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ATTORNEY FOR APPELLANTS:

ALPHONSO MANN
Bloomington, Indiana

ATTORNEY FOR APPELLEE:

MARK SMALL
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM GLENN SCISCOE and ANITA)
MICHELLE SCISCOE,)

Appellants,)

vs.)

MARCELLA McDANIEL, Personal Representative))
Of The Estate Of JOHN R. DAVIS, Deceased,)

Appellee.)

No. 28A01-0612-CV-560

APPEAL FROM THE GREEN CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0508-MF-352

July 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

William and Anita Sciscoe (collectively the Sciscoes) appeal the trial court's denial of their summary judgment motion in their quiet title action, as well as the grant of summary judgment in favor of Marcella McDaniel, personal representative of the estate of John Davis (the Estate), on the Estate's complaint for foreclosure. The Sciscoes raise the following two issues for our review:

1. Did the trial court err in denying their summary judgment motion and granting summary judgment in favor of the Estate?
2. Did the trial court abuse its discretion in ordering the Sciscoes to pay a \$15,000.00 appeal bond?

We affirm.

In September 2002, the Sciscoes verbally entered into a conditional real estate sales contract (the Contract) with John and Mattie Davis. Pursuant to the terms of the contract, the Sciscoes agreed to purchase real property in Greene County from the Davises for \$65,000.00. The purchase price was to be paid in monthly installments of \$509.02 until the principal was paid in full. The Contract provided that when all sums due under the contract were paid, the Davises would convey a warranty deed to the Sciscoes.

In November 2002, the Sciscoes began making payments to the Davises through monthly electronic transfers. By February 2003, seventy-eight-year-old Mr. Davis was in poor health and could not stand or walk without assistance. On February 3, 2003, Bloomfield State Bank employee Pamela Poe went to the Davises' home to witness and notarize the signatures of the Sciscoes and the Davises on a written contract that memorialized the parties' September 2002 agreement, a warranty deed, and a vendor's affidavit. The Sciscoes continued to make monthly payments pursuant to the terms of the

Contract until John Davis's death in May 2004.¹

Davis's sister, Marcella McDaniel, was appointed personal representative of Davis's estate. In July 2004, McDaniel wrote a letter to the Sciscoes asking them to become current on their payments. The Sciscoes made a full payment in August 2004, and partial payments for the following three months. The Sciscoes made no payments in December 2004 or January 2005. In January 2005, Mrs. Sciscoe told the attorney for the Estate, Mona Paddock, that they had experienced some financial difficulties but would be able to bring the contract payments current in February 2005. The Sciscoes made a partial payment in February 2005, but it was not enough to cure their deficiency.

In April 2005, Paddock sent the Sciscoes a notice of forfeiture. Later that month, during a telephone conversation, Mrs. Sciscoe told Paddock that she and her husband had made payments that were not reflected in the bank statements and that they had the deed to the property in their possession. In May 2005, Paddock asked Mrs. Sciscoe to provide proof the payments had been made by showing cancelled checks, receipts, or bank records. Mrs. Sciscoe never provided the requested proof but did send a copy of the deed to Paddock. In addition, the Sciscoes made payments to the Estate in April, June, and July 2005.

On August 5, 2005, the Estate filed a foreclosure action against the Sciscoes, who filed the warranty deed in the recorder's office two weeks later. The Sciscoes filed a complaint to determine or quiet title. In August 2006, the Sciscoes filed a summary judgment motion in their quiet title action. The Estate filed a summary judgment motion in their forfeiture action in September 2006. In December 2006, the trial court denied the

¹ His wife preceded him in death.

Sciscoes' motion and granted the Estate's motion. Specifically, the court explained as follows:

The undisputed facts before the Court are that the Contract required conveyance of Seller's interest in the Real Estate to the Buyers only upon full payment of all sums due under the Contract and full performance of all covenants and agreements therein. There is no competent evidence to dispute the terms of the Contract. It is further undisputed that the Buyers failed to fully pay the sums due under the Contract.

Appellant's Appendix at 8.

The Sciscoes moved for a stay of execution pending an appeal. The trial court responded by issuing an order requiring the Sciscoes to pay a \$15,000.00 appeal bond to obtain the stay. The Sciscoes appeal the grant of summary judgment in favor of the Estate as well as the amount of the appeal bond.

The Sciscoes first argue that the trial court erred in denying their summary judgment motion in their quiet title action and in granting summary judgment in favor of the Estate in their foreclosure action. Specifically, the Sciscoes contend that the trial court should have granted them judgment as a matter of law because Mr. Davis modified the contract.

On review of a trial court's decision to grant or deny summary judgment, we apply the same standard as the trial court. Specifically, we must decide whether there is a genuine issue of material fact that precludes summary judgment and whether the moving party is entitled to judgment as a matter of law. *Old Romney Dev. Co. v. Tippecanoe County*, 817 N.E.2d 1282 (Ind. Ct. App. 2004). Once the moving party has sustained its initial burden of proving the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law, the party opposing summary judgment must respond by designating

specific facts establishing a genuine issue for trial. *Id.*

Specific findings and conclusions by the trial court are not required, and although they offer valuable insight into the rationale for the judgment and facilitate our review, we are not limited to reviewing the trial court's reasons for granting or denying summary judgment. *Id.* Rather, a grant of summary judgment may be affirmed upon any theory supported by the designated materials. *Id.* In addition, the fact that the parties made cross motions for summary judgment does not alter our standard of review. *Id.* Instead, we must consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. *Id.*

Here, the parties entered into a contract for the sale of real property, which had to be, and was, in writing. *See Brown v. Branch*, 758 N.E.2d 48 (Ind. 2001) (citing the Statute of Frauds, Ind. Code Ann. § 32-21-1-1). The contract provided that the Sciscoes would pay the Davises \$509.02 per month on a \$65,000.00 purchase price until the amount due was paid in full. The Sciscoes now essentially claim that Davis modified the contract when he transferred the property to the Sciscoes “free and clear of any claims under the contract which was rendered null and void or the obligations therein were discharged by delivery of the warranty deed” Appellants’ Brief. at 14.

Any modification to the original contract, however, would also have to have been in writing. *See Woodall v. Citizens Banking Co.*, 507 N.E.2d 999 (Ind. Ct. App. 1987), *trans. denied*, (holding that because an agreement to modify a mortgage was essentially an agreement to execute a mortgage, the modification was required to be in writing by the Statute of Frauds). The Sciscoes have designated no such writing. Further, they do not deny

that they failed to pay all sums due under the contract. Under these circumstances, the trial court did not err in denying the Sciscoes's summary judgment motion on their quiet title action and in granting the Estate's summary judgment motion on its foreclosure action.

The Sciscoes also argue that the trial court abused its discretion in ordering them to pay a \$15,000.00 appeal bond. Their sole challenge is to the amount of the bond. The determination of the amount of an appeal bond lies within the trial court's discretion and will not be disturbed absent an abuse of discretion. *Kocher v. Getz*, 824 N.E.2d 671 (Ind. 2005).

As the sole authority to support their argument, the Sciscoes direct us to Ind. Code Ann. § 34-55-10-2 (West, PREMISE through 2006 Second Regular Session), which lists exemptions in the execution of judgments. The Sciscoes, however, fail to explain how this statute applies to the amount of an appeal bond. They have therefore failed to show that the trial court abused its discretion. We find no error.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.