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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0825**

Diane Pettit, as Trustee of the
Alan W. Pettit Marital Trust A,
Appellant,

vs.

Mary J. Spethmann,
Respondent.

**Filed January 29, 2018
Reversed and remanded
Kirk, Judge**

Otter Tail County District Court
File No. 46-CV-16-546

Paul B. Hunt, Karkela, Hunt & Cheshire, PLLP, Perham, Minnesota (for appellant)

Thomas H. Sellnow, Sellnow Law Office, P.A., Long Prairie, Minnesota; and

John D. Hagen, Jr., Minneapolis, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Jesson,
Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

In this intrafamilial dispute over a family lake property, appellant-trustee challenges the summary-judgment dismissal of her claim against respondent under Minn. Stat. § 507.34 (2016), part of the Minnesota Recording Act (MRA). Trustee argues that the district court

erred as a matter of law in concluding that (1) trustee was a mere donee and not a good-faith purchaser for value (GFP) under the MRA, and (2) in concluding that trustee's first-recorded, but later-in-time deed, conveying the subject property to the marital trust under the terms of parents-settlors' trust documents, did not take priority over respondent's first-in-time, but later-recorded deed, conveying the subject property to respondent and her now-deceased husband, trustee's brother. We reverse the district court's grant of partial summary judgment to respondent on trustee's MRA claim, and remand to the district court for consideration of all issues in accordance with this opinion.

FACTS

The material facts related to trustee's MRA claim are undisputed for the purposes of summary judgment. On December 5, 1996, settlors Alan W. Pettit and Jean D. Pettit created the Alan W. Pettit Living Trust (Alan's Living Trust) and the Jean D. Pettit Living Trust (Jean's Living Trust), and named themselves as trustees. That same day, they conveyed the subject real property, a family lake cabin in Otter Tail County, to Alan's Living Trust, and recorded the deed of conveyance (Original Deed). The Original Deed recited that the subject property was conveyed "for valuable consideration" of "\$100 or less." Alan's and Jean's Living Trusts were restated on September 24, 2004, and both restated trusts named Alan and Jean's daughter, appellant-trustee Diane Pettit, as co-trustee. In relevant part, the restated Alan's Living Trust document granted Alan and Diane equal authority to act jointly or severally as co-trustees for Alan's Living Trust.

On December 27, 2005, Alan and Jean executed a trustee's deed conveying the subject property from Alan's Living Trust to their son, Jeffrey A. Pettit, and his wife,

respondent Mary J. Spethmann (Respondent's Deed).¹ The Respondent's Deed recited that the subject property was conveyed "for valuable consideration" of "less than \$500." Spethmann represented to the district court that Alan approached her prior to December 2005 and asked her if she and her family wanted the lake cabin after he was gone, and that Alan later told her he wanted to convey the lake cabin to her and Jeffrey. According to Spethmann, Alan then executed the Respondent's Deed and instructed them not to record the deed until after Jean and Alan died. Spethmann acknowledged that she and Jeffrey paid no monetary consideration for the Respondent's Deed, but said that she, Jeffrey, and their nine children provided other services to Alan and Jean during their lifetimes, which constituted valuable consideration for the conveyance of the subject property. The parties dispute whether the Respondent's Deed was fraudulent.

Jean resigned as co-trustee of Jean's Living Trust on December 31, 2005, leaving Diane as the sole trustee. Alan resigned as co-trustee of Alan's Living Trust on December 31, 2006, leaving Diane as the sole trustee. Alan died on September 28, 2009. On December 31, 2010, according to the terms of Alan's Living Trust, Diane conveyed the subject property via trustee's deed to the Alan W. Pettit Marital Trust A for the benefit of Jean (Marital Trust A Deed). Diane was the named trustee of Marital Trust A. The Marital Trust A Deed was recorded on February 3, 2011, and recited that the subject property was conveyed "for valuable consideration" of "under \$500." It is undisputed that Diane was not aware of the unrecorded Respondent's Deed when she made and recorded the Marital Trust A Deed.

¹ Neither party argues that Alan and Jean lacked the authority to act on behalf of Alan's Living Trust or to act without the consent of the named co-trustee Diane.

Jeffrey died on February 7, 2012, and Jean died on November 3, 2012. On November 5, 2012, Diane, as trustee of Marital Trust A, conveyed the subject property to the Alan W. Pettit Family Trust B (Family Trust B Deed), in accordance with the terms of Marital Trust A. Diane was the named trustee of Family Trust B. The Family Trust B Deed recited that the subject property was conveyed “for valuable consideration” of “under \$500.” Diane was not aware of the unrecorded Respondent’s Deed when she made this conveyance. Shortly thereafter, on November 13, 2012, Spethmann recorded the Respondent’s Deed.

From 2006 to 2014, it is undisputed that Alan’s Living Trust, Marital Trust A, and Family Trust B, administered by Diane in accordance with their terms, expended money in the payment of real-property taxes, insurance, utilities, and improvements to the subject property. Diane learned of the Respondent’s Deed in 2013 when Family Trust B did not receive a tax document for the subject property. Diane recorded the Family Trust B Deed on April 21, 2014, by which time she had actual and constructive notice of the now-recorded Respondent’s Deed. Diane does not argue that the Family Trust B Deed takes priority.

Diane served a complaint on Spethmann in January 2017, seeking to void the Respondent’s Deed under Minn. Stat. § 507.34 or as a matter of equity. In her answer and counterclaim, Spethmann asked the district court to award her the subject property. Both parties moved for summary judgment on Diane’s MRA claim. In her summary-judgment motion, Spethmann also raised trust-administration claims and asked the district court to award her an additional piece of real property.

In its summary-judgment order, the district court held that Diane, in her role as trustee for Marital Trust A, acted as a mere donee and that the protections of the MRA were

inapplicable to her as a matter of law. The court dismissed Diane’s MRA claim with prejudice and entered final-partial summary judgment on the MRA claim under Minn. R. Civ. P. 54.02. The court also dismissed Spethmann’s counterclaim without prejudice, noting that Spethmann could bring her counterclaim and plead her other trust-related claims in a separate trust action. The district court did not address Diane’s equitable claims, which remain pending. Diane appealed. We accepted jurisdiction over the MRA claim only under Minn. R. Civ. App. P. 103.03(a).

DECISION

“We review a district court’s summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citations omitted). We “must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). We also review de novo the application of a statute to undisputed facts. *See In re Marriage of Branch*, 632 N.W.2d 261, 263 (Minn. App. 2001). “If the plain language of a statute is clear and free from ambiguity, the court’s role is to enforce the language of the statute and not explore the spirit or purpose of the law.” *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015) (quotation omitted).

Minnesota is a race-notice state, meaning that under Minn. Stat. § 507.34, a subsequent GFP of real property who first records her interest, takes priority over a prior purchaser of that real property who failed to record. *Anderson v. Graham Inv. Co.*, 263

N.W.2d 382, 384 (Minn. 1978). “A ‘good-faith purchaser’ is a purchaser ‘who gives consideration in good faith without actual, implied, or constructive notice of inconsistent outstanding rights of others.’” *Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 278 (Minn. 2010) (quoting *Anderson*, 263 N.W.2d at 384). Thus, for a purchaser to qualify as a GFP under the MRA, she must establish: “(1) [p]ayment of a valuable consideration; (2) good faith, without purpose to take an unfair advantage of third persons; and (3) absence of notice, actual or constructive, of the outstanding rights of others. If any of these elements is lacking [the purchaser’s] proof fails.” *Goette v. Howe*, 232 Minn. 168, 173, 44 N.W.2d 734, 738 (1950).

It is undisputed that Diane, acting as trustee, offered sufficient evidence to establish the second and third requirements of GFP status—Diane acted in good faith in accordance with the terms of Alan’s Living Trust and Marital Trust A when she executed and recorded the Marital Trust A Deed, and she did so without actual or constructive notice of the unrecorded Respondent’s Deed. However, the district court concluded that Diane failed to offer sufficient evidence to establish the first requirement of GFP status—payment of valuable consideration by Marital Trust A. The district court held that non-nominal valuable consideration must be pleaded and proved with evidence other than a recital in a deed document, and concluded that: “Because the consideration alleged by [Marital Trust A] is no more than a nominal consideration, [its trustee] occupies the position of a mere donee, and cannot claim the protections which the recording act grants to purchasers *for value*.”

“Consideration is usually in the form of [the] payment of money, but [it] can be in the form of a promise to perform certain future acts” 6A Cheryl L. Grasmoe,

Minnesota Practice § 43.31 (3d ed. 2017) (citing *Ketterer v. Indep. Sch. Dist. No. 1*, 248 Minn. 212, 222-23, 79 N.W.2d 428, 436 (1956); *Enkema v. McIntyre*, 136 Minn. 293, 298, 161 N.W. 587, 589 (1917)). In many instances, as occurred here, a trust is not able to provide monetary consideration at the time of a conveyance of real property because the trust has no assets until the real property or funds are transferred to it. See Minn. Stat. § 501C.0401(a)(1) (2016) (providing that a trust may be created by a “transfer of property to another person as trustee during the settlor’s lifetime or by will or other disposition taking effect upon the settlor’s death”). Instead, “[a] valuable consideration, in the sense of the law, may consist either of some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” *Ketterer*, 248 Minn. at 222, 79 N.W.2d at 436 (quotation omitted); see, e.g., *Enkema*, 136 Minn. at 297-98, 161 N.W. at 589 (holding that a purchaser’s assumption of the obligations related to the real property and promise to pay the mortgage and taxes was valuable consideration, without evidence of monetary consideration).

Further, deeds will often recite nominal consideration to acknowledge the receipt of other valuable, non-monetary consideration, as also occurred here. See *Brandes v. Hastings*, 163 Minn. 15, 17, 203 N.W. 430, 431 (1925) (noting that the phrase “\$1 and other valuable considerations” recited in a deed conveying real property indicates that legally sufficient consideration was given, regardless of evidence of a monetary payment); see also *In re Delva’s Estate*, 195 Minn. 192, 193-94, 262 N.W. 209, 209 (1935) (noting that the recital of monetary consideration in a deed for the transfer of real property merely acknowledges the receipt of consideration and does not constitute a contractual amount of payment).

Here, the record shows that Diane was acting in her capacity as trustee for Alan's Living Trust and as the named trustee for Marital Trust A when Alan's Living Trust conveyed the subject property to Marital Trust A. During discovery, Diane's responses to the interrogatories regarding Marital Trust A's consideration for the conveyance indicated that she merely followed the dictates of the trust documents in executing and recording the Marital Trust A Deed, and that the stated valuable consideration of "under \$500" was formulaic and nominal, not actual. Indeed, the Original Deed, the Respondent's Deed, and the Family Trust B Deed all included similar recitals that the subject property was conveyed "for valuable consideration," and listed nominal consideration of \$500 or less.

Viewing the evidence in the light most favorable to Diane in her role as trustee, the settlors' trusts administered by Diane paid real-estate taxes, insurance, utilities, and improvements for the subject property between 2006 and 2014. Given this record, there is sufficient, undisputed evidence to reach the legal conclusion that Marital Trust A gave valuable consideration for the conveyance of the subject property—the trustee's promise on behalf of the trust to undertake the future duties and responsibilities of the subject property, including payment of the taxes and related expenses—as acknowledged by the recital of valuable consideration in the deed.

In addition, we need not look at extrinsic evidence outside of the deed's recital to conclude that Marital Trust A gave valuable consideration as a matter of law. The Minnesota and foreign-jurisdiction caselaw relied upon by the district court is inapplicable because those cases involved allegations of fraud or misdoings, purchasers who did not act in good faith, and/or challenges to the validity of a deed. That is not the case here, where the Marital

Trust A Deed has not been challenged, and where the record provides undisputed evidence that Diane, as trustee, acted in good faith, and without notice of the Respondent's Deed.

Because there was sufficient evidence offered to establish that Marital Trust A gave valuable consideration for the conveyance of the subject property as a matter of law, and because the evidence establishing the other two required elements of GFP status is not disputed, the record shows that Diane, in her role as trustee for Marital Trust A, was a GFP entitled to the protections of the MRA. Therefore, under Minn. Stat. § 507.34, the Respondent's Deed to the subject property is void as against the Marital Trust A Deed, because the Marital Trust A Deed was recorded first by a "subsequent purchaser in good faith and for a valuable consideration." The district court's order contradicts long-standing Minnesota law and would disrupt real estate, trust, and estate practice in Minnesota. The district court erred in granting Spethmann partial summary judgment on Diane's MRA claim, and we reverse and remand for consideration of all issues in light of our holding.

Reversed and remanded.