

*This opinion is nonprecedential except as provided by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
A21-0164**

In the Matter of the Petition of Jane Serrano and Lynn Barbeau
for certain relief relating to lands lying within St. Louis County, Minnesota
as registered in Certificate of Title No. 328817.

**Filed August 23, 2021
Reversed and remanded
Jesson, Judge**

St. Louis County District Court
File No. 69DU-CV-19-3123

Patrick B. Steinhoff, Thomas F. DeVincke, Malkerson Gunn Martin, LLP, Minneapolis,
Minnesota (for appellants Jane Serrano and Lynn Barbeau)

Paul B. Kilgore, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota (for
respondents Jeffery Forester and Penny Forester)

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

NONPRECEDENTIAL OPINION

JESSON, Judge

When appellants (sisters Jane Serrano and Lynn Barbeau) sought to refinance the mortgage on their Lake Vermillion property, their parents co-signed the loan. To provide their parents an interest in the property, appellants executed a quitclaim deed to themselves and the parents as tenants in common. Although the first page did not limit the parents' interest in the property, the second page included a "1%" notation. But certificate of title for the Torrens property identified the parents' interest as 50%.

After the parents' deaths, appellants and respondents (their other siblings) contested their parents' interest in the Lake Vermillion property in a special proceeding. Respondents claimed that their parents had a 50% interest in the property; appellants asserted that their parents had only a one percent interest in the property. Under the terms of the parents' wills, each of the four children would receive an equal share of their parents' interest in the property, so the disputed ownership interest loomed large.

The district court granted summary judgment to respondents based on its conclusion that the deceased father was a good-faith purchaser for value of appellants' property despite a claimed error in the deed. Because there are genuine issues of material fact that preclude summary judgment, we reverse and remand to the district court for further proceedings.

FACTS

Appellants Jane Serrano and Lynn Barbeau and respondents Jeffery Forester and Penny Forester are siblings, the children of Barbara and Edward Forester (the Foresters). In 2003, appellants purchased as tenants in common two parcels of property, including a seasonal cabin, on Lake Vermillion. Ten years later, when appellants refinanced the mortgage on the property, the lender required a co-signor. Their parents, the Foresters, were willing to co-sign the mortgage. The mortgage lender, however, required them to have an interest in the property in order to co-sign. As a result, appellants agreed to quitclaim an interest in the property to the Foresters. Appellants assert that they intended to transfer a one percent interest in the property to their parents.

Unfortunately, appellants did not seek legal help in drafting the quitclaim deed. The deed lists "love and affection" as the consideration and shows a deed tax of \$1.65, a

minimum tax. But the face of the deed does not limit the Foresters' interest in the property to one percent. Rather, on the second page, next to the address of the parcels, there is a handwritten annotation of "1%," which appellants allege was added by Edward Forester. The certificate (termed a "Torrens certificate of title" because the property here is Torrens property subject to a particular statutory scheme) was issued on April 3, 2013, showing the parties' interests in the property as equally divided among appellants and the Foresters as tenants in common.

Barbara Forester died on September 13, 2013 and Edward Forester died on July 31, 2014. All of Barbara's estate passed to her husband. Respondents filed a petition for determination of descent in the two probate matters.¹ The parties agreed that the issue of Edward Forester's interest in the Lake Vermillion property would be reserved to a proceeding subsequent, which is the method used to correct errors in a Torrens certificate. Minn. Stat. § 508.71, subd. 2 (2020). Setting that issue aside, the probate court concluded that Edward's will left each of his children one-fourth of his estate, and, therefore, each child had a one-fourth interest in his share of the Lake Vermillion property.

Appellants then filed a petition to resolve the reserved issue in a separate proceeding. Appellants sought to correct the Torrens certificate to reflect that only one percent of the property had been transferred to the Foresters, while respondents asserted that the Torrens certificate correctly showed that the property was evenly divided among

¹ When a person's estate has not been probated for more than three years after the person's death, any interested party may ask the court to decide how the estate should be divided. Minn. Stat. § 525.31 (2020).

appellants and the Foresters. The district court granted respondents’ motion for summary judgment, reasoning that the Torrens statute did not allow alteration of the certificate of title because the Foresters—and therefore, their heirs—were good-faith purchasers for value. In doing so, the court noted that “had this been an action involving equitable relief, the result might have been different.” And the district court noted that “the evidence submitted . . . strongly suggests that respondents are getting more value from the subject property than what their parents intended to receive during the mortgage refinancing process.”

This appeal follows.

DECISION

Appellants contend that the district court erred by granting summary judgment based on its conclusion that their deceased father was a good-faith purchaser despite a claimed error in the deed. We review the district court’s grant of summary judgment de novo to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). In our review, we turn first to the statutory scheme at issue here, then apply that law to the case before us.

This matter arises out of the Minnesota Torrens Act, Minnesota Statutes sections 508.01-.84 (2020). The Torrens Act provides for registration of the title to real property in a single certificate of title, which is updated by the registrar of titles when a conveyance, lien, instrument, or proceeding affects the title. *In re Collier*, 726 N.W.2d 799, 804 (Minn. 2007). The purpose of the Torrens system is to simplify conveyance of real property. *Id.*

In theory, a person purchasing Torrens property can determine the status of the title merely by examining the registration certificate itself, without having to resort to an extensive and cumbersome search of all prior actions affecting title, as is required for abstract property.²

Id.

In light of the purpose of the Torrens system, i.e., that title be readily ascertainable from the certificate,

[e]very person receiving a certificate of title pursuant to a decree of registration and every subsequent purchaser of registered land *who receives a certificate of title in good faith and for a valuable consideration shall hold it free from all encumbrances* and adverse claims, excepting only the estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the office of the registrar[,]

subject to some limited exceptions not applicable here. Minn. Stat. § 508.25 (emphasis added). Because of this, the registrar of titles may not erase, alter, or amend an entry to a certificate of title once it is attested, except “by order of the court or as otherwise provided in [chapter 508].” Minn. Stat. § 508.71, subd. 1.

But the simplicity of the Torrens system is not set in stone. The statute permits the registrar to correct clerical errors or omissions. *Id.*, subd. 1a. And the registered owner may also apply for a court order to correct a certificate for one of seven reasons:

(1) registered interests have terminated;

² Under the abstract property system, all documents that are related to a title of property, such as transfers, dissolutions, inheritances, foreclosures, and other actions, are summarized in an abstract of title. Each time a property is transferred, all of these documents must be examined in order to ascertain whether there is marketable title. *Collier*, 726 N.W.2d at 803-04.

- (2) new interests have been created;
- (3) an error or omission was made when creating an entry;
- (4) a person's name has changed;
- (5) a person's marital status has changed;
- (6) a corporate owner has dissolved; or
- (7) "upon any reasonable ground, that any other alteration or adjudication should be made."

Id., subd. 2. We note that this last exception, upon *any reasonable ground*, significantly expands the issues that may be litigated and serves as a basis for an exception to the Torrens expectation that title be readily ascertainable from the certificate. *In re Metro Siding, Inc.*, 624 N.W.2d 303, 307-08 (Minn. App. 2001). As this court explained in *Metro Siding*, the "scope of inquiry in a proceeding subsequent under Minn. Stat. § 508.71, subd. 2(7) . . . is not limited to claims that can be resolved solely by referring to documents recorded on the certificate of title." *Id.* at 308. And we specifically concluded that "with proper notice, the issue of the parties' ownership interests in the property could be determined in a proceeding subsequent." *Id.*

With this Torrens statutory backdrop in mind, we turn to the Lake Vermillion property dispute before us. Here, the district court focused on the preliminary question of whether the Foresters were purchasers in good faith and for value. The court relied upon the following statutory language which provides that:

[t]he provisions of this section shall not give the court authority to open the original decree of registration, and *nothing shall be done or ordered by the court which shall impair the title or*

other interest of the purchaser who holds a certificate of title *for value and in good faith*, or of the purchaser's heirs or assigns without written consent of the purchaser or heirs or assigns.

Minn. Stat. § 508.71, subd. 2 (emphasis added). The district court found that appellants and the Foresters had a “good-faith belief that only 1% of the property was transferred,” and concluded that this made the Foresters purchasers in good faith, and, further, that the Foresters purchased the property for value, because they co-signed appellants’ mortgage. And because respondents are heirs of the Foresters, the district court concluded that it lacked authority to impair their interest in property. While the court recognized the potential inequity in this holding, the district court concluded it could not apply equitable principles because the Lake Vermillion property was Torrens property.

The description of the Foresters as “good-faith purchasers” at the summary judgment stage is troubling. A good-faith purchaser is one who does not have “actual knowledge of a prior, unregistered interest in the property.” *Collier*, 726 N.W.2d at 809. Appellants produced evidence that the Foresters were aware that they were receiving only one percent of the property; if so, the Foresters knew that appellants had a prior, unregistered interest in the 49% of the property now identified as having been transferred to the Foresters. To some extent, this allegation is supported by the handwritten figure of “1%” included on the deed, as well as the consideration described as “love and affection” and the minimum deed tax of \$1.65, which does not reflect the value of a transfer of one-half of the property. These ambiguities raise a question as to whether the Foresters were good-faith purchasers of 49% of the property.

This open question is bolstered by additional writings made by Edward Forester that support appellants' allegations and which the district court did not consider in reaching its conclusion. Respondents challenge the admissibility of this evidence, but the district court granted summary judgment without a full examination of it; there is no ruling on whether appellants' proffered evidence is admissible or inadmissible under the rules of evidence. *See* Minn. R. Civ. P. 56.03 (summary judgment must be based on admissible evidence).

Based on the evidence identified by appellants, there are genuine issues of material fact concerning whether the Foresters were good-faith purchasers of 49% of the property, particularly when the evidence is viewed in the light most favorable to the nonmoving party. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 664 N.W.2d 72, 76-77 (Minn. 2002). Accordingly, we conclude that the grant of summary judgment was premature.

And because the district court erroneously concluded that the Foresters were good faith purchasers of 49% of the Lake Vermillion property, it did not reach the issue of whether the statutory exceptions (including the "any reasonable ground" exception) applied when considering the parties ownership interests. When addressing the good faith purchaser issue on remand—as well as potentially reaching the statutory exceptions—we observe that the district court may apply equitable principles, in its discretion. While the Torrens system strives to add certainty to property transfers, the Minnesota Supreme Court noted that "we have applied principles of equity when a result under the Torrens Act violates notions of justice and good faith." *Collier*, 726 N.W.2d at 808. And in *In re Mortg. Elec. Registration Sys., Inc.*, this court upheld the district court's revision of a title certificate based on oral testimony that contradicted the written deeds, and handwritten

notations on the purchase agreement. 835 N.W. 2d 487, 490-92, 495 (Minn. App. 2013). We further concluded that a party may ask for amendment of a certificate of title by showing that the party is entitled to *equitable* relief. *Id.* at 498.³

Accordingly, we reverse and remand this matter to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

³ This court explicitly recognized that equitable principles may be applied in a Torrens proceeding, stating: “[F]ailing to apply [equitable doctrines in a proceeding subsequent] would subject mortgagees to the possibility that their interest may be precluded by imprecise execution and registration of the relevant documents and would limit their ability to protect their interest through a security instrument.” *Id.* at 497.