IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

REV CAROL, *Plaintiff/Appellant*,

v.

LORRAINE J. REINHART, *Defendant/Appellee*.

No. 1 CA-CV 17-0579
FILED 8-21-2018

Appeal from the Superior Court in Maricopa County
No. CV2017-053068
The Honorable John R. Hannah, Judge

AFFIRMED

APPEARANCES

Rev Carol, Phoenix
Plaintiff/Appellant

Tevis Reich, Flagstaff
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Peter B. Swann joined.

P E R K I N S, Judge:

¶1 Rev Carol appeals the trial court's judgment in favor of her sister, Lorraine Reinhart. On Reinhart's motion for summary judgment, the trial court found that there were no genuine issues for trial and that the claims were barred by the statute of limitations. Because we find that Rev Carol did not present evidence to support a prima facie case, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 We view the evidence and all reasonable inferences therefrom in the light most favorable to Rev Carol. *St. George v. Plimpton*, 241 Ariz. 163, 165, ¶ 11 (App. 2016). Rev Carol and her father Donald Gaylien ("Gaylien") bought a home (the "Property") in Arizona as joint tenants in 1985. A year later, Rev Carol moved out of Arizona. According to Rev Carol, she drafted and executed a quitclaim deed in 1996 purporting to transfer her interest in the Property to Gaylien, but that deed was never recorded. However, a quitclaim deed transferring the Property from Rev Carol to Gaylien was recorded in 2003. This quitclaim deed purports to bear Rev Carol's signature, and to have been notarized in Maricopa County in September 2001.

¶3 Rev Carol began travelling and living outside of the United States sometime after September 2001 and she did not return until 2016. In 2006, Gaylien executed a durable general power of attorney naming his daughter Reinhart as his attorney-in-fact. Acting in that capacity, Reinhart subsequently sold the Property to help pay for Gaylien's medical expenses. He died shortly afterward.

¶4 Upon returning to the United States, Rev Carol found a letter from the Internal Revenue Service about a tax lien on the Property, listing Rev Carol as an owner. Rev Carol then discovered that the deed she drafted in 1996 was not ever recorded. She brought this lawsuit against Reinhart, arguing that because she still owned the Property, Reinhart committed fraud by selling it.

¶5 Reinhart moved for summary judgment, presenting evidence that she sold the property in 2007 pursuant to a properly-executed power of attorney and that Rev Carol transferred her interest in the Property by the 2001 quitclaim deed. In response, Rev Carol claimed that she had never seen, much less signed, the 2001 quitclaim deed, and as proof she argued that the signature on the deed did not match her own. Further, Rev Carol presented affidavits from herself and Armida Emling ("Armida"), the parties' mother, showing Rev Carol could not have signed the 2001 quitclaim deed because she was in Georgia, not Maricopa County, when it was notarized. Armida's affidavit also states that another family member told her that he had "helped" Reinhart with the quitclaim deed. Rev Carol alleges that Reinhart must, therefore, have forged the 2001 deed.

¶6 The trial court granted judgment in favor of Reinhart, holding that Rev Carol failed to produce admissible evidence to support her claims and that her claims were barred by the statute of limitations. Because we agree that the affidavits filed by Rev Carol do not create a genuine issue for trial, we affirm the trial court's judgment.

DISCUSSION

¶7 We review a grant of summary judgment de novo, viewing the record in the light most favorable to the party against whom summary judgment was entered. *United Dairymen of Ariz. v. Schugg*, 212 Ariz. 133, 140, ¶ 26 (App. 2006). Summary judgment is appropriate when the movant is entitled to judgment as a matter of law and there are no genuine disputes of material fact. Ariz. R. Civ. P. 56(a). "Summary judgment is also appropriate when a plaintiff fails to establish a *prima facie* case." *Gorney v. Meaney*, 214 Ariz. 226, 232, ¶ 17 (App. 2007).

¶8 A claim for common law fraud requires proof of nine elements by clear and convincing evidence:

> (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it be acted upon by the recipient in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely on it; (9) the hearer's consequent and proximate injury.

Comerica Bank v. Mahmoodi, 224 Ariz. 289, 291–92, ¶ 14 (App. 2010). A fraudulent recording occurs when "[a] person purporting to claim an interest in, or a lien or encumbrance against, real property . . . causes a

document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged . . . ." Ariz. Rev. Stat. § 33-420(A) (2018).

¶9 Reinhart presented evidence in the form of an affidavit and other exhibits that she properly sold the Property in 2007 pursuant to her role as attorney-in-fact for Gaylien. This evidence was not disputed by the evidence submitted by Rev Carol, and Rev Carol does not submit any evidence showing any wrongdoing by Reinhart regarding the 2007 transfer. Thus, the trial court properly granted summary judgment in favor of Reinhart as to the propriety of the 2007 sale.

¶10 As for the 2001 quitclaim deed, Rev Carol presented evidence establishing, at most, that she did not sign the 2001 quitclaim deed. However, while this evidence tends to show that the 2001 quitclaim deed may have been a forgery, it does not implicate Reinhart in any way.

¶11 The only evidence for Reinhart's participation in any alleged fraud is Armida's affidavit stating that a family relative told her that he had "helped" Reinhart with the 2001 quitclaim deed. This statement was hearsay, and the trial court did not err by refusing to consider it. *See Wallace v. Casa Grande Union High Sch. Dist. No. 82 Bd. of Governors*, 184 Ariz. 419, 425 (App. 1995) (holding the trial court did not err in entering summary judgment for defendants when plaintiff's only evidence was based on inadmissible hearsay). Even if this statement were admissible, Rev Carol has not submitted evidence to establish a prima facie case that Reinhart committed either common law fraud or a fraudulent recording. Thus, the trial court did not err in finding that there was no genuine issue of material fact for trial.

CONCLUSION

¶12 For the foregoing reasons, we affirm the trial court's judgment in favor of Reinhart. In our discretion, we decline to award attorney fees, but Reinhart may seek costs upon compliance with Arizona Rule of Civil Appellate Procedure 21. Rev Carol has submitted several documents to this court during the pendency of this case. Because we affirm the trial court,

we decline to address the contents of those documents or order responsive briefing.

AMY M. WOOD • Clerk of the Court
FILED: AA