, 588 N.E.2d 567, 569 (Ind. Ct. App. 1992) (“The dead man’s statute guards against false testimony by requiring that, when the lips of one party to a transaction are closed by death, the lips of the other party are closed by law.”). The statute provides that “a person (1) who is a necessary party to the issue or record; and (2) whose interest is adverse to the estate; is not a competent witness as to matters against the estate.” I.C. § 34-45-2-4(d).

In re Estate of Rickert, 934 N.E.2d 726, 731 (Ind. 2010).

will only consider the evidence most favorable to the judgment. Surber, 899 N.E.2d at 702.

Huerter's argument is simply a claim to reweigh the evidence and the credibility of the witnesses. He relies solely on his own testimony, and it was within the trial court's discretion to discredit Huerter's self-serving statements. Furthermore, on the record before us, Huerter first claimed lack of consideration on February 8, 2007, nearly two and one-half years from the date the parties executed the contract and fifteen months after Sedric's death. The evidence before the trial court supports a reasonable inference that Sedric paid the \$100,000 purchase price on the date the contract was executed because Sedric received the quit claim deed on that same date.

For all of these reasons, we conclude that sufficient evidence supports the trial court's findings that Huerter received adequate consideration and the parties therefore had a valid contract. Accordingly, we affirm the trial court's judgment in favor of Sedric's Estate and denying Huerter's compliant to quiet title to the Lake County real estate.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.