

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0901**

In re the Matter of the Petition of Wendy Nevins.

**Filed March 8, 2021
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-ET-CV-19-159

Robert J. Hajek, Hajek & Beauclaire, L.L.C., Minnetonka, Minnesota (for appellant Robert Nevins)

Kevin J. Dunlevy, Beisel & Dunlevy, P.A., Minneapolis, Minnesota; and

Timothy A. Netzell, Netzell Legal Services, P.L.L.C., Eden Prairie, Minnesota (for respondent Wendy Nevins)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

We have been asked to determine whether a dissolution decree conferred on one party an interest in real property that the other party had acquired during the parties' marriage. We conclude that the district court erred by not giving proper effect to the parties' separation agreement, which was incorporated into their dissolution decree and states that any property that was acquired during the parties' marriage but not provided for

in the separation agreement shall be deemed to be owned by both parties. Therefore, we reverse and remand.

FACTS

This appeal concerns a parcel of real property in the city of Crystal. In 1958, the parents of Wendy Nevins acquired the property as joint tenants. In 1999, Wendy's parents conveyed the property by quit-claim deed to their three adult children and reserved a life estate for themselves. The deed reflects that each of the adult children received a one-third interest as tenants in common. The Torrens certificate of title also reflects three tenants in common and, in addition, the names of the spouses of the tenants in common.

At the time of the conveyance of the Crystal property, Wendy was married to Robert Nevins, whom she had wed in 1996. Their marriage was dissolved by a Colorado court in 2003. The dissolution decree adopted and incorporated by reference the parties' written separation agreement, which was signed by both parties and their respective attorneys.

Paragraph 2 of the separation agreement states that it "is intended as a complete settlement of the matters of maintenance, division of marital property, payment of marital debts, custody of the minor children, parenting time, child support, and all of the rights, duties, and obligations of the parties toward one another arising out of their marriage to one another." Paragraph 12 of the agreement states, in part, "The parties agree that each has made a complete disclosure of any and all significant items of property in which he or she has any interest" In paragraph 17, Robert waived any claim to a marital interest in a particular promissory note that previously had been given to Wendy. In paragraph 18, which is captioned "Real Estate," the parties agreed that two particular parcels of real

property, which were characterized as marital property, should be awarded to Wendy. And in paragraph 30, the parties agreed as follows:

Undisclosed Property: In the event that there is discovered any real or personal property which has been acquired by the Wife or the Husband during this marriage and which has not been provided for herein, then, in that event, such property is deemed to be owned by both Wife and Husband as tenants in common until such time as the parties can divide such property by agreement or otherwise.

In 2019, after Wendy's parents had passed away, Wendy and her siblings entered into an agreement for the sale of the Crystal property. Robert declined Wendy's request to execute a quit-claim deed to disclaim any interest in the property. The record indicates that the buyers have made payment and that Wendy's portion of the net proceeds of the sale, approximately \$102,000, has been placed in an escrow account.

In August 2019, Wendy petitioned the district court for the cancellation of the existing certificate of title for the Crystal property, which refers to Wendy's marriage to Robert, and the issuance of a new certificate of title that does not make any reference to Robert. *See* Minn. Stat. § 508.71, subd. 2 (2020). In February 2020, the district court referred the matter to the examiner of titles for Hennepin County.

In March 2020, the parties filed cross-motions for summary judgment. Robert requested that he be awarded a one-sixth interest in the property and that the district court order the issuance of a new certificate of title reflecting such an interest. In support of his motion, he submitted an affidavit that states, "I never knew that [Wendy] obtained an interest in [the Crystal property] during our marriage." Wendy requested that she be granted the relief she sought in her amended petition. In support of her motion, she

submitted an affidavit stating that her parents' conveyance of the Crystal property "was disclosed and discussed with Robert on several occasions during the marriage."

In June 2020, the deputy examiner of titles filed a nine-page report, which includes a statement of undisputed facts, a conclusion of law, a recommended order, and a memorandum of law. The deputy examiner determined that Robert "has no interest" in the Crystal property because it "was a gift to [Wendy] and was her non-marital property under either Minnesota or Colorado law." The deputy examiner recommended that the district court order the registrar of titles to cancel the existing certificate of title and to issue a new certificate of title in favor of the two buyers. The district court filed an order adopting the report of the deputy examiner. Robert appeals.

DECISION

Robert argues that the deputy examiner and the district court erred by granting Wendy's summary-judgment motion and, accordingly, by granting her petition and ordering a new certificate of title that does not recognize his interest in the Crystal property.

A district court "shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

Robert contends that the deputy examiner and the district court erred by not giving effect to the Colorado court's dissolution decree, which incorporated the parties' separation agreement. Robert relies primarily on paragraph 30 of the agreement, which provides that if "there is discovered any real or personal property which has been acquired by the Wife or the Husband during this marriage and which has not been provided for herein, . . . such property is deemed to be owned by both Wife and Husband as tenants in common."

The deputy examiner considered paragraph 30 but reasoned that it does not apply on the grounds that the separation agreement was limited in scope to the division of marital property and that Wendy's interest in the Crystal property was non-marital in character because it was a gift from her parents. This reasoning reflects a misinterpretation of the separation agreement and, thus, a misinterpretation of the parties' dissolution decree. The scope of the separation agreement was much broader than merely a division of marital property. Paragraph 2 of the agreement states that it "is intended as a complete settlement of the matters of maintenance, division of marital property, payment of marital debts, custody of the minor children, parenting time, child support, and all of the rights, duties, and obligations of the parties toward one another arising out of their marriage to one another."

Furthermore, other provisions of the separation agreement make clear that Wendy was obligated to disclose her interest in the Crystal property to Robert, even if it was non-marital in character. Paragraph 12 states, "The parties agree that each has made a complete disclosure of *any and all* significant items of property in which he or she has any interest" (Emphasis added.) The parties' obligation to disclose all property—whether marital

or non-marital in character—is confirmed by paragraph 30, which is triggered if “there is discovered *any* real or personal property which has been acquired by the Wife or the Husband during this marriage and which has not been provided for herein.” (Emphasis added.) Accordingly, the deputy examiner should not have disregarded paragraph 30 on the ground that Wendy’s interest in the Crystal property was non-marital in character.

Pursuant to paragraph 30, Robert has an interest in the Crystal property if he has satisfied two requirements. The first requirement is that the Crystal property was acquired by Wendy during the marriage. There is no dispute that it was. Wendy stated in an affidavit that, “at the time of the execution of the Quit Claim Deed, I was married to Robert Nevins.” The second requirement is that the Crystal property was “not . . . provided for” in the separation agreement. There is no dispute that it was not provided for. Wendy’s brief states, “The separation agreement does not include a description of the subject property. . . .” Our independent review of the separation agreement confirms that it makes no mention of the Crystal property. As a result, the Crystal property must be “deemed to be owned by both [Wendy] and [Robert] as tenants in common.” That is the consequence to which the parties agreed in 2003.

Thus, the deputy examiner erred by concluding that Robert does not have an interest in the Crystal property. Consequently, the district court erred by granting Wendy’s motion for summary judgment and denying Robert’s motion for summary judgment. Therefore, we reverse and remand to the district court with instructions to deny Wendy’s motion for summary judgment, grant Robert’s motion for summary judgment, and deny Wendy’s

petition for cancellation of the existing certificate of title and issuance of a new certificate of title.

Reversed and remanded.

A handwritten signature in cursive script, appearing to read "Matthew Engelson". The signature is written in dark ink on a white background.