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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3956-19**

MICHAEL JOHN BOSWELL,

Plaintiff-Respondent,

v.

**DANIEL E. BOSWELL,
ELIZABETH BOSWELL
PAULSON, MICHAEL JAMES
BOSWELL, SUSAN BOSWELL
MCENTEE, and GERALD
BOSWELL,**

Defendants-Appellants,

and

BARLEY POINT, INC.,

Defendant-Respondent.

Argued January 25, 2022 – Decided December 9, 2022

Before Judges Currier, DeAlmeida, and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
C-000057-19.

Roshan Shah argued the cause for appellants (Anderson & Shah, LLC, attorneys; Lorraine M. Sult, of counsel and on the briefs).

Robert F. Schillberg, Jr., argued the cause for respondent Michael John Boswell (Schillberg Law, LLC, attorneys; Robert F. Schillberg, Jr., on the brief).

Bruce J. Ackerman argued the cause for respondent Barley Point, Inc. (Pashman Stein Walder Hayden, PC, attorneys; Bruce J. Ackerman, on the brief).

The opinion of the court was delivered by
DeALMEIDA, J.A.D.

Defendants Daniel E. Boswell, Gerald Boswell, Michael James Boswell, Elizabeth Boswell Paulson, and Susan Boswell McEntee appeal from the May 15, 2020 judgments of the Chancery Division: (1) finding that plaintiff Michael John Boswell, Michael James,¹ and McEntee each have a one-third interest in a shore bungalow and eighteen shares of stock of defendant Barley Point, Inc. (Barley Point), the corporation that owns the land on which the bungalow is located; (2) declaring that Daniel, Gerald, and Paulson have no right, title, or interest in the bungalow or shares of stock; (3) directing Daniel, Gerald, and Paulson to vacate the bungalow and restraining them from attempting to sell or

¹ Because several of the defendants share the surname Boswell, we refer to them by their first names. No disrespect is intended.

accessing the bungalow in the future; and (4) directing Barley Point to issue a stock certificate to Michael John, Michael James, and McEntee consistent with the judgments and to cancel a stock certificate it issued without authorization in 2004. We affirm.

I.

Daniel, Gerald, Michael James, McEntee, and Paulson are siblings (the Boswell Siblings). Michael John is their nephew. His father, Lawrence Boswell, a sibling of the other defendants, is deceased. At issue is who among the parties has an ownership interest in a vacation home on Barley Point Island in the Navesink River in Rumson.

Barley Point is a for-profit entity that owns the land comprising Barley Point Island. Shareholders in the corporation are issued a lease that permits them to occupy a specified parcel on the island developed with a residential structure owned by the shareholders. According to Barley Point's bylaws, share "[c]ertificates shall only be issued to owners of cottages located on the land known as Barley Point" and can be transferred only with the consent of the corporate board of directors.

In February 1996, Susan M. Boswell (Grandmother Boswell), Michael John's grandmother and the mother of the Boswell Siblings, owned eighteen

shares of stock in Barley Point and a lease for unit H-9, which was developed with a bungalow. She requested in writing that Barley Point transfer the shares to six of her children: Lawrence, Gerald, Daniel, Michael James, McEntee, and Paulson.² Barley Point issued a new stock certificate for the eighteen shares in the name of the six children. Grandmother Boswell continued to reside in the bungalow.

In 1998, Grandmother Boswell wrote to Barley Point requesting a new stock certificate be issued in the names of only Michael John and McEntee. Included with the request were letters signed by each of the six children previously listed on the stock certificate relinquishing their interest in the shares. It is not clear why Grandmother Boswell made the request, given that she was not the owner of the shares at that time. In any event, Barley Point issued a new stock certificate for eighteen shares in the names of Michael John and McEntee.

At that time, Grandmother Boswell authored a letter entitled "Wishes Regarding Future Occupancy and Ownership of Bungalow H-9 on Barley Point, Rumson, N.J." The letter states that Michael John and McEntee are now the owners of the bungalow, that she had permission to reside in the bungalow as

² The interests of a seventh child, Theodore Boswell, who is deceased, are not before the court.

long as she was physically able to do so, to maintain the assessment, and if the bungalow needed to be sold, to receive the value of the sale proceeds for her care. The letter states that when Michael John and McEntee take over upkeep of the bungalow, they should keep an accounting to be reimbursed for expenses in the event the property is sold.

In 2002, McEntee requested Barley Point add Michael James to the stock certificate. Her letter was signed by both McEntee and Michael John. Barley Point complied with the request and issued a stock certificate for eighteen shares in the name of Michael John, Michael James, and McEntee.

On March 6, 2003, Grandmother Boswell died. In her will, she left her assets, stocks, bank accounts, and real estate to her children, to be divided equally between Lawrence, Gerald, Daniel, Michael James, Paulson, and McEntee. The will appoints Gerald and Paulson as co-executors of the estate.

Gerald later renounced his executorship. At the time the will was probated, Paulson, as sole executrix, stated that Grandmother Boswell's estate had a value of \$500.

In 2004, McEntee sent Barley Point a notarized affidavit of loss recounting that she could not locate the stock certificate. She requested issuance of a new stock certificate with the addition of Daniel and Paulson as owners.

Only McEntee signed the request. Although there was no evidence Michael John agreed to McEntee's request, Barley Point issued a new stock certificate for eighteen shares in the names of Michael James, Michael John, Daniel, Paulson, and McEntee.

The bungalow was destroyed by Tropical Storm Irene in 2011 and Superstorm Sandy in 2012. The structure was subsequently reconstructed.

In 2018, the Boswell Siblings attempted to sell the bungalow. Michael John objected to the sale, expressing his intention that the structure remain in the Boswell bloodline. The Boswell Siblings disputed Michael John's ownership of the bungalow.

The Boswell Siblings initiated an action in the Probate Part under Grandmother Boswell's estate seeking to obtain a determination of ownership of the eighteen shares and the bungalow. They argued that both the shares and the residence were bequeathed to them by Grandmother Boswell. In November 2018, the court dismissed that complaint, concluding that "the stock certificates reportedly at issue in the verified complaint did not pass pursuant to the last will and testament, but clearly had passed years before the decedent's passing and, thus, were not part of her estate." In addition, the court concluded that ownership of the bungalow was "not related to the last will and testament" of

Grandmother Boswell, but depended on the meaning of the stock certificate she transferred to Michael John and McEntee before she died. Thus, the court concluded, the question of ownership of the bungalow was not properly brought in the Probate Part.

On May 8, 2019, Michael John filed a verified complaint in the Chancery Division seeking a declaratory judgment that he had a fifty-percent ownership interest in the shares, as well as in the bungalow. He relied on the 1998 stock certificate issued to him and McEntee and alleged he had no recollection of signing the 2002 letter from McEntee requesting Michael James be added to the stock certificate. Michael John alleged the Boswell Siblings continued to attempt to sell the bungalow and wrongfully locked him out of the property.

The Boswell Siblings filed an answer and counterclaim seeking a declaratory judgment that Michael John has a one-fifth ownership interest in the stock certificate. They relied on the stock certificate issued in 2004 at the request of McEntee. In addition, the Boswell Siblings requested a declaratory judgment that the stock certificate gives the holder no interest in the bungalow, and that, therefore, Michael John has no interest in that structure. They allege ownership of the bungalow passed to the Boswell Siblings, and not Michael

John, through Grandmother Boswell's estate. The parties cross-moved for summary judgment.

On May 14, 2020, the trial court issued an oral decision on the cross-motions. The court found that in 1998, Grandmother Boswell made an inter vivos transfer of both the eighteen shares and the bungalow to Michael John and McEntee, with each receiving a fifty-percent interest. The court concluded that Grandmother Boswell's letter, which accompanied her request to transfer the shares to Michael John and McEntee, clearly evinced her donative intent with respect to both the shares and the residence. The court also found that at the time of the 1998 transfer, the six Boswell Siblings on the stock certificate issued in 1996 relinquished any interest in the shares.

The court noted that a 1999 letter from Grandmother Boswell to Barley Point stated that the bungalow lease should be mailed to McEntee's home, with instructions for McEntee to forward it to Michael John, or to both McEntee's home and Michael John's home. This further supported the court's conclusion that Grandmother Boswell transferred ownership of both the shares and the bungalow in 1998. Thus, the court concluded, given that Grandmother Boswell simultaneously transferred both the shares and the bungalow to Michael John

and McEntee, it need not determine whether ownership of the shares constitutes ownership of the bungalow.

The court also found that the 2002 addition of Michael James to the stock certificate was valid. The court found there was no genuine issue of material fact with respect to whether Michael John signed the request to add Michael James to the stock certificate. As a result, Michael John, Michael James, and McEntee each had a one-third interest in the shares.

Finally, the court found that the 2004 stock certificate adding Daniel and Paulson as owners of the shares was invalid, noting that McEntee's written request to issue a new stock certificate adding two of her siblings as owners did not mention Michael John. Nor, the court found, did Michael John sign the request or authorize McEntee to act on his behalf with respect to the dilution of his interest in the shares or the bungalow.

On May 15, 2020, the court issued judgments: (1) finding that Michael John, Michael James, and McEntee each have a one-third interest in the shares and the bungalow; (2) declaring that Daniel, Gerald, and Paulson have no right, title, or interest in the bungalow or shares; (3) directing Daniel, Gerald, and Paulson to vacate the bungalow and restraining them from attempting to sell or accessing the bungalow in the future; and (4) directing Barley Point to issue a

stock certificate to Michael John, Michael James, and McEntee consistent with the judgment and to cancel the 2004 stock certificate it issued without authorization.

This appeal follows. Defendants argue that the trial court erred when it: (1) found the 1998 stock transfer to Michael John and McEntee also transferred ownership of the bungalow; (2) concluded that the 2004 change to the stock certificate was invalid; and (3) imposed restraints on Gerald, Daniel, and Paulson.

II.

We review the trial court's decision granting summary judgment de novo, using "the same standard that governs trial courts in reviewing summary judgment orders." Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998). Rule 4:46-2(c) provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." "Thus, the movant must show that there does not exist a 'genuine issue' as to a material fact and not

simply one 'of an insubstantial nature'; a non-movant will be unsuccessful 'merely by pointing to any fact in dispute.'" Prudential, 307 N.J. Super. at 167.

Self-serving assertions that are unsupported by evidence are insufficient to create a genuine issue of material fact. Miller v. Bank of Am. Home Loan Servicing, L.P., 439 N.J. Super. 540, 551 (App. Div. 2015). "Competent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments.'" Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 426 (App. Div. 2009) (citations omitted). We review the record "based on our consideration of the evidence in the light most favorable to the parties opposing summary judgment." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995).

We have carefully reviewed the record and find no basis on which to reverse the trial court's judgments. We begin with the trial court's finding that Grandmother Boswell made an inter vivos transfer of her interest in the shares and bungalow in 1998 to Michael John and McEntee. An inter vivos gift has three elements:

First, there must be actual or constructive delivery; that is, "the donor must perform some act constituting the actual or symbolic delivery of the subject matter of the gift." Pascale v. Pascale, 113 N.J. 20, 29 (1988). Second, there must be donative intent; that is, "the donor must possess the intent to give." Ibid. Third,

there must be acceptance. Ibid. We have also recognized that the donor must absolutely and irrevocably relinquish "ownership and dominion over the subject matter of the gift, at least to the extent practicable or possible, considering the nature of the articles to be given."

[Bhagat v. Bhagat, 217 N.J. 22, 40 (2014) (quoting In re Dodge, 50 N.J. 192, 216 (1967)).]

The party seeking to establish that they are the recipient of a vivos gift has the burden of proving the required elements. Id. at 41. "Generally, the recipient must show by 'clear, cogent and persuasive' evidence that the donor intended to make a gift." Ibid.

There is sufficient support in the record for the trial court's conclusion that Michael John established the three elements of an inter vivos transfer of the shares and bungalow in 1998. Delivery of the shares and donative intent are established by the issuance of a new stock certificate at Grandmother Boswell's request, accompanied by written relinquishments of interest in the shares signed by the Boswell Siblings. Michael John demonstrated his acceptance of the share certificate.

In addition, Grandmother Boswell's donative intent with respect to her interest in the bungalow is established by the letter she issued at the time of the 1998 transfer of the shares. The letter recognizes that Michael John and

McEntee are the owners of the bungalow and states that she "had permission to reside in the bungalow," evincing her understanding that she had transferred ownership of the structure. In a 1999 letter, Grandmother Boswell directed that the bungalow lease be mailed to McEntee's home, with instructions for McEntee to forward it to Michael John, or to both McEntee's home and Michael John's home. This is further evidence of Grandmother Boswell's donative intent with respect to the bungalow.

There is also sufficient support in the record for the trial court's conclusion that Michael John accepted the bungalow. Michael John and McEntee signed leases for the bungalow beginning 1999. In addition, Michael John and his spouse were closely involved in the reconstruction efforts after the bungalow was destroyed. They were engaged in the financial aspects of the reconstruction, obtaining grant money, providing funding, and visiting the property during construction. Michael John and his family occupied the property during the summer months without seeking permission to do so from other family members.

We also find sufficient support in the record for the trial court's conclusion that Barley Point lacked authority to issue the 2004 stock certificate. The record contains no evidence that Michael John consented to the dilution of his interest

in the stock by adding Daniel and Paulson to the stock certificate. The affidavit of lost stock and accompanying request to add Daniel and Paulson were signed only by McEntee. The record contains no evidence that Michael John authorized McEntee to make this request on his behalf, was aware of the issuance of the new stock certificate, or received any consideration for the dilution of his interest in the shares. In fact, McEntee admitted that Michael John's spouse expressed her objection to adding Daniel to the certificate. McEntee did not state in her deposition that she addressed that objection with Michael John and obtained his permission to add Daniel to the certificate.

We turn to the restraints entered against Gerald, Daniel and Paulson. In the early stages of the proceedings, Michael John and his spouse submitted certifications detailing what they alleged to be abusive behavior by Gerald intended to interfere with their use of the bungalow. According to the certifications, while Michael John and his family were using the bungalow, Gerald took over the bed of one of Michael John's sons, although a separate bedroom was available to Gerald, hung a urine bottle on a dresser in an open loft area where teenagers were sleeping, and was seen naked in the living areas and outside the bungalow. Other residents of Barley Point witnessed Gerald's public nudity outside the bungalow and complained to Barley Point officials. In

addition, Gerald intentionally blocked access to the kitchen and living room furniture in an attempt to frustrate Michael John's family's enjoyment of the bungalow.

In an August 2019 order to show cause the trial court restrained defendants, when sharing the bungalow with family members, from nudity in any space in or around the bungalow except in a bathroom. In addition, the court restrained defendants from urination or defecation in any space at the bungalow except the bathroom. That order also imposed a schedule for exclusive use of the bungalow while the matter was pending in the Chancery Division.

In its March 15, 2020 judgments, the trial court permanently enjoined and restrained Gerald, Daniel and Paulson from accessing the bungalow. They argue that the permanent restraints were entered without findings of fact and conclusions of law and interfere with their ability to enter the property at the invitation of McEntee and Michael James, who each have a one-third interest in the bungalow.

"[A] judge sitting in a court of equity has a broad range of discretion to fashion the appropriate remedy in order to vindicate a wrong consistent with principles of fairness, justice, and the law." Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999). "[A] court's equitable jurisdiction provides as much

flexibility as is warranted by the circumstances" Matejek v. Watson, 449 N.J. Super. 179, 183 (App. Div. 2017).

We are satisfied that the trial court did not abuse its discretion when it restrained Gerald, Daniel and Paulson from accessing the bungalow. The record firmly establishes that the Boswell Siblings repeatedly attempted to sell the bungalow while they were aware of Michael John's claim to have an interest in the building. In addition, the certifications of Michael John and his spouse detail a disturbing pattern of behavior by Gerald to interfere with the use and enjoyment of the bungalow by Michael John and his family. The trial court acted within its equitable discretion, in light of the circumstances, to impose restrictions on the Boswell Siblings with no ownership interest in the bungalow in order to permit Michael John and his family to enjoy the use of their property.

The trial court's restraints on the ability of Gerald, Daniel, and Paulson to sell, lease, or otherwise alienate the bungalow are permanent, as they do not have a property interest in the bungalow. However, to the extent that family dynamics may have changed since entry of the trial court judgments, and given that McEntee and Michael James may be inclined to allow their siblings to access the bungalow, the parties are free to apply to the trial court for relief from the restraints on Gerald, Daniel, and Paulson accessing the bungalow under

conditions consistent with McEntee and Michael James's property interests and which do not interfere with the reasonable use and enjoyment of the bungalow by Michael John and his family.

To the extent we have not specifically addressed any of defendants' remaining claims, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION