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IN THE
COURT OF APPEALS OF INDIANA

THOMAS E. COWDREY, JR.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 84A01-0811-CV-541
	)	
WENDY BRYANT,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
DIVISION I
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0801-CT-36

June 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Plaintiff, Thomas E. Cowdrey, Jr. (Cowdrey), appeals the trial court's grant of summary judgment to Appellee-Defendant, Wendy Bryant (Bryant), determining that the Statute of Frauds and parol evidence rule defeat Cowdrey's claim as a matter of law.

We affirm.

ISSUE

Cowdrey raises two issues, one of which we find dispositive and restate as: Whether the trial court erred by refusing to acknowledge his prior oral agreement with Bryant.

FACTS AND PROCEDURAL HISTORY

On July 19, 2005, Bryant entered into a purchase agreement to buy real estate consisting of a house and land located at 9477 East Old Fort Harrison Avenue, in Terre Haute, Indiana (the property). At the time, Cowdrey and Bryant were in a relationship. The property was owned by Cowdrey, his mother, and his aunt. The purchase agreement called for a purchase price of $60,000, with Bryant paying $45,000 in cash, and Cowdrey gifting $15,000 worth of equity in the property to Bryant. On September 12, 2005, Cowdrey signed a gift letter expressly giving $15,000 in equity of the property to Bryant. On October 12, 2005, Bryant obtained a mortgage loan from Fifth Third Mortgage Company in the amount of $45,000 for the purchase of the property, of which $35,000 went to Cowdrey's aunt to purchase her interest, and the additional $10,000 went toward back taxes and improvements for the property. At some point, Cowdrey's aunt deeded her interest to Cowdrey and his mother, and on October 12, 2005, Cowdrey and his mother signed a warranty deed conveying

their interests in the property to Bryant. Cowdrey and Bryant lived together in the house on the property, with each paying half of the mortgage payment for over two years. Cowdrey and Bryant's relationship ended for some reason, and Bryant evicted Cowdrey from the property.

On January 3, 2008, Cowdrey filed a complaint challenging the conveyance of the property. On January 10, 2008, Cowdrey filed an amended complaint alleging that he and Bryant had an agreement to purchase the property and hold it jointly as if they were husband and wife. "The real estate was deeded to [Bryant] solely for the purpose of [Bryant] being able to obtain a mortgage sufficient to pay off [Cowdrey's aunt]." (Appellant's App. p. 7). Cowdrey further alleged the $15,000 in equity that he gave Bryant in the property was not really a gift, but rather made so that Bryant could obtain the mortgage on his and her behalf. Cowdrey asked for the following relief:

> 1. For an Order declaring the respective ownership interest of the parties as is supported by the evidence pertaining to contributions made by the parties;
>
> 2. For an Order requiring the sale of the real estate and the satisfaction of any and all mortgage liens against said real estate;
>
> 3. For an Order, following the sale of the real estate and the satisfaction of the liens, determining the respective ownership and equitable interests of the parties based upon the evidence in this case;
>
> 4. That the deeds to the defendant be reformed in accordance with the agreement of the parties in the evidence of this case; and,
>
> 5. For all other relief, which is just and proper in the premises.

(Appellant's App. p. 8).

Bryant responded to Cowdrey's complaint by denying the material allegations. She also counterclaimed alleging that Cowdrey's lawsuit had slandered her title to the property, and, as a result, she had suffered pecuniary loss.

On May 30, 2008, Bryant filed a motion for summary judgment contending that the gift letter and the warranty deed unambiguously conveyed the property to her, and therefore, parol evidence challenging that conveyance would not be admissible. On June 30, 2008, Cowdrey responded to the motion for summary judgment arguing that the equitable remedies of unjust enrichment and promissory estoppel should be applied to prevent an unjust and unconscionable loss to him. On July 22, 2008, the trial court held a hearing on the motion. On September 15, 2008, the trial court issued an order granting Bryant summary judgment, stating in part:

> The Court is somewhat sympathetic with [Cowdrey's] description of the motivations for this real estate transaction. However, the written documents herein are clear and governed by the Indiana Statute of Frauds[,] I.C. 32-21-1-1(b), which precludes parole [sic] evidence in the interpretation of the intent of the parties entering into a written agreement when the language of the written document is not ambiguous.

(Appellant's App. p. 5).

Cowdrey now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

In reviewing summary judgment rulings, we apply the same standard as the trial court. *Kopczynski v. Barger*, 887 N.E.2d 928, 930 (Ind. 2008). We will affirm summary judgment unless there is a genuine issue as to a material fact or the moving party is not entitled to a

judgment as a matter of law. *Id*. All facts and reasonable inferences from them are to be construed in favor of the nonmoving party. *Id*. We must carefully review a decision on summary judgment to ensure that a party was not improperly denied its day in court. *Evan v. Poe & Associates, Inc.*, 873 N.E.2d 92, 97-98 (Ind. Ct. App. 2007).

II. *Parol Evidence Rule*

Cowdrey argues that the trial court erred by applying the parol evidence rule to grant summary judgment to Bryant. Specifically, Cowdrey contends that he acted pursuant to a separate oral agreement, and the warranty deed did not contain an integration clause; so, therefore, the parol evidence rule is inapplicable.

According to the parol evidence rule, extrinsic evidence is not admissible to clarify or modify the terms of a written instrument if the terms of the instrument are clear and unambiguous. *Depew v. Burkle*, 786 N.E.2d 1144, 1148 (Ind. Ct. App. 2003), *trans. denied*.

> When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence . . . of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing.

Dicen v. New Sesco, Inc., 839 N.E.2d 684, 688 (Ind. 2005) (citing CORBIN ON CONTRACTS § 573 (2002 reprint)) (emphasis removed). Likewise, there is a general proposition that a party is excluded from presenting extrinsic evidence of prior or contemporaneous oral agreements offered to vary or contradict the terms of a written contract. *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 161 (Ind. 2005). "Rather, a written contract is presumed to embody the parties' entire agreement." *Id*. (citing *Keystone Square Shopping Ctr. Co. v. Marsh Supermarkets, Inc*., 459 N.E.2d 420, 422 (Ind. Ct. App. 1984)).

Cowdrey argues, in part, that the trial court's summary judgment order is in error because the parol evidence rule does not apply where there is no integration clause in the written document being considered. His contention has some support in our cases. *See, e.g.*, *Truck City of Gary, Inc. v. Schneider Nat'l Leasing*, 814 N.E.2d 273, 278 (Ind. Ct. App. 2004) ("The parol evidence rule is inapplicable to the case at bar because the Contract in question does not contain an integration clause nor any additional evidence that the parties intended the Contract to be totally integrated.").

However, we do not find there to be a lack of evidence that Cowdrey and Bryant intended the contract to be totally integrated. "A warranty deed is a deed in which the grantor warrants good and clear title." *Windell v. Miller*, 687 N.E.2d 585, 588 (Ind. Ct. App. 1997) (citing 10 I.L.E. Deeds § 2 (1983)). The usual covenants of title are warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title as to all claims. *Id*. (emphasis added). Further, the warranty deed issued by Cowdrey and his mother to Bryant stated that they "Convey and warrant unto" Bryant. (Appellant's App. p. 47). The language "conveys and warrants to" has been defined by statute to convey land in "fee simple" from the grantor to the grantee. I.C. § 32-17-1-2. Fee simple has been defined as "[a]n interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs." BLACK'S LAW DICTIONARY 648 (8th ed. 2004).

Cowdrey states in his brief that "[a]t closing, Bryant became the sole legal owner of the real estate in fee simple." (Appellant's Br. p. 6). However, the substance of Cowdrey's action contradicts his concession of Bryant's fee simple ownership. When initiating this

action, Cowdrey asked that the "respective ownership rights" of the parties be declared by the trial court and that the deed be reformed. (Appellant's App. p. 8). Further, he stated in support of his response to Bryant's motion for summary judgment that he is "the owner of a substantial amount of equity in the real estate." (Appellant's App. p. 57). When we acknowledge the substance of Cowdrey's action, it becomes clear that he is attempting to clarify or modify the terms of the warranty deed based upon an antecedent agreement between himself and Bryant. Stated another way, by issuing the warranty deed, Cowdrey has promised to the world that he would defend Bryant's ownership of the property from all competing claims, but now Cowdrey is trying to compete with Bryant's claim. The parol evidence rule does not permit Cowdrey to use our courts to facilitate such a contradiction of actions. Therefore, we must affirm the trial court's grant of summary judgment to Bryant.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly applied the parol evidence rule to award summary judgment to Bryant.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.