NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3030-21

LIDIA BRANCO,

Plaintiff-Respondent,

v.

FRANCISCO ANDRE RODRIGUES, and Estate of JOSE RODRIGUES,

Defendants-Appellants,

and

MONICA MEJIA, MANUEL COSTA, JONATHAN RODRIGUES (person with potential interest), and JOANNA RODRIGUES (person with potential interest),

Defendants.

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APPROVED FOR PUBLICATION
June 20, 2023
APPELLATE DIVISION

Submitted April 25, 2023 – Decided June 20, 2023

Before Judges Sumners, Susswein, and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. C-000187-20.

Nelson C. Monteiro, attorney for appellants.

John VR. Strong, Jr., attorney for respondent.

The opinion of the court was delivered by

BERDOTE BYRNE, J.S.C. (temporarily assigned)

In this appeal of apparent first impression in New Jersey, we are asked to resolve the outcome of an inter vivos transfer of a fee simple estate into a joint tenancy, where the donor pre-deceased the donee, who was unaware of her estate interest.

Defendants, Francisco Andres Rodrigues and the Estate of Jose Rodrigues (Estate), appeal an award of summary judgment quieting title to property formerly owned by Jose Rodrigues in fee simple, but subsequently conveyed to him and plaintiff, Lidia Branco, as joint tenants with rights of survivorship. Defendants argue the trial court erred in granting summary judgment because there were disputed facts clouding the issues of donative intent, delivery, and acceptance. We disagree and affirm.

Lidia[1] lived with Jose for approximately twenty-five years in a long-term relationship until he died in a car accident in June 2020. The two were never married. Jose was an entrepreneur who owned several entities and properties, including a sixteen-unit multifamily residential building in Newark, (the

[1] We use first names because multiple parties have the same last name; we intend no disrespect to the parties by the informality.

property), which he owned since 1996. The property was an income-producing asset for Jose, who died intestate.

Francisco is one of Jose's sons and the administrator of his estate. Francisco was the only named defendant to appear before the trial court; the other defendants were named as interested parties but never appeared and default was entered against them.

In March 2007, when Jose and Lidia had been together for twelve years, and unbeknownst to her, Jose conveyed title to the property, for nominal consideration, from himself in fee simple to himself and Lidia as joint tenants with rights of survivorship. Jose was the only signatory on the deed transferring title. The deed was recorded in April 2007. Jose never told Lidia about the conveyance, and she did not discover the conveyance until after his death, more than thirteen years later.

In June 2020, Jose died in an automobile accident. In July 2020, Francisco began forwarding monthly rental checks from the property to Lidia. In August 2020, Lidia ordered a title search of the property, whereby she first discovered her interest in the estate. Upon learning of her interest, Lidia formed a real estate holding company and transferred title of the property to the entity.

In December 2020, Lidia filed a verified complaint seeking injunctive relief, including a full accounting and independent administration of the Estate, and an injunction to block the Estate from transferring or otherwise transacting business involving the property. Lidia eventually voluntarily dismissed all claims except the quiet title. Discovery proceeded in the normal course, and in January 2022, the trial court entertained cross-motions for summary judgment.

The issue framed to the trial court was whether the property transfer was an effective inter vivos gift. Finding for Lidia, the court found the undisputed record contained the requisite elements of an inter vivos gift transfer. Regarding donative intent, the court noted the twenty-five-year relationship where Jose continuously supported Lidia financially with income generated by the property. The court found, irrespective of Lidia's lack of awareness of her property interest during Jose's lifetime, the fact the deed was recorded constituted constructive notice to third parties about Lidia's property interest, and therefore favored her. Defendants appealed.

We conduct a de novo review of an order granting a summary judgment motion, Gilbert v. Stewart, 247 N.J. 421, 442 (2021), applying "the same standard as the trial court under Rule 4:46-2(c)," State v. Perini Corp., 221 N.J. 412, 425 (2015). In considering a summary judgment motion, "both trial and

appellate courts must view the facts in the light most favorable to the non-moving part[ies]," which, in this case, are defendants. Bauer v. Nesbitt, 198 N.J. 601, 604 n.1 (2009). Summary judgment is proper if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)). Issues of law are subject to the de novo standard of review, and the trial court's determination of such issues is accorded no deference. Meade v. Twp. of Livingston, 249 N.J. 310, 326-27 (2021); Kaye v. Rosefielde, 223 N.J. 218, 229 (2015).

We must be mindful that "an issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). "In order to demonstrate the existence of a genuine issue of material fact, the opposing party must do more than point to any fact in dispute." Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016).

Defendants contend Lidia failed to produce dispositive evidence of Jose's donative intent. They argue the transfer of title was an inter vivos gift;

the gift was defective, and the transfer was void because the requisite elements — delivery, intent, and acceptance ——were not established. They complain the lack of evidence on these elements prevented Lidia from sustaining her burden of proof, and therefore, as a matter of law, should have precluded summary judgment. Although we agree determination of the issue before us depends upon whether the transfer deed was a valid inter vivos gift, we reject defendants' arguments and affirm the trial court's order.

Joint tenancy is one of the earliest forms of estate interest, dating back to the thirteenth century. See 7 Powell on Real Property § 51.01(1) (2023). From its inception, the law has allowed two or more persons to own undivided interests in the real property. See 4 Thompson on Real Property § 31.02 (Thomas ed. 2023). The right of survivorship to be held by co-equal co-owners is the essence of the joint tenancy estate and does not exist in other estate interests. See 13 N.J. Practice, Real Estate Law and Practice §§ 5:2 - 5:10 (Henry C. Walenctowicz) (2023).

In New Jersey, joint tenancies are authorized by statute. N.J.S.A. 46:3-17.1 provides:

> Any conveyance of real estate, hereafter made, by the grantor therein, to himself and another or others, as joint tenants shall, if otherwise valid, be as fully effective to vest an estate in joint tenancy in such real estate in the grantees therein named, including the grantor, as if the same had been conveyed by the

> grantor therein to a third party and by such third party to said grantees.

Our statute, enacted in 1950,[2] reflects a departure from previous common law requirements by allowing direct conveyances from a grantor to him or herself and another, circumventing the need for a "straw man."[3] See, e.g., Lipps v. Crowe, 28 N.J. Super. 131 (Ch. Div. 1953) (retroactively permitting direct conveyance to a 1926 joint tenancy deed which predated the enactment).

In New Jersey, ownership of real property is transferred by deed. N.J.S.A. 46:3-13; see also H.K. v. State, Dep't of Human Servs., Div. of Med. Assistance & Health Servs.,184 N.J. 367, 382 (2005) (setting forth examples of such transfers). "Transfer of real property interest by deed is complete upon execution and delivery of the deed by the grantor, and acceptance of the deed by the grantee." Ibid. (quoting In re Estate of Lillis, 123 N.J. Super. 280, 285 (App. Div. 1973)). "A deed transfers a property interest 'upon delivery.'" Ibid. (quoting Tobar Constr. Co. v. R.C.P. Assocs., 293 N.J. Super. 409, 413 (App.

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[2] L. 1950, c. 71.

[3] At common law, there was no uniform interpretation regarding the legal consequence of such a direct conveyance on the four unities of time, title, possession, and interest required by joint tenancy. This occasionally necessitated a straw man conveyance. See generally 7 Powell § 51.02.

Div. 1996)). "Delivery can be shown by '[a]nything that clearly manifests the grantor's intention that the deed become immediately operative and that the grantee become the owner of the estate purportedly conveyed.'" Ibid.

The requisite elements for an inter vivos gift are nearly identical to those required for an effective deed transfer. See In re Dodge, 50 N.J. 192, 216 (1967). To demonstrate a valid and irrevocable gift, a donee must establish four elements:

> First, the donor must perform some act constituting the actual or symbolic delivery of the subject matter of the gift. Second, the donor must possess the intent to give. Third, the donee must accept the gift. Our cases also recognize an additional element, the relinquishment by the donor "of ownership and dominion over the subject matter of the gift."
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> [Sipko v. Koger, Inc., 214 N.J. 364, 376 (2013) (quoting Pascale v. Pascale, 113 N.J. 20, 29 (1988)).]

"The proof of these essential elements should be clear, cogent, and persuasive." Ibid. (quoting Farris v. Farris Eng'g Corp., 7 N.J. 487, 500-01 (1951)).

Much of the litigation reviewing courts have considered involving inter vivos gift challenges has dealt with issues regarding the donor's capacity, particularly in the context of undue influence. See Bhagat v. Bhagat, 217 N.J. 22, 45 (2014) (holding a parent who seeks to rebut a presumption that a property transfer to their child was a gift must present clear and convincing

evidence of a contrary intent); Pascale, 113 N.J. at 31-32; Dodge, 50 N.J. at 241; see also Oachs v. Stanton, 280 N.J. Super. 478, 485-86 (App. Div. 1995). We have not yet been asked to opine on the present scenario – a challenge to donative intent based not on undue influence – because it is undisputed the donee here was unaware of the gift until after donor passed away.

In New Jersey, there has been no lack of challenges on the elements of an effective deed transfer where a deed was never recorded;[4] however, we do not find successful challenges to an effective transfer where, as here, a deed was recorded. We believe those reasons to be self-evident.

The owner of an interest in real property is generally prohibited from effecting transfer unless evidenced by a signed writing "by or on behalf of the transferor" because of the New Jersey Statute of Frauds. N.J.S.A. 25:1-11(a)(1). The Statute of Frauds writing requirement is so fundamental to the adjudication of property transfers in New Jersey, it is in certain circumstances fatal to litigants seeking to enforce a real property right derived from oral agreements, such as an antenuptial oral promise. See Gilbert v. Gilbert, 61 N.J. Super. 476 (Ch. Div. 1960) aff'd, 66 N.J. Super. 246, 253-54 (App. Div. 1961).

[4] See, e.g., H.K., 184 N.J. at 382-83.

Moreover, New Jersey is a "race-notice" jurisdiction, and its status as such generally rewards those who record their deeds first. N.J.S.A. 46:26A-12(a)-(c); Cox v. RKA Corp., 164 N.J. 487, 496 (2000).[5] A recorded deed serves as constructive "notice to all subsequent purchasers, mortgagees and judgment creditors" of its execution. N.J.S.A. 46:26A-12(a). "A deed or other conveyance of an interest in real property shall be of no effect . . . unless that conveyance is evidenced by a document that is first recorded." N.J.S.A. 46:26A-12(c).

Lidia possesses a recorded deed satisfying both the Statute of Frauds, N.J.S.A. 25:1-11, and the recording statute, N.J.S.A. 46:26A-12. Defendants argue "[Jose's] actions in not informing [Lidia] of the execution and existence of the deed is demonstrative of a concerted decision on the part of [Jose] to not finalize the claimed gift." Defendants proffer no other evidence to support a lack of donative intent and their arguments in the face of a recorded deed are unavailing. See Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 97-98 (App. Div. 2014) ("Bald assertions are not capable of either supporting or

[5] "New Jersey is considered a 'race-notice' jurisdiction, which means that as between two competing parties the interest of the party who first records the instrument will prevail so long as that party had no actual knowledge of the other party's previously-acquired interest . . . . As a corollary to that rule, parties are generally charged with constructive notice of instruments that are properly recorded." (citations omitted).

defeating summary judgment."). The very act of recording the deed conveying title in this case evinced Jose's donative intent. See Pascale, 113 N.J. at 29 ("An adult donor is generally presumed to be competent to make a gift.").

Moreover, although a "deed does not need to be recorded in order to pass title," the recorded deed here raises a strong presumption of delivery because it clearly manifests Jose's intent that the deed become immediately operative. H.K., 184 N.J. at 382. Courts generally look to intent when there has been no recording because intent may be a disputed material fact. Here, there can be no dispute regarding Jose's intent because he recorded the deed, rendering the joint tenancy immediately operable.

Commentators have noted where a donor transfers real estate into joint tenancy, the transfer may be presumed to be a gift. See 15 Powell § 85.21. That presumption applies here, where Jose transferred the property unilaterally, unbeknownst to Lidia, and dissolved his greater fee simple interest. Like any presumption, it may be rebutted with clear and convincing evidence. Defendants have failed to proffer any evidence to rebut this presumption.

Because the gift may be presumed, the element of acceptance by donee may also be presumed, "subject to the donee's right to disclaim the gift within a reasonable time after the donee becomes aware of the gift." See Restatement

(Second) of Property (Donative Transfers) § 32.3(2) and cmt. e (Am. Law Inst. 2009).

As to the additional element of donor relinquishment, there can also be no doubt regarding Jose's actions. When Jose unilaterally dissolved his fee simple interest in favor and recorded the deed, he could not have subsequently unilaterally revoked the gift to transform the property back into a fee simple estate without Lidia's consent or the court's involvement. See Brodzinsky v. Pulek, 75 N.J. Super. 40, 50 (App. Div. 1962) ("A joint tenancy may be terminated altogether by mutual agreement between the parties . . . .") (citation omitted).

While Jose could have petitioned a court of equity for partition to sever the real property, such an act would have merely converted both parties' interest into a tenancy in common; it would not have the effect of revoking the gift or the effect of restoring him to his fee simple estate. Id. at 49-50 ("A joint tenancy may be converted into a tenancy in common . . . by the unilateral act of one of them in alienating or transferring his interest in the jointly owned property so as to destroy one or more of the four constituent unities . . . ."); see also Gauger v. Gauger, 73 N.J. 538, 542-43 (1977). Thus, the effect of recording the deed with a lesser title irrevocably destroyed Jose's fee simple

interest and satisfied the total relinquishment element necessary for an inter vivos gift.

In arguing there was no evidence to support donative intent, defendants wholly disregarded both Jose's unilateral execution and recording of the deed. In failing to present any evidence to the contrary, defendants failed to present disputed issues of material fact precluding summary judgment, which was properly awarded to Lidia.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION