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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1060**

Rodney Wayne Kesanen,
Appellant,

vs.

Dawn Strobe-Robinson,
Respondent.

**Filed February 11, 2019
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69VI-CV-17-751

John H. Bray, Maki & Overom, Ltd., Duluth, Minnesota (for appellant)

Richard E. Prebich, Richard Dahl, Prebich Law Office, P.C., Hibbing, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Rodney Wayne Kesanen (creditor) had judgment against David C. Strobe (debtor). Debtor, shortly before he died, executed a transfer-on-death deed to transfer certain real property to his niece, respondent Dawn Strobe-Robinson (transferee). After debtor's death, creditor sued transferee under the Minnesota Uniform Voidable

Transactions Act (MUVTA), Minn. Stat. §§ 513.41-.51 (2018), seeking to void the transfer as fraudulent and to establish that he had a lien on the property. The district court granted summary judgment in favor of transferee, concluding that there is no genuine issue of fact that the property was debtor's homestead and that transferee was entitled to a judgment as a matter of law. We affirm.

FACTS

In April 2006, creditor obtained a judgment of several hundred thousand dollars against debtor. Eight years later, debtor filed for bankruptcy. Debtor moved the bankruptcy court to avoid creditor's judgment lien on debtor's real property located at 4450 Pelican Road in Orr, Minnesota, for the reason that the property was his homestead. Pursuant to stipulations by the parties, the bankruptcy court granted the motion. The underlying debt was not discharged in bankruptcy.

Thereafter, in early August 2017, debtor, who had no spouse or children, executed and filed a transfer-on-death deed (TODD), conveying the property to his niece upon his death. On August 14, 2017, debtor died. Creditor subsequently filed this action against transferee, seeking to void the transfer of the property as fraudulent under the MUVTA; he also sought a determination that a judgment lien attached to the property. The district court granted transferee's motion for summary judgment on the grounds that the homestead exemption applied to debtor's property, the transfer was not voidable under the MUVTA, and no judgment lien attached to the property.

This appeal follows.

DECISION

On appeal from summary judgment, we review de novo whether a genuine issue of material fact exists and whether the district court erred in its application of law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *Id.* at 66-67 (quotation omitted). A motion for summary judgment shall be granted when the record shows “that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted); see Minn. R. Civ. P. 56.01. In this case, the district court granted summary judgment in favor of transferee because it decided that (1) no genuine issue existed as to whether the property was debtor’s homestead until death and (2) transferee was entitled to judgment as a matter of law because the transfer of debtor’s homestead property was not voidable under the MUVTA and because debtor’s homestead property was transferred without being subject to a judgment lien.

We will address both decisions, but we begin with the legal issues.

I. Application of Law

The district court decided that, if the transferred property was debtor’s homestead until his death, transferee was entitled to judgment as a matter of law because the transfer was not voidable and no lien attached to the property.

A. MUVTA Claim

Creditor claims that the transfer of the property to transferee was fraudulent and voidable under the MUVTA. The MUVTA renders “a transfer made or obligation incurred

by a debtor” voidable as to a creditor in certain situations. Minn. Stat. §§ 513.44-.45. “‘Transfer’ means every mode . . . of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.” Minn. Stat. § 513.41(16). “‘Asset’ means property of a debtor, but the term does not include . . . property to the extent it is generally exempt under nonbankruptcy law” Minn. Stat. § 513.41(2).

Homestead property is exempt under nonbankruptcy law. Minn. Stat. § 510.01 (2018). Thus, a transfer of homestead property is not within the scope of the MUVTA. *See* Minn. Stat. §§ 513.41, .44 (providing when a transfer is voidable under the MUVTA). Caselaw, applying essentially the same statutory grant of homestead right, holds that the homestead exemption extends to fraudulent conveyances. *See Nw. Holding Co. v. Evanson*, 122 N.W.2d 596, 600 (Minn. 1963) (“Even a conveyance fraudulent as to creditors does not deprive the property of its homestead exemption.”); *First Nat’l Bank of Mankato v. Wilson*, 47 N.W.2d 764, 766 (Minn. 1951) (“[A] conveyance of [a] homestead cannot be set aside by creditors as fraudulent, even though the debtor conveying the property intends thereby to defraud his creditors.”); *Sisco v. Paulson*, 45 N.W.2d 385, 387 (Minn. 1950) (“Exempt property [including homestead property] is not susceptible of fraudulent alienation, and creditors ordinarily have no right to complain of the disposition made of it”).

Creditor argues that, even assuming the property was debtor’s homestead, the transfer at issue is still within the scope of the MUVTA because debtor’s homestead exemption ceased to exist upon debtor’s death, rendering the property nonexempt. Creditor

cites Minn. Stat. § 510.06 (2018), which provides that a homestead exemption survives the owner's death if the owner dies leaving a spouse or minor children but does not, creditor notes, extend the same protection to a niece.

But debtor did not only die, he transferred his property, and Minnesota law protects the rights of owners to convey homestead property free of debts. Minn. Stat. § 510.07 (2018) provides that an "owner may sell and convey the homestead without subjecting it . . . to any judgment or debt from which it was exempt in the owner's hands." Thus, if section 510.07 applies to debtor's transfer, it was a transfer of homestead property and not subject to the MUVTA. *See Nw. Holding Co.*, 122 N.W.2d at 600.

Creditor argues that section 510.07 does not apply because the transfer was by means of a TODD. He reasons that the TODD become effective upon debtor's death; that, at some theoretical moment between debtor's death and the transfer, debtor's homestead exemption expired; and that debtor therefore transferred nonexempt property. Besides the lack of authority for excepting a TODD from section 510.07, we cannot see why the full protection of homesteaders' rights under section 510.07 would not apply to debtor's conveyance by a TODD when those rights would have applied had debtor conveyed the property to his niece the day before his death. Minnesota law "jealously protect[s] the rights of homesteaders," *id.*, and this protection includes the right to convey homestead property free of debts.

Creditor also argues that the right to convey a homestead under section 510.07 does not apply because it applies only in arm's-length transactions and this transfer was not arm's-length. But "[t]he right to sell and convey the homestead is absolute, and the purpose

of the transfer is immaterial, as is the amount of the consideration paid.” *Wilson*, 47 N.W.2d at 766. Section 510.07 therefore applies even though the transfer was to debtor’s niece, at no cost.

Thus, the district court correctly concluded that, if debtor’s property was homestead property at the time of his death, the transfer of his property falls within the protections of section 510.07 and the MUVTA does not apply.

B. Lien

Creditor also argues that the district court erred by concluding that he is not entitled to a lien on the property. Under the TODD statute, an interest transferred by a TODD after the grantor-owner’s death “is transferred subject to all effective . . . judgments . . . to which the interest was subject on the date of death of the grantor owner.” Minn. Stat. § 507.071, subd. 3 (2018). Relying on similar reasoning to his MUVTA argument, creditor asserts that debtor’s homestead exemption expired at his death and, at a theoretical moment between his death and the transfer of the property pursuant to the TODD, creditor’s judgment lien attached and the property was thus transferred subject to the lien.

Again, we disagree. Debtor’s interest in the property could be subject to no judgment lien as long as the property was debtor’s homestead. As the district court suggested, the expiration of both debtor’s homestead exemption and debtor’s interest in the property occurred simultaneously upon debtor’s death; there was no period of time in which debtor retained an interest in nonexempt property to which a judgment lien could have attached. The property was thus transferred to transferee without creditor’s asserted lien attached.

The district court made no error of law by concluding that transferee was entitled to summary judgment if debtor's property was his homestead. We turn next to whether there is any genuine issue of fact concerning that question.

II. There is no genuine dispute that debtor's property was his homestead until death.

"The house owned and occupied by a debtor as the debtor's dwelling place . . . constitute[s] the homestead of such debtor and the debtor's family." Minn. Stat. § 510.01. The district court concluded that there was no genuine dispute as to whether debtor's property was his homestead until death.

Transferee presented several pieces of evidence to prove that the property was debtor's homestead until his death. First, during debtor's bankruptcy proceeding in 2014, creditor stipulated that the property was a homestead. Second, the St. Louis County Assessor's office certified that the property was homesteaded in 2017 for tax purposes. Third, debtor's death certificate lists Orr, Minnesota, as his residence and place of death. Fourth, two former neighbors of debtor signed affidavits in which they stated that, during the years they knew debtor and at the time of his death, debtor "was owner of the property" and "occupied the property . . . as his primary residence." One of them knew debtor for over 15 years and saw him once or twice a week at the property towards the end of his life.

Creditor, on the other hand, did not present any evidence suggesting that the property ceased to be a homestead at some point before debtor's death. Creditor instead argues that a genuine issue persists because transferee failed to establish that the property had been a homestead at the moment debtor died. This argument is unpersuasive. Not only

does creditor unfairly disregard the neighbors' sworn statements to the contrary, he misconstrues what a summary-judgment movant's burden is. Transferee's burden, as a summary-judgment movant, is not to prove that there is no theoretical possibility that a genuine issue can exist. See *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (“[A] metaphysical doubt as to a factual issue will not defeat a summary judgment motion.” (quotation omitted)). Rather, her burden is to prove that reasonable persons cannot “draw different conclusions from the evidence presented.” *Id.* at 69.

Summary judgment “is mandatory against a party who fails to establish an essential element of [the] claim, if that party has the burden of proof.” *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001) (alteration in original) (quotation omitted), *review denied* (Minn. Oct. 26, 2002). Here, creditor bears the ultimate burden to prove that debtor had stopped using the property as a homestead before he died. See *Gordon v. Emerson-Brantingham Implement Co.*, 210 N.W. 87, 88 (1926) (“[O]nce a homestead is acquired, the exemption from the claims of creditors is presumed to continue until it is shown by clear and convincing evidence that the right has been abandoned.”). Because creditor did not present any evidence to support that proposition, a reasonable person would find that creditor failed to meet his burden. There was no genuine issue as to the fact that debtor homesteaded the property until his death.

Because there was no genuine dispute of fact that the property was debtor's homestead, and because transferee was entitled to judgment as a matter of law, the district court did not err in granting summary judgment to transferee.

Affirmed.