

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHELLY K. JOHNSTON,	:	DOCKET NO. 14-01995
Plaintiff,	:	CIVIL ACTION
vs.	:	
	:	
DALTON T. JOHNSTON and ROBERTA L.	:	
JOHNSTON, his wife, and THOMAS M. JOHNSTON,	:	QUIET TITLE
Defendants	:	SUMMARY JUDGMENT

OPINION AND ORDER

Before the Court are cross-motions for summary judgment. Upon review of the motions, briefs, the summary judgment record of evidence, and argument, Plaintiff, Shelly K. Johnston's motion for summary judgment is DENIED; Defendants, Dalton T. Johnston, Roberta L. Johnston and Thomas M. Johnston's motion for summary judgment is GRANTED. The Court provides the following in support of its decision.

Factual Background.

In 1991, Donald Holtzman and Thomas Johnston proposed to essentially swap about 6 acres of land from their respective adjoining properties in Pine Township. The swap involved two parcels accessed by an existing private right-of-way. By letter dated January 9, 1991(1991 letter), the Lycoming County Planning Commission notified Donald Holtzman and Thomas Johnston that the Chairperson granted final plan approval of their two add lot subdivision in accordance with Section 2.033 E., of the Lycoming County Subdivision and Land Development Ordinance. The plan proposed to subdivide lot #1, containing 6.005 acres from land owned by Thomas Johnston to be added to adjoining lands owned by Donald Holtzman and to subdivide 6.012 acres from Donald Holtzman to be added to adjoining land owned by Thomas Johnston.

That letter provided the following stipulation for approval.

As a stipulation of subdivision approval, Donald Holtzman and Thomas Johnston, as Grantee, each are required to combine their addition lot with their existing property into one deed of record. If the parcels are described separately in the same deed, we require a note be placed in the deed that the two parcels are to be considered as one for subdivision purposes. This will preclude future conveyance of the property without prior subdivision approval.

As required, a copy of the approved plan and approval letter were timely recorded in the County Register and Records office. The swap of the land occurred with Thomas Johnston and his wife, Beverley Johnston, now deceased, receiving a deed to the 6.012 acres of land (“addition lot”). However, Thomas Johnston did not combine the addition lot with his existing property into one deed as required by the stipulation. By deed dated December 21, 2001, Thomas Johnston and his wife conveyed the exiting property to their now deceased son and his wife, Plaintiff, Shelly K. Johnston without mention of the addition lot. The deed lists the consideration for that conveyance as \$1.00. By deed dated September 13, 2011, Thomas Johnston conveyed the addition lot to his other son, Defendant Dalton Johnston and his wife, Defendant Roberta Johnston.¹

On July 31, 2014, Plaintiff, Shelly K. Johnston, filed a complaint to quiet title as to the addition lot, seeking to declare that the Defendants are barred from ascertaining any right, lien, title or interest in the Lot and requesting an Order to cancel the Deed which provides the Defendants with record ownership of the addition lot.

The parties filed cross-motions for summary judgment. Plaintiff Shelly Johnston contends that the deed dated September 13, 2011 conveying the addition lot to Dalton and

¹ A deed dated May 17, 2013 and recorded on May 31, 2013, labeled a corrected deed, purported to convey the addition lot from Plaintiff Shelly Johnston and her husband (now deceased) to themselves. Since a deed dated September 13, 2011 was recorded as conveying title to the addition lot prior to the corrective deed, Plaintiff does not contend that the corrective deed gives her title. Instead, by this action, Plaintiff seeks to have that deed stricken as a legal nullity and require that a quit claim deed be filed to convey title of the addition lot to her.

Roberta Johnston is a legal nullity as a matter of law because the stipulation for approval of the swap of addition lots set forth in the 1991 letter was violated and no further approval was sought or obtained prior to separating the addition lot from the property existing at the time of the swap. Defendants contend that as a matter of law Plaintiff Shelly Johnston has no legal title to the addition lot because the deed conveying the existing property did not include the addition lot and the addition lot was subsequently conveyed by deed to them. Defendants contend that summary judgment should be entered in their favor along with a determination that they have legally valid title to the addition lot.

Legal Standards

Summary Judgment

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. 2011). A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)).

Discussion

“[C]onveyance of real property by way of deed is presumptively valid and will not be set aside unless it is shown by clear and convincing evidence that the transfer was improperly induced by fraud or other misconduct on the part of the transferee or that the deed was ineffective to pass title, as, for example, where the deed was not delivered.” Wagner v. Wagner, 353 A.2d 819, 824 (Pa. 1976).² “The introduction of the executed and delivered deed, complete on its face, shifted to appellant the burden of proving the deed the result of fraud, accident or mistake.” Roe v. Roe, 407 Pa. 125 178 A.2d 714 (Pa. 1962) *citing*, Cragin's Estate, 274 Pa. 1, 117 Atl. 445 (1922).

In the present case, on its face, a properly recorded deed conveys ownership of the addition lot to Defendants Dalton and Roberta Johnston. No material issues of fact exist as to the validity of that deed. Plaintiff does not contend that Thomas Johnston and his wife did not intend to convey the addition lot by deed dated September 13, 2011, or that that deed was procured by fraud, accident or mistake. Plaintiff has not produced evidence of a dispute of material facts as to the existence of fraud, accident or mistake sufficient to invalidate the deed.

In her summary judgment motion, Plaintiff Shelly Johnston relies on the claim that the conveyance is invalid for failure to conform with a binding stipulation set forth in the 1991 letter. That stipulation, which required that the addition lot be combined with the existing property into one deed of record, had been in violation for over 23 years as of the time Plaintiff filed her complaint. Plaintiff cites no case or statute that permits a court to invalidate a deed because the deed conveys property without the appropriate subdivision approval or in violation of a specific

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subdivision approval stipulation.³ 53 P.S. § 10515.3 provides enforcement remedies to municipalities for violations of subdivision or land development ordinances. That enforcement provision includes fines but does not include authority to invalidate deeds. In sum, the Plaintiff has not established as a matter of law that the Court should take the extraordinary remedy of invalidating a deed and directing that the addition lot be conveyed to her by a quit claim deed.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 16th day of **December, 2015**, upon consideration of cross motions for summary judgment, it is ORDERED and DIRECTED as follows.

1. Plaintiff Shelly K. Johnston's motion for summary judgment is DENIED.
2. Defendants, Dalton T. Johnston, Roberta L. Johnston and Thomas M. Johnston's motion for summary judgment is GRANTED.
3. The "corrective deed" recorded dated May 17, 2013 and recorded on May 31, 2013, purporting to convey the addition lot from Plaintiff Shelly Johnston and her husband (now deceased) to themselves is invalid and hereby STRICKEN.

BY THE COURT,

December 16, 2015
Date

Richard A. Gray, J.

cc: Scott T. Williams, Esq. for Plaintiff
J. Michael Wiley, Esq. for Defendants

³ Plaintiff cites Doylestown Township v. Teeling, 635 A.2d 657 (Pa. Cmslth. 1993), Bonner v. Upper Makefield Township, 597 A.2d 196 (Pa. Cmlwth. 1991) and Treasure Lake Property Owners Association, Inc. v. Meyer, 832 A.2d 477 (Pa. Cmwlt. 2003). None of those cases provide authority for the Court to invalidate a deed that conveys property in violation of a subdivision plan.