ATTORNEYS FOR APPELLANT

Nancy A. McCaslin
McCaslin & McCaslin
Elkhart, Indiana

Martin A. McCloskey
McCloskey Law Office
Elkhart, Indiana

ATTORNEY FOR APPELLEE

John William Davis, Jr.
Davis & Roose
Goshen, Indiana

IN THE COURT OF APPEALS OF INDIANA

Becky Cutter,
Appellant-Defendant,

v.

Linda Rothrock Jurus,
Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No. 21A-PL-200

Appeal from the Elkhart Superior Court

The Honorable Teresa L. Cataldo, Judge

Trial Court Cause No. 20D03-2001-PL-5

Shepard, Senior Judge.

[1] The equitable doctrine of reformation allows courts to alter written instruments to correct mistakes of fact by the instrument's signers. The trial court reformed two property deeds for a ten-acre parcel of land to include a life estate that had been granted to Linda Rothrock Jurus under prior contracts involving that property. Becky Cutter appeals the trial court's denial of her motion for

summary judgment and grant of summary judgment in favor of Jurus. We affirm.

Facts and Procedural History

[2] In 2001, Linda Jurus and her husband Bernard Jurus purchased a ten-acre property in Goshen, Indiana, and they lived there in a large white house. They rented a smaller house on the property to Cutter beginning in 2007.

[3] In 2013, Linda and Bernard Jurus signed an "Agreement to Sell Real Estate" to Joseph Bailey. Appellant's App. Vol. II, p. 35. They agreed to sell their land and certain personal property to Bailey for $155,000, to be paid in installments. Cutter was a friend of Bailey, and she signed the Agreement as a witness. The land contract had a closing date of July 17, 2014.

[4] On that same day, the Juruses and Bailey signed an Addendum to the Agreement ("Addendum"). The Addendum granted the Juruses the right to reside on the land "for their natural lifetime." *Id.* at 36. They agreed to "make all updates, repairs, pay utilities, insurance, taxes [sic] for the Big White House on the property." *Id*. The couple further agreed that, although they would have an unlimited right of access to the full ten acres, they would not "interfere with any decisions or improvements that the new owner makes." *Id.* Finally, they acknowledged that Joseph Bailey would take control of leases on the property. Cutter continued to live in the small house as Bailey's tenant or guest.

[5] In January 2014, Bernard Jurus died in Arizona. There is no dispute that Linda Jurus was Bernard's heir and became the sole owner of their life estate interest in the ten-acre property.

[6] On July 28, 2014, Ms. Jurus and Bailey signed a "Contract for the Sale of Real Estate" ("Land Contract"). *Id.* at 37. The Contract again addressed Jurus' sale of the 10-acre parcel to Bailey, stating that Bailey would purchase the property subject to Jurus receiving "a life estate in the real estate upon which is erected the main residence, together with ingress and egress." *Id.* at 39. The Land Contract was recorded with the Elkhart County Recorder's Office ("the Recorder's Office").

[7] In 2015, Jurus hired a title company to prepare a deed and organize a closing. On April 9, 2015, she signed a Warranty Deed ("the Warranty Deed") transferring the land to Bailey. The Warranty Deed stated it was "in full and final satisfaction" of the Land Contract. *Id.* at 44. The Warranty Deed, unlike the Addendum or the Land Contract, omitted any reference to Jurus having a life estate interest in the land. The Warranty Deed was also filed at the Recorder's Office.

[8] In 2016, Bailey petitioned the Elkhart County's Board of Zoning Appeals ("BZA") for a variance, requesting permission to build a new house. He explained in his petition that the new house would replace the smaller house, while he would keep another house, Structure A, "for a period of time." *Id.* at 110. Photographs attached to Bailey's petition show that Structure A was the

large white house in which Ms. Jurus lived. Bailey further stated in the petition that Structure A "would stay until the lady that lives in it retires to Arizona in a couple of years and then it will be torn down." *Id.* at 114.

[9] The BZA's staff noted in a report that one of the houses on the property would be removed "at the termination of a life lease." *Id.* at 117. The minutes of the meeting at which the BZA considered Bailey's variance request reflect that Bailey described Jurus' home as a "rental property" that would be demolished after the "tenant" retired to Arizona or passed away. *Id.* at 123. In granting the variance, the BZA directed that Bailey's petition would be reviewed every two years "until the termination of the life lease." *Id.* at 125. After receiving approval for the variance, Bailey built a new house for Cutter and demolished the small one in which she had lived.

[10] Bailey died in 2018. Under the terms of his will, Cutter was both the personal representative of his estate and the primary beneficiary. On April 29, 2019, after the trial court approved Cutter's proposed distributions of the estate's assets, she signed a Personal Representative's Deed ("Representative's Deed") conveying the land to herself. The Representative's Deed omitted any mention of Jurus having a life estate interest in any part of the property.

[11] Meanwhile, Linda Jurus had continued to live in the big white house, and she discovered the absence of any reference to her life estate in the Warranty Deed and the Representative's Deed. In 2020, she filed a civil complaint, asking the trial court to reform the 2015 and 2019 deeds to include a life estate. The trial

court held a hearing, during which Jurus specified she sought a life estate and a right of access as to only the big white house, not to the entire property. The court later granted Jurus the remedy she requested, denying Cutter's cross-motion. This appeal followed.

Discussion and Decision

[12] Cutter argues the trial court should have granted her motion for summary judgment and denied Jurus' motion. Alternatively, Cutter now claims there are factual disputes that should have led the trial court to deny both motions.

[13] We review summary judgment decisions de novo, applying a standard of review similar to that of the trial court. *AM Gen. LLC v. Armour*, 46 N.E.3d 436 (Ind. 2015). A party moving for summary judgment must show "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C). Upon this showing, the nonmoving party then has the burden of demonstrating there is a genuine issue of material fact. *AM Gen.*, 46 N.E.3d 436.

[14] A trial court's grant of summary judgment is presumptively valid, and the party who lost in the trial court has the burden of demonstrating error. *Webb v. City of Carmel*, 101 N.E.3d 850 (Ind. Ct. App. 2018). The trial court's findings and conclusions facilitate our review but do not bind us. *Cox v. N. Ind. Pub. Serv. Co., Inc.*, 848 N.E.2d 690 (Ind. Ct. App. 2006). Cross-motions for summary judgment do not alter our standard of review. *State Auto. Ins. Co. v. DMY Realty Co., LLP*, 977 N.E.2d 411 (Ind. Ct. App. 2012).

[15] This case addresses the equitable doctrine of reformation of contracts. A court of equity has authority to reform written documents. *Carr Dev. Grp., LLC v. Town of N. Webster*, 899 N.E.2d 12 (Ind. Ct. App. 2008). "Equity will reform a written contract between the parties whenever, through mutual mistake, or mistake of one of the parties accompanied by the fraud of the other, it does not, as reduced to writing, correctly express the agreement of the parties." *Citizens' Nat. Bank of Attica v. Judy*, 146 Ind. 322, 340, 43 N.E. 259, 264 (1896).

[16] The remedy of reformation is considered "extreme" because written instruments are presumed to reflect the intentions of the parties to those instruments. *Estate of Reasor v. Putnam Cnty.*, 635 N.E.2d 153, 158 (Ind. 1994). *Id.* Further, reformation overcomes the Statute of Frauds and has the potential to affect others beyond the immediate dispute. *S&S Enters. v. Marathon Ashland Petroleum, LLC*, 799 N.E.2d 18 (Ind. Ct. App. 2003).

[17] Reformation is available to remedy only mistakes of fact, not mistakes of law. *Estate of Spry v. Greg & Ken, Inc.*, 749 N.E.2d 1269 (Ind. Ct. App. 2001). A mistake of fact occurs when "words were inserted that were agreed to be left out, or that words were omitted that were agreed to be inserted." *Bd. of Comm'rs of Hamilton Cnty. v. Owens*, 138 Ind. 183, 186, 37 N.E. 602, 603 (1894) (quotation omitted). By contrast, a mistake of law regards the legal effect of the contract's terms, not the terms themselves. *See Gierhart v. Consol. Rail Corp.-Conrail*, 656 N.E.2d 285 (Ind. Ct. App. 1995) (affirming trial court's denial of request to reform release of liability; the language used was clear, and the

complaining party merely misunderstood the effect of the language), *trans. denied*.

[18] In cases involving mutual mistake, a party seeking reformation must show: (1) the true intentions of the parties to an instrument; (2) that a mistake was made; (3) that the mistake was mutual; (4) and that the instrument does not reflect the true intentions of the parties. *Estate of Reasor*, 635 N.E.2d 153. A party seeking reformation must prove its case by clear and convincing evidence. *Id.*

[19] Cutter first argues she is entitled to complete outright ownership because she concludes that, under the doctrine of merger, the parties' intentions must be understood from the terms of the 2015 Warranty Deed alone, rather than along with Jurus and Bailey's prior agreements. We disagree. The doctrine of merger states: "In the absence of fraud or mistake, all prior or contemporaneous negotiations or executory agreements, written or oral, leading up to the execution of a deed are merged therein by the grantee's acceptance of the conveyance in performance thereof." *Thompson v. Reising*, 114 Ind. App. 456, 462, 51 N.E.2d 488, 491 (1943). But Jurus is raising an equitable claim for reformation based on mistake. We have stated: "[t]he doctrine of merger does not apply and cannot be asserted in an action . . . brought to reform a deed because of the mistake in preparing the deed to carry out the confessed and admitted intentions of the parties to the agreement which preceded the deed and pursuant to which the deed was executed by the grantor." *Stack v. Com. Towel & Uniform Serv.*, 120 Ind. App. 483, 494, 91 N.E.2d 790, 795 (1950).

[20] In a related argument, Cutter claims we may not look at any evidence beyond the four corners of the 2015 Warranty Deed to ascertain the parties' intent. We conclude that the law is otherwise. Cutter refers to the parol evidence rule, under which evidence extrinsic to a written instrument is inadmissible to add to, vary, or explain the terms of the instrument if it is clear and unambiguous. *Cooper v. Cooper*, 730 N.E.2d 212 (Ind. Ct. App. 2000). But "[i]n this state it is settled that a written contract may be reformed upon parol evidence, and then specifically enforced as reformed." *Cripe v. Coates*, 124 Ind. App. 246, 250, 116 N.E.2d 642, 644 (1954). Thus, in an equitable action to reform a contract, we look to the parties' conduct during the course of the contract to determine their true intent. *Meyer v. Marine Builders, Inc.*, 797 N.E.2d 760 (Ind. Ct. App. 2003).

[21] Cutter further states that Jurus' claim for reformation must fail because Bailey passed away prior to this lawsuit, and she concludes reformation should be "barred where there has been a death of witnesses who could have provided valuable testimony regarding the conveyance of land." Appellant's Br. p. 28. The case Cutter cites on this point, *Angel v. Powelson*, 977 N.E.2d 434 (Ind. Ct. App. 2012), is distinguishable. In that case, a panel of this Court affirmed a grant of summary judgment to Powelson on Angel's claim to reform a deed, concluding Angel's claim was barred by the equitable defense of laches. Among other considerations, the deed in question had been executed thirty years prior to the lawsuit, and several witnesses (including the grantor) had died. By contrast, Cutter has not raised a defense of laches, and far less time passed between the execution of the deeds at issue.

[22] In summary, we reject Cutter's argument that she is entitled to judgment as a matter of law. The trial court did not err in denying her motion.

[23] In the alternative, Cutter claims there are disputes of material fact that should have barred a grant of summary judgment in favor of Jurus.[1] Specifically, she says there is mixed evidence that Bailey and Jurus had a mutual mistake of fact.

[24] After reviewing the record, we cannot conclude there is a dispute of material fact as to mutual mistake. Bailey and Jurus signed the 2013 Addendum and the 2014 Land Contract, both of which explicitly granted Jurus a life interest in the large white house. This is strong evidence of Bailey and Jurus' intent.

[25] In addition, the Addendum granted Bailey control over the ten-acre property, except for Jurus' house. He exercised that control in subsequent years, demolishing and replacing several structures, including Cutter's residence. But he never attempted to replace or renovate Jurus' home. In addition, during Bailey's life, Jurus paid her own utility bills for the house and attempted to contribute funds to pay property taxes, acts that are inconsistent with a standard landlord-tenant arrangement or a status as a mere guest.

[26] Cutter points to her own affidavit to support her claim that there is a dispute of fact as to Jurus and Bailey's intent. In *AM General*, Justice David wrote for a

---

[1] We note that in her motion for summary judgment, Cutter told the trial court she was entitled to summary judgment because "there is no genuine issue of material fact." Appellant's App. Vol. II, p. 140. It is incongruous, although not barred, for her to now state that there are factual disputes that would preclude summary judgment.

unanimous Supreme Court that "a self-serving affidavit may only preclude summary judgment when it establishes that material facts are in dispute, and not when an affidavit merely disputes a legal issue." 46 N.E.3d at 441.

[27] In her affidavit, Cutter states in relevant part:

> 8. The original intent of the parties, [Jurus] and Bailey, was to allow [Jurus] to live in the house for at most a couple of years, when she would live full time at her home in Arizona. The intent of the parties was not to provide a life estate to [Jurus].
>
> 9. It was Joseph Bailey's intent that [Jurus] would live in the house for a couple of years, and then the house would be torn down. [citation to Bailey's variance questionnaire].

Appellant's Addendum pp. 32-33.[2] These paragraphs speak to the parties' legal dispute rather than raising a factual issue. If Cutter had instead stated something like, "Bailey once told me before he signed the 2015 Warranty Deed that he no longer intended to abide by Jurus' life estate as described in the 2013 Addendum and the 2014 Land Contract," such a statement would raise hearsay issues, but it would be a factual assertion. Paragraphs 8 and 9, by essentially reiterating legal statements in Cutter's pleadings, fail to establish a dispute of material fact. *See Peterson v. First State Bank*, 737 N.E.2d 1226 (Ind. Ct. App. 2000) (affirming grant of summary judgment on claim to reform promissory

[2] Jurus objected to these paragraphs and asked the trial court to strike them because they stated legal conclusions and failed to explain how Cutter knew what was in Bailey and Jurus' minds. The trial court failed to rule on Jurus' objection.

note; appellants raised a question of law rather than an issue of fact in response to summary judgment filing).

[28] Cutter also points to supposedly contradictory statements by Bailey during the 2016 variance proceeding as establishing a dispute of fact as to his intent. We disagree. Bailey stated in his petition that Jurus' house would remain on the property "for a period of time" and until she moved to Arizona in a few years. Appellant's App. Vol. II, p. 110. He also described Jurus as a "tenant" during a BZA hearing. *Id.* at 123. But during the same hearing, he clarified that her house would remain on the property until she died or moved. And the BZA's staff described Jurus' arrangement as a life lease. Further, the BZA's approval of Bailey's petition was conditioned on a biennial review of the variance until the "life lease" ended, and there is no evidence that he objected to that condition. In light of Bailey's clear statement of intent in the Addendum and Land Contract, we cannot conclude his imprecise statements during the variance proceeding established a dispute of material fact as to his intent. In the absence of a dispute of material fact, the trial court did not err in granting Jurus' request for reformation to recognize her life estate.

Conclusion

[29] For the reasons stated above, we affirm the judgment of the trial court.

[30] Affirmed.

Kirsch, J., and Pyle, J., concur.