NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

GEORGE ANDERSON TRAINING AND CONSULTING, INC., a Florida corporation; and GEORGE C ANDERSON, an individual and intervenor, Appellants, v. MILLER BEY PARALEGAL & FINANCING, LLC, a Florida limited liability company, Appellee.	)	Case No. 2D19-4413

Opinion filed March 12, 2021.

Appeal from the Circuit Court for Pinellas County; Patricia Muscarella, Judge.

Paul H. Bowen of Paul H. Bowen, P.A., Palm Harbor, for Appellants.

Matthew D. Weidner of Weidner Law, P.A., St. Petersburg, for Appellee.

VILLANTI, Judge.

George Anderson Training and Consulting, Inc., and George C Anderson[1] (collectively, "Anderson"), the plaintiffs in a quiet title action below, appeal from an order

[1]Mr. Anderson has no middle name, and as such, does not place a period after the "C" in his name. Stated another way, his middle name *is* C.

granting a motion for a directed verdict in favor of defendant Miller Bey Paralegal & Financing, LLC (Miller Bey), following a bench trial. We treat the directed verdict as an involuntary dismissal.[2] See Thompson v. Fla. Cemeteries, Inc., 866 So. 2d 767, 769 (Fla. 2d DCA 2004) ("[A]lthough the defendants [moved for a directed verdict] and the trial court's order reflected that it was granting a motion for directed verdict, in reality this was a motion for involuntary dismissal pursuant to Florida Rule of Civil Procedure 1.420(b)."); see also Tillman v. Baskin, 260 So. 2d 509, 510 (Fla. 1972) ("In non-jury trials, a motion for directed verdict is tantamount to a motion for involuntary dismissal . . . ."). Because the deed purporting to transfer title from an intermediate party to Miller Bey is invalid on its face, we must reverse. To provide historical context and frame the issue on appeal, we begin by briefly discussing the relevant factual history.

Facts

In 2001, Mr. Anderson incorporated George Anderson Training and Consulting, Inc. (Anderson Inc.). He designated himself president and gave himself 95% of the company's common stock. He designated Gladys Maria Otero as vice-president, and gave her 5% of the company's common stock. In 2002, Anderson Inc. purchased, via warranty deed, certain real property in Pinellas County (the property).[3]

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[2]The trial court could not direct a verdict because there is no verdict to direct in a bench trial. See Goodno v. S. Fla. Farms Co., 95 Fla. 90, 96 (Fla. 1928) ("A verdict is the determination of a jury upon the testimony submitted to them."); Black's Law Dictionary (11th ed. 2019) (defining "verdict" as "[a] jury's finding or decision on the factual issues of a case"). Thus, a motion for a directed verdict has no meaning when a case is tried without a jury.

[3]There is no dispute as to the validity of this deed.

On December 21, 2004, unbeknownst to Mr. Anderson, Anderson Inc. allegedly quit-claimed the property *to* Mr. Anderson. The deed was executed by Ms. Otero as grantor, and she signed the conveyance as president of Anderson Inc. That deed was recorded on the same day. Also on the same day, a quit-claim deed was executed conveying the same property from Mr. Anderson to Ms. Otero. However, this second deed was not recorded until January 7, 2009. Mr. Anderson denied having any knowledge of either of these conveyances until sometime in 2009, at which time he filed a quiet title action against Ms. Otero and filed a lis pendens. He asserted that Ms. Otero was not, in fact, the president of Anderson Inc. and did not have any authority to convey the property, and that the signature on the deed conveying the property from himself as grantor to Ms. Otero was a forgery.

In 2010, Ms. Otero filed for bankruptcy. Anderson promptly filed a claim in the bankruptcy court. Then, on September 11, 2015—while Ms. Otero's bankruptcy case was still pending and before the Trustee had acted on Anderson's claim and unbeknownst to the Trustee or Anderson—Ms. Otero conveyed the property to Miller Bey via special warranty deed. Upon discovering this, Anderson filed a quiet title action against Miller Bey on June 3, 2016.[4] On February 6, 2019, the Trustee assigned the bankruptcy estate's interest in the property to Anderson. Apparently, the Trustee was never apprised of the prior conveyance of the property from Ms. Otero to Miller Bey. During the course of the proceedings in the Miller Bey quiet-title lawsuit, Anderson filed a motion for summary judgment. However, there is no indication in our record that the

[4]Anderson's quiet title action against Ms. Otero was eventually dismissed for lack of prosecution.

motion was ever considered or heard. Instead, the matter went directly to a bench trial. At the close of the plaintiffs' evidence, Miller Bey moved for a directed verdict, which the trial court orally granted. Shortly thereafter, the trial court entered an order stating, "This court finds that the Plaintiff failed to present evidence sufficient to meet its evidentiary burdens" and that "record title to the property . . . remains vested in Defendant Miller Bey . . . free of any and all claims of Plaintiff." The order contains no findings of fact or discussion of law in support of this conclusion.

Analysis

As indicated above, we treat the order granting the motion for a directed verdict as an order granting a motion for involuntary dismissal and review it as an adjudication of the merits. See Fla. R. Civ. P. 1.420(b) ("Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision . . . operates as an adjudication on the merits."). In any case, the same law is applicable to both. See Thompson, 866 So. 2d at 769; Deutsche Bank Nat'l Tr. Co. v. Clarke, 87 So. 3d 58, 60 n.1 (Fla. 4th DCA 2012).

> [W]here plaintiff has presented a prima facie case based on unimpeached evidence . . . the trial judge should not grant the motion even though he is the trier of the facts and may not himself feel at that point in the trial that the plaintiff has sustained his burden of proof. [In that] situation the trial judge should . . . decline to render any judgment until the close of all the evidence[] and deny the motion. If, after denial of the motion, the defendant declines to present any evidence, the judge must, of course, then exercise his own judgment in applying the law to the facts presented and rule on the motion and decide the case.

Tillman, 260 So. 2d at 511 (quoting Rogge v. Weaver, 368 P.2d 810, 813 (Alaska 1962)).

> In making the motion, the movant admits the truth of all facts in evidence and every reasonable conclusion or inference based thereon favorable to the non-moving party. Where the plaintiff has presented a prima facie case and different conclusions or inferences can be drawn from the evidence, the trial judge should not grant a motion for involuntary dismissal.

Day v. Amini, 550 So. 2d 169, 171 (Fla. 2d DCA 1989) (citations omitted). We review a final judgment entered following the grant of a motion for involuntary dismissal at the close of the plaintiff's case de novo. Luciani v. Nealon, 181 So. 3d 1200, 1202 (Fla. 5th DCA 2015).

To state a claim to quiet title, a plaintiff must allege that he or she has title to the subject property, that there is a cloud on the title, and that the defendant's claim to the title is invalid. Stark v. Frayer, 67 So. 2d 237, 239 (Fla. 1953); Woodruff v. Taylor, 118 So. 2d 822, 822 (Fla. 2d DCA 1960). In this case, there is no dispute as to the validity of the original deed obtained by Anderson Inc. in 2002, but there is considerable evidence that all of the conveyances after that point were invalid or fraudulent. Although several conveyances of the same property came into play during the course of events in this case, we need only address three of them. We first consider the two deeds that were executed in 2004; we then turn to the 2015 deed which is the subject of the underlying action.

I. The 2004 Deeds.

First, we consider the two deeds that were executed on December 21, 2004. The first of these is a quit-claim deed from Anderson Inc. to Mr. Anderson, signed by Ms. Otero as president of Anderson Inc. (the corporate deed). Anderson argued, as he does on appeal, that Ms. Otero was not president of Anderson Inc. and

that she had no authority to convey the property.[5] On appeal, Miller Bey argues that the corporate deed was valid on its face under section 692.01, Florida Statutes (2015). This is not true. Section 689.01(1) requires any conveyance of real property to be signed in the presence of two subscribing witnesses by a person *authorized* to sign on behalf of the corporation. Mr. Anderson testified that Ms. Otero did not have such authorization. Importantly, Mr. Anderson's testimony was unrebutted. As Miller Bey partially argues, section 692.01 provides that a corporation may convey an interest in real property that is signed by the president, vice president, or chief executive officer, and that "an instrument so executed is valid whether or not the officer signing for the corporation was authorized to do so by the board of directors." § 692.01. But Miller Bey overlooks the fact that this is true only if the instrument is "sealed with the common or corporate seal." Id. (emphasis added). The deed in question was not sealed; therefore, Ms. Otero—regardless of her position as president or vice president could not sign the deed as grantor without corporate authorization. See § 689.01(1). Accordingly, the deed transferring the property from Anderson Inc. to Mr. Anderson was not valid on its face.[6]

The second deed executed on December 21, 2004 (but not recorded until 2009), purported to convey the property from Mr. Anderson to Ms. Otero. Assuming for

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[5]In fact, Ms. Otero had filed an annual report with the Florida Division of Corporations in which she changed her title from vice president, treasurer, and director (VTD) to president, secretary, treasurer, and director (PSTD) of Anderson Inc. The resolution of this appeal does not require us to consider whether the amendment was fraudulently filed.

[6]Ms. Otero was subpoenaed to appear as a witness in this case but did not appear.

the sake of argument that the corporate deed validly transferred the property from Anderson Inc. to Mr. Anderson, ownership of the property at that instant vested solely in Mr. Anderson. If this is true, then only Mr. Anderson in his individual capacity could subsequently convey the property to another person or entity.

The burden of proof that a purported signature on a deed has been forged is by a preponderance or greater weight of the evidence. Pate v. Mellen, 237 So. 2d 266, 268 (Fla. 1st DCA 1970). This is to be distinguished from the burden of proof necessary to resolve issues of fraud, which is by clear and convincing evidence. Id. The testimony of a purported grantor that his or her alleged signature on a deed is a forgery and was placed there without his or her knowledge or consent is sufficient to meet this burden and to place the issue before the finder of fact. See Sec. Tr. Co. v. Calafonas, 68 So. 2d 562, 563-64 (Fla. 1953). In this case, Mr. Anderson testified that he did not execute the deed conveying the property to Ms. Otero, that his signature was forged, that he was not in the State of Florida when the purported deed was allegedly executed, and that he would never sign a document that indicates that his middle initial is "C." ("C" with a period). This testimony was uncontradicted by any other evidence presented below, and the trial court made no findings to the contrary. Thus, Anderson presented a sufficient prima facie case that the 2004 deed was forged.

II. The 2015 Otero-Miller Bey Special Warranty Deed.

At the final hearing, the trial court found, in somewhat disjointed fashion, as follows:

> And all of the proof that I have before me today is two things. One, is that special warranty deed is what it is. Doc stamps weren't paid. It doesn't matter whether Mr. Miller

> signed it or not. It only has to do with Ms. Otero. There was zero evidence as to Ms. Otero's authority to do anything.
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> On its face, it's valid. It's filed. It's recorded. And saying 10,000 -- consideration is considered a valid deed for consideration on every planet I know of in the State of Florida. Just because you put $100 and valuable consideration does not (inaudible) part of that deed. It does not make it invalid as a result of that.
>
> Lastly, there was no tie to Mr. Miller to the corporation who was being sued at all. Zero.[7]

Contrary to the trial court's findings and conclusions, the deed from Ms. Otero[8] to Miller Bey is invalid on its face as a matter of law. First, a deed to convey real property must be witnessed by at least two persons, and the signatures of those persons must be witnessed and verified by a notary. § 689.01(1). In this case, the special warranty deed was signed by Frank Miller as both grantor and witness. But Mr. Miller could not be the grantor because he was not an owner; his only relationship to the deed was as a member of the purported grantee, "Miller Bey Paralegal & Financing, LLC." Additionally, under Florida law, a grantee may not generally sign as witness to a deed. See Liddon v. Hodnett, 22 Fla. 442, 443-44 (Fla. 1886).

Second, "Marlene O. Duncan" signed as a witness but then also notarized her own signature. Miller Bey argues that there is no impediment to a notary signing as a witness to a deed. This misses the point. Even if a notary may sign as a witness, it

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[7]This last factual finding is contrary to the evidence adduced at trial; presuming the court meant the LLC Miller Bey, there was more than sufficient evidence that Mr. Miller formed the LLC and was authorized to represent it.

[8]Anderson argues, as he did below, that Ms. Otero's signature on the deed was forged or that a different person named "Maria Otero" executed the deed. We decline to address this issue because Ms. Otero was not a party to this action and was not called as witness.

does not change the fact that "it is unlawful for a notary public to notarize his or her own signature." § 117.05(1), Fla. Stat. (2015) (emphasis added). Additionally—and incredulously—the notarizing statement at the bottom of the deed states, "The foregoing instrument was acknowledged before me . . . by Marlene O. Duncan, who . . . has produced [her] driver[s] license as identification." This is like saying, "I don't personally know me but I showed me my driver's license as identification." Frank Miller's signature is not notarized at all. The bottom line is that while there might be a scenario in which a notary could legally sign a deed as a witness, there is no situation that would permit a notary to notarize his or her own signature; indeed, it is unlawful to do so. See § 117.05(1).

Third, Ms. Otero signed as grantor. But Ms. Otero could not convey any property because the property (assuming, arguendo, that it was even her property) was part of the bankruptcy estate at the time of the alleged conveyance.

We also note that the owner of the title company identified on the document denied in an affidavit that her company had anything to do with this transaction and further swore that her company had no record of any of the individuals identified in the deed, that the company was closed at the time it was allegedly signed, and that the statement "Prepared by Crimmins Title Company" on the document was fraudulent.

Based on the above, we conclude that the 2015 special warranty deed from Ms. Otero to Miller Bey was legally invalid on its face and therefore failed to convey any legal interest in the property to Miller Bey.

An involuntary dismissal should be entered only when the evidence, considered in the light most favorable to the non-moving party, fails to establish a prima facie case on the non-moving party's claim. See Day, 550 So. 2d at 171. As long as competent, substantial evidence has been adduced, even if it conflicts with other evidence, the motion should not be granted. Curls v. Tew, 346 So. 2d 1242, 1243 (Fla. 1st DCA 1977). Importantly, in making this determination, the court "can neither weigh the evidence nor consider the credibility of witnesses." Capital Media, Inc. v. Haase, 639 So. 2d 632, 633 (Fla. 2d DCA 1994); see also Curls, 346 So. 2d at 1243 ("A trial judge may not weigh evidence when ruling on a defendant's motion pursuant to Rule 1.420(b) following the presentation of a prima facie case by a plaintiff."). Here, by holding that "the Plaintiff failed to present evidence sufficient to meet its evidentiary burdens," the trial court failed to limit itself to a determination of whether Anderson made a prima facie case and impermissibly weighed the evidence. See Luciani, 181 So. 3d at 1203. Here, Anderson made a prima facie case that the 2015 deed purporting to convey the property from Ms. Otero to Miller Bey was invalid on its face. The trial court erred in finding otherwise.

Normally, when a claim is dismissed involuntarily and this court determines that the dismissal was error because the evidence was sufficient to withstand such dismissal, the remedy is to reverse and remand for further proceedings. This is because "[w]hen a prima facie case is made by plaintiff, fairness would appear to require that the trial judge weigh it in the light of the strength or weakness of the defendant's defense evidence, if any, as in the case of a jury trial." Tillman, 260 So. 2d at 512. But in this case, the 2015 deed from Ms. Otero to Miller Bey is, without

question, invalid on its face. There is no possible evidence Miller Bey can present to refute this. Thus, Miller Bey Paralegal & Financing, LLC, the only named defendant, cannot prevail in a new trial.[9] Accordingly, we conclude that judgment must be entered in favor of Anderson on remand.

Reversed and remanded for further proceedings consistent with this opinion.

NORTHCUTT and LABRIT, JJ., Concur.

[9]This conclusion is unaffected by the historical facts recited in this opinion regarding the 2004 conveyances.