Savage v. Walker, No. 327-5-07 Rdcv (Teachout, J., Dec. 19, 2007)

STATE OF VERMONT
RUTLAND COUNTY

DOUGLAS SAVAGE,	)	
Plaintiff,	)	**Rutland Superior Court**
	)	**Docket No. 327-5-07Rdcv**
v.	)	
	)	
ROBERT WALKER,	)	
Defendant.	)	

DECISION
Defendant's Motion for Summary Judgment, filed August 3, 2007

Plaintiff seeks to recover real estate that he gratuitously transferred in 2005, or its equivalent value. Defendant has filed a Motion for Summary Judgment, arguing that Plaintiff cannot meet his burden of proof on a key issue: that he transferred all interest in the property for nothing in return without having had an intent to make a gift. For the reasons stated below, Defendant is entitled to summary judgment.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3). In determining whether a genuine issue of material fact exists, the non-moving party receives the benefit of all reasonable inferences; however, the party opposing summary judgment must provide specific facts to support their contention that a genuine issue remains for trial. V.R.C.P. 56(e). Viewed in the light most favorable to plaintiff, the facts in this case are as follows.

Plaintiff Savage gratuitously conveyed a parcel of real estate to his then-significant other, Jane Walker, via quitclaim deed dated March 15, 2005. The deed was duly recorded and had the effect of transferring legal title to Ms. Walker. It contains the following language:

> I, DOUGLAS E. SAVAGE . . . have REMISED, RELEASED AND FOREVER QUIT CLAIMED unto the said grantee, JANE C. WALKER, her heirs, executors, administrators and assigns all right and title which I or my heirs have in, and to [the real estate in question].
>
> . . .
>
> AND FURTHERMORE I, the said Grantor, for my heirs, executors and administrators, do covenant with the said Grantee, JANE C. WALKER, her heirs, executors, administrators and assigns, that from and after the ensealing of these presents I the said Grantor will have and claim no right, in, or to the said quitclaimed premises.

The deed was signed by Mr. Savage.

Mr. Savage and Ms. Walker subsequently ended their relationship. Ms. Walker then conveyed the property to her son, Defendant Robert Walker, via a quitclaim deed dated September 27, 2006.

Mr. Savage now argues that the property should be returned to him because, at the time of the March 2005 conveyance, Ms. Walker had entered into an agreement with him whereby she promised to return the property to him upon his request. Mr. Savage has not produced any writing, signed by Ms. Walker, setting forth such an agreement. Mr. Savage alleges in the complaint that "[i]t was clearly understood between Plaintiff and the said Jane Walker as of the time of said conveyance that she would reconvey said real estate to Plaintiff forthwith upon any request of Plaintiff that she do so." *Amended Complaint*, ¶ 5.

The admissibility of any contemporaneous agreement regarding the future disposition of real property is governed by the Statute of Frauds, 12 V.S.A. § 181(5). That statute provides that any such agreement must be in writing:

> An action at law shall not be brought in the following cases unless the promise, contract or agreement upon which such action is brought or some memorandum or note thereof is in writing, signed by the party to be charged therewith or by some person thereunto by him lawfully authorized:
>
> . . .
>
> (5) A contract for the sale of lands, tenements or hereditaments, or of an interest in or concerning them.

Id. This statutory provision protects settled estates in land from being undermined by parol evidence. *Couture v. Lowery*, 122 Vt. 239, 243 (1961). Put another way, the Statute protects a party "from being compelled, by oral and perhaps false testimony, to be

held responsible for an agreement he or she claims was never made." *Mason v. Anderson*, 146 Vt. 242, 244 (1985).

Ms. Walker denies that she made any agreement with Mr. Savage regarding the future disposition of the property. In Mr. Walker's Motion for Summary Judgment, he essentially asks Mr. Savage to produce evidence of a written agreement. See *Donnelly v. Guion*, 467 F.2d 290, 293 (2d Cir. 1972) ("A summary judgment motion is intended to 'smoke out' the facts so that the judge can decide if anything remains to be tried.") (citations omitted). Mr. Savage has not done so in his response. The effect is an admission on the part of the Plaintiff that no such writing exists. V.R.C.P. 56(c)(2).

Mr. Savage also has not shown any facts that would bring his claim within the equitable exception to the Statute of Frauds set forth in the opinion of *In re Estate of Gorton*, 167 Vt. 357, 361–62 (1997). The Statute therefore prevents Mr. Savage from introducing evidence of any oral agreement between himself and Ms. Walker regarding the disposition of the property.

Mr. Savage asks the court to deny summary judgment on the grounds that he may have lacked donative intent at the time the gift was made. Along with delivery, donative intent is one of the two essential elements of a gift. *Tyree v. Ortiz*, 127 Vt. 177, 184–85 (1968). In the context of property, donative intent refers to "an intention on the part of the donor to transfer the title to the property immediately and irrevocably." *Id*. (quoting *Colby's Executor v. Poor*, 115 Vt. 147, 152 (1947). Ordinarily, the act of titling property in the name of another is sufficient evidence of donative intent, as it achieves the purpose of transferring irrevocable title. *Phillips v. Plastridge*, 107 Vt. 267, 269–70 (1935).

In this case, Plaintiff relies upon the Vermont Supreme Court's recent opinion in *Brousseau v. Brousseau*, 2007 VT 77, ¶ 5, 18 Vt.L.W. 161 (mem.), and argues that the court should decline to presume donative intent from the fact of the unconditional transfer.

In *Brousseau,* a mother who purchased property with her own funds caused the property to be titled in the name of herself and her daughter as joint tenants with a right of survivorship. *Id*. ¶ 2. The mother later attempted to sell the property over her daughter's objection. *Id*. In arguing that the daughter had no presently exercisable interest in the property, the mother alleged that she had not intended to make a gift when she wrote the deed. *Id*. Rather, the mother claimed, her intent was to facilitate estate planning by having the property pass outside of probate upon her death.

The Supreme Court ruled in the mother's favor, reasoning that no presumption of donative intent may be drawn from a mere joint title, as the act is consistent with probate avoidance as an estate planning goal. *Id*. ¶¶ 10–11 (citing *Stephan v. Lynch*, 136 Vt. 226, 229–30 (1978)). The *Brousseau* decision is a ruling that joint titling of property may be done for the purpose of estate planning as well as for the purpose of making an inter vivos gift of property.

The *Brousseau* opinion does not amount to a change in property law concerning settled expectations, as the opinion expressly provides that "[o]ur holding today does nothing to undermine the general presumption that the act of titling property in another's name establishes intent to convey a present interest in the property." *Id*., ¶ 12. Neither does it bear upon the outcome in this case. Mr. Savage executed a quitclaim deed transferring sole legal title in the property to Ms. Walker. In so doing, he retained no present or future interest in the property akin to the interest a joint tenant retains in her property if her goal is estate planning. Unlike the mother in *Brousseau,* Mr. Savage cannot argue that he deeded the property in order to satisfy an estate-planning goal of having the property pass outside of probate upon his death, as he retained no interest in it.

The quitclaim deed therefore stands as evidence of Savage's intent to confer upon Ms. Walker a present interest in land. *Plastridge*, 107 Vt. at 269–70. The language of the deed bolsters this presumption of donative intent as to all interest in the property, as it provides that Mr. Savage "forever quit claimed" all of his present and future rights in the property. Absent a separate written agreement to the contrary, the undisputed facts show a donative intent, which, with delivery of the deed, establishes that an effective gift was made.[1]

Based on the undisputed facts and the applicable law, Mr. Savage cannot establish that he lacked donative intent at the time of the transfer to Ms. Walker. Defendant is entitled to summary judgment.

ORDER

For the foregoing reasons, Defendant's Motion for Summary Judgment is *granted.*

Dated at Rutland, Vermont this ____ day of December, 2007.

_____
Hon. Mary Miles Teachout
Superior Court Judge

[1] Mr. Savage does not dispute that delivery was effective. *Tyree*, 127 Vt. at 184-85.