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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1734**

Scott Sundgaard,
individually and as Personal Representative of
the Estate of Donald Sundgaard,
Respondent,

vs.

Janice Lundgren,
Appellant.

**Filed July 1, 2019
Affirmed
Florey, Judge**

Morrison County District Court
File No. 49-CV-16-424

Luther M. Amundson, J. Noble Simpson, Maser, Amundson, Boggio & Hendricks, P.A.,
Richfield, Minnesota (for respondent)

Gerald W. Von Korff, Rinke Noonan, St. Cloud, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this deed-reformation action, appellant Janice Lundgren argues the district court
erred by reforming a warranty deed from a joint-tenancy transfer to a tenancy-in-common
transfer. We affirm.

FACTS

In 2004, following the recent passing of their respective spouses, appellant and respondent Scott Sundgaard's father, Donald,¹ now deceased, began a romantic relationship together. They had known each other for approximately 25 years. They also each had children from a previous marriage. Appellant had two children with her late husband, and Donald had two children with his late wife—one of whom had predeceased him, leaving respondent as his only surviving child.

During Donald's later years, respondent was actively involved in his father's finances and investments. Respondent was listed as a co-owner on Donald's Wells Fargo bank account and would occasionally pay Donald's expenses through the account, if needed. When Donald died in 2014, his Wells Fargo account went to respondent as joint owner.

On June 3, 2005, Donald executed his Last Will and Testament. Donald named respondent his personal representative and sole beneficiary of his estate. He also appointed respondent and, alternatively, respondent's wife, as his health-care agent and attorney-in-fact. Appellant was neither named in Donald's will nor nominated to be his health-care agent or attorney-in-fact.

On September 16, 2005, appellant and Donald purchased their first home together (referred to by the parties as "South Oaks" or "Golf View"). The warranty deed for South Oaks transferred the property to appellant and Donald as tenants-in-common. To purchase

¹ Both parties refer to respondent's father in their appellate briefs by his first name. For consistency, we do the same.

the property, appellant and Donald each paid half of the down payment with their separate funds. And, when they sold the property in March 2010, appellant and Donald each received one-half of the sale proceeds, which they deposited into their separate bank accounts.

In general, appellant and Donald maintained throughout their relationship their own separate finances and assets. And, since the start of their relationship, it was both of their intentions to leave their respective assets to their own children. Appellant and Donald did, however, share a bank account to which they contributed equally, and from which they paid joint expenses, such as household items and monthly telephone bills.

On May 22, 2008, appellant and Donald purchased a second home together—the subject property (referred to by the parties as “Oak Ridge”). To purchase the property, appellant and Donald each made equal payments of \$110,000 from their own separate bank accounts. The Oak Ridge warranty deed provided that the property was conveyed to appellant and Donald “as joint tenants.” The warranty deed was signed by the conveyors of the property.

Incidental to their purchase of Oak Ridge, appellant and Donald took out an owner’s title-insurance policy for the cost of the home. Pursuant to their policy commitment, dated April 16, 2008, and prepared by their closing agent, Larson Abstract Company, title was to be conveyed to appellant and Donald “as joint tenants.” Accordingly, the owner’s title-insurance policy, effective May 22, 2008, showed title vested in appellant and Donald “as joint tenants.” Appellant and Donald signed the property’s abstract receipt as well as a

compliance agreement, both of which were among the documents prepared by Larson Abstract Company.

Appellant and Donald were engaged to be married and, in 2009, they had “their union blessed by their pastor.” While both appellant and Donald wanted to get married, had appellant legally married Donald, she would have lost benefits she received through her late husband’s disability payments. Thus, appellant and Donald were never legally married, but they viewed their relationship as a partnership “through the sight of God.” Appellant testified that, at the time they were blessed by their pastor in 2009, it was still both of their intentions that their respective assets would be left to their own children.

Following a knee injury, Donald resided in a nursing facility from mid-November 2012 until May 2013. While Donald was in the nursing facility, appellant was added as a “joint owner” to Donald’s bank account held at Mid-Minnesota Federal Credit Union. Appellant and Donald also discussed, while Donald was at the nursing facility, their plans if something were to happen to one of them. They decided to execute a Transfer on Death Deed (TODD).

The TODD was prepared by an attorney, Michael Perry, who had done legal work for appellant and Donald in the past. In December 2012, appellant went to Perry’s office to retrieve the TODD, and brought the document back to the nursing facility for Donald to sign in front of a notary. Donald did not consult with an attorney before signing. The TODD, signed on December 4, 2012, by both appellant and Donald, provided that appellant and Donald conveyed and quitclaimed, to appellant’s two sons, “an undivided one-half interest as tenants in common”; and Donald’s son, respondent, “an undivided one-half

interest,” effective “on the death of the last of the Grantor Owners to die, if more than one Grantor Owner is named above.” The TODD described the Oak Ridge property and provided that, once effective, the TODD “conveys any and all interests in the described real property acquired by the Grantor Owner(s) before, on, or after the date of this instrument.” In a letter dated December 4, 2012, from Perry to appellant, Perry wrote: “The [transfer on death] deed allows you to live in the home until the death of the last of you. You may also sell or mortgage it without the signature of the boys.”

In December 2014, Donald passed away. On January 2, 2015, respondent and his wife met with appellant at the Oak Ridge home. While there, appellant gave respondent a number of documents belonging to Donald, including statements from Donald’s bank account at Mid-Minnesota Federal Credit Union. Appellant and respondent agreed to close the account that day.

Appellant and respondent first drove to Mid-Minnesota Federal Credit Union where appellant withdrew the remaining funds (\$15,848.16) from Donald’s account, and then to Pine Country Bank, where appellant deposited the funds into her account. Appellant then wrote a check to respondent for \$15,848.16. Later that day, appellant expressed to respondent that she was concerned he was going to ask her to move out of the Oak Ridge property.

Between January 2, 2015, and the summer of 2015, respondent contributed to a handful of Oak Ridge-related expenses, some of which were payments for work done prior to Donald’s death. Respondent’s payments for Oak Ridge-related expenses included: (1) \$228.68 for half the invoice total from Central Minnesota Electric; (2) \$500 for half the

invoice total for tree removal work; (3) \$322.50 for half the invoice total from Pioneer Mutual Insurance; and (4) the first half of the 2015 real-estate-property taxes.

Respondent testified that, following Donald's death, he paid for half of the expenses because it was his understanding that he was co-owner of the Oak Ridge property. Similarly, appellant testified that respondent contributed because "he still thought he was half owner of the place." She conceded that she too, at that time, believed respondent was a co-owner of Oak Ridge.

On July 8, 2015, appellant signed an Affidavit of Identity and Survivorship. The document was drafted and notarized by her sister, Barbara Andersen, a legal secretary for appellant's trial attorney. Appellant testified that her understanding of the affidavit was to ensure that, once "a person dies[,] . . . you're the only one that's on the deed." On July 9, 2015, Donald's death certificate was issued, and on July 13, 2015, the affidavit and death certificate were filed with the county recorder's office.

On August 27, 2015, appellant revoked the TODD. The revocation effectively eliminated respondent's interest in Oak Ridge. *See* Minn. Stat. § 507.071, subd. 10 (2018) ("A revocation revokes the transfer on death deed in its entirety."). Appellant testified that she understood the revocation would "take [her] children" and "Don's son" "off the deed." She testified that, had respondent stayed "decent," then "he would have got half of the house and [her] boys would have got half of the house." But, according to appellant, respondent "got so nasty with [her], [and] that's when [she] said enough is enough."

In February 2016, appellant was served with respondent's summons and complaint requesting that the district court void or reform the Oak Ridge deed such that it reflected a

tenancy-in-common transfer. Following a bench trial, the district court issued an order instructing appellant to sign a quitclaim deed to respondent for an undivided one-half interest in the Oak Ridge real estate. Both parties moved for amended findings.

In July 2018, the district court issued an amended order wherein it denied respondent's motion, but granted, in part, appellant's motion. The amended order revised some findings but maintained appellant's obligation to sign a quitclaim deed to respondent for an undivided one-half interest in the Oak Ridge real estate.

The district court concluded there were at least five pieces of evidence demonstrating Donald and appellant "intended to purchase Oak Ridge as tenants-in-common": (1) the TODD; (2) appellant's testimony that, as of the date of Donald's death "and up to July 8, 2015, it was her understanding that [respondent] owned half of Oak Ridge"; (3) appellant's expressed concern to respondent that he was going to force her out of Oak Ridge; (4) "[appellant's] conduct after Donald Sundgaard's death"; and (5) that appellant "asked [respondent] to pay for half of the expenses." The district court concluded:

The evidence clearly and convincingly shows that Donald Sundgaard and [appellant] had agreed to own Oak Ridge as tenants-in-common and that the Oak Ridge deed does not reflect this intention. The failure of the deed to reflect the intention was due to a mutual mistake of the parties. It appears that [appellant] learned about the words and/or the meaning of the words on the warranty deed when this was brought to her attention by Barbara Andersen in July 2015. The [c]ourt must therefore grant [respondent's] request for the [c]ourt to reform the Oak Ridge deed to reflect Donald Sundgaard's intent to take title as a tenant-in-common.

In September 2018, the district court issued a stipulated order for sale of the Oak Ridge real estate. This appeal followed.

D E C I S I O N

I. The district court did not err by reforming the joint-tenancy deed to reflect, instead, a tenancy-in-common.

Appellant argues that the district court’s reformation of the Oak Ridge warranty deed constituted clear error. She contends that, because the reformation was not supported by sufficient evidence that she and Donald intended to take title as tenants-in-common, we must reverse the district court’s order and dismiss respondent’s underlying deed-reformation action.

“Reformation is an equitable remedy that is available when a party seeks to alter or amend language in a contract so that the contract reflects the parties’ true intent when they entered into the contract.” *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). A party seeking to reform a deed must prove:

(1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument allegedly evidencing the agreement failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

Theros v. Phillips, 256 N.W.2d 852, 857 (Minn. 1977). “A deed creating by mistake a tenancy in common, where a joint tenancy was intended, will be reformed.” *Magnuson v. Diekmann*, 689 N.W.2d 272, 274 (Minn. App. 2004) (quotation omitted).

“Determining a party’s intent is a question of fact, and this court will not disturb the district court’s determination unless it was clearly erroneous and unsupported by

reasonable evidence.” *Brown v. Cannon Falls Twp.*, 723 N.W.2d 31, 44 (Minn. App. 2006); *see also* Minn. R. Civ. P. 52.01; *Theros*, 256 N.W.2d at 857. Appellate courts “have expressly followed that standard of review in cases involving reformation of written instruments.” *Theros*, 256 N.W.2d at 857.

“The evidence supporting reformation of a written instrument, including a deed, must be consistent, clear, unequivocal, and convincing.” *Id.*; *see also Magnuson*, 689 N.W.2d at 275 (holding that reformation of the deed was supported by “clear and convincing” evidence); *In re Estate of Savich*, 671 N.W.2d 746, 752 (Minn. App. 2003) (holding that “appellant had failed to produce clear and convincing evidence supporting reformation of the deeds”). “[W]e have characterized this level of proof as a high burden.” *SCI*, 795 N.W.2d at 865 (quotation omitted).

“[W]hen parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement.” *Danielson v. Danielson*, 721 N.W.2d 335, 339 (Minn. App. 2006) (concluding that, “[b]ecause the language of the deed [was] unambiguous, the district court erred as a matter of law by admitting and considering evidence to determine the meaning of the deed”); *see also* Minn. Stat. § 336.2-202 (2018) (limiting the admission of parol or extrinsic evidence). “Parol evidence is admissible, however, to prove a mutual mistake of fact and to show how the instrument should be corrected to reflect the actual intent of the parties thereto.” *Johnson v. Johnson*, 379 N.W.2d 215, 219 (Minn. App. 1985) (quotation omitted).

Minnesota Statutes section 500.19, subdivision 2 (2018), provides that “[a]ll grants and devises of lands, made to two or more persons, shall be construed to create estates in

common . . . unless expressly declared to be in joint tenancy.” But, strict compliance with the statute is secondary to the intent of the parties, particularly where, as here, there is evidence of a donative intent not reflected in the deed. *See Magnuson*, 689 N.W.2d at 275. “In seeking to determine the donor’s intention, all relevant evidence, whether direct or circumstantial, may be considered, including the text of the donative document and relevant extrinsic evidence.” *Id.* (quotation omitted).

Appellant challenges the five pieces of evidence that the district court relied on in making its decision to reform the warranty deed. First, she contends that her and Donald’s decision to execute the TODD in 2012 was consistent with their understanding that they held title as joint tenants. According to appellant, “[t]he TODD would have allowed [her and Donald] to reap the benefits of the joint tenancy during their lives (that neither of them should be put out of his or her home), while also providing pecuniary benefit to all of their children after they were gone.”

Second, appellant contends that any deposition or trial testimony she gave wherein she conceded to believing in 2015 that respondent was a co-owner of Oak Ridge is irrelevant. She argues that the only evidence the district court should have considered was evidence demonstrating her and Donald’s intent when they purchased Oak Ridge in 2008. Accordingly, argues appellant, the fact that she was not named in Donald’s will nor appointed as his health-care agent or power-of-attorney in 2005 is irrelevant to their intentions in taking title to Oak Ridge in 2008.

Third, appellant argues that any concern she expressed to respondent about being forced out of the Oak Ridge home following Donald’s death is not demonstrative of her

and Donald's intent in taking title to the property in 2008. She contends, "There are many reasons why [she] might have been concerned about [respondent's] motives and plans." As appellant testified, following Donald's death, respondent became "so nasty" with her, he made her feel uncomfortable, and she ultimately lost trust in him.

Fourth, appellant disputes the relevancy of her conduct following Donald's death. She contends that the revocation of the TODD, for example, "ha[d] no impact on the intent with which [she] and Donald took title to Oak Ridge in 2008." She argues that "her relationship with Scott [had] deteriorated," and the revocation "was unquestionably within her rights."

Lastly, with regard to the financial transactions between her and respondent, appellant argues that "[f]our of the five payments were made without any request from [her]," and that "[a]t least two of [respondent's] five payments were for work ordered prior to Donald's death." She argues that respondent's "actual contributions—\$2,800—is a tiny amount considering the costs associated with maintaining a house and considering the funds that [she] voluntarily conveyed to [respondent] following Donald's death." She argues that, because respondent failed to present "consistent, clear, unequivocal and convincing evidence" that the joint-tenancy deed did not reflect her and Donald's true intentions, the district court's reformation constituted clear error and it must be reversed.

We conclude that the district court's reformation of the warranty deed, supported by clear and convincing evidence, was not clear error. Nevertheless, appellant's position is not entirely without merit. In our evaluation of the district court's decision, we address, first, the potential strengths of appellant's case.

One, there is no dispute that the language of the Oak Ridge deed was unambiguous. The warranty deed expressly provided that the property was conveyed to appellant and Donald “as joint tenants.” Two, the record demonstrates that, at the time they purchased Oak Ridge, appellant and Donald had prior experience purchasing and conveying real estate. In fact, the record shows that Donald and his late spouse purchased their home together as joint tenants. Third, the closing paperwork prepared by Larson Abstract Company, some of which required appellant’s and Donald’s review and signatures, stated that title to Oak Ridge was to be conveyed to them “as joint tenants.”

The TODD, and the letter accompanying the TODD, could support either party’s position. On the one hand, had appellant and Donald intentionally taken title as joint tenants with a right of survivorship, it would make sense that they execute a TODD to preserve their respective children’s interest in Oak Ridge. On the other hand, had appellant and Donald intended to take title as tenants-in-common, but intended that neither person would be forced to move out of Oak Ridge upon the death of the other, it would also make sense that they execute a TODD to ensure their children’s interest in Oak Ridge would not take effect until both appellant and Donald had passed.

Likewise, the language in the letter from Perry to appellant accompanying the TODD could apply to either a joint-tenancy or tenancy-in-common. The language, “[t]he [transfer on death] deed allows you to live in the home,” could imply that appellant and Donald thought they were in a tenancy-in-common, given a TODD would not be necessary to protect appellant’s interest in a joint-tenancy. However, the rest of the sentence, “until the death of the last of you,” could imply that, once the remaining tenant passed (in either

a joint-tenancy or tenancy-in-common), the TODD would ensure that title was conveyed to appellant's and Donald's designated beneficiaries. While it would be logical for appellant and Donald to execute a TODD in either a joint-tenancy or tenancy-in-common, the fact that they waited to execute a TODD until four years after the purchase of Oak Ridge is evidence that they intended to take title as tenants-in-common.

In a joint-tenancy, all of the decedent's interest in the jointly held real estate passes by survivorship to the surviving joint tenant. *See Hendrickson v. Minneapolis Fed. Sav. & Loan Ass'n*, 161 N.W.2d 688, 690 (Minn. 1968) ("A joint tenancy is distinguished from a tenancy in common by the fact that a surviving joint tenant succeeds to the person with whom he shared the joint tenancy."). On the other hand, in a tenancy-in-common, there is no right of survivorship; thus, the decedent's interest passes to the decedent's heirs or devisees. *Id.*; *see also Black's Law Dictionary* 1695 (10th ed. 2014) (defining tenancy-in-common). Here, under a joint-tenancy, had Donald died before they executed a TODD, his interest in Oak Ridge would have passed entirely to appellant as the surviving joint tenant. Such a result would have been contrary to both his and appellant's intentions that their respective assets be reserved for their own children.

Furthermore, appellant's conduct following Donald's death, and her testimony that she believed, upon his passing, that respondent was the rightful half-owner of Oak Ridge, is indicative that she and Donald intended to take title in 2008 as tenants-in-common. Appellant's actions, her testimony, and other circumstantial evidence properly considered by the district court leads us to conclude that the district court's findings were not clearly erroneous. The record shows that (1) appellant and Donald generally maintained

throughout their relationship separate finances; (2) appellant and Donald always intended that their respective assets would go to their own children; (3) despite those intentions, a TODD was not executed until several years after appellant and Donald took title as joint tenants; and (4) appellant believed and acted as if respondent was co-owner of Oak Ridge following the passing of his father. Based on the clear and convincing evidence² in the record, coupled with our deferential standard of review, we conclude the district court did not clearly err by reforming the warranty deed to reflect a tenancy-in-common transfer.

Affirmed.

² Appellant's argument suggests that "consistent, clear, unequivocal, and convincing evidence" is a different, and higher, burden than "clear and convincing." Caselaw, however, uses the terms interchangeably, often times within the same opinion. *See, e.g., Savich*, 671 N.W.2d at 751-52 (stating that "[t]he evidence supporting reformation must be consistent, clear, unequivocal, and convincing," and finding that "appellant had failed to produce clear and convincing evidence supporting reformation of the deeds" (quotation omitted)). Any indication that the terms constitute different standards of proof is without merit.