Reversed and rendered and Memorandum Opinion filed August 17, 2023

In The

Fourteenth Court of Appeals

NO. 14-22-00080-CV

BRIAN WILLIAMS, Appellant

V.

EVA HOWARD PROVOST, Appellee

On Appeal from the Probate Court No. 1
Harris County, Texas
Trial Court Cause No. 441,709-401

MEMORANDUM OPINION

Earl Howard died on May 4, 2014, leaving behind his wife of almost 30 years, Sandra, three of his four daughters from a previous relationship, and his stepson, Bryan Williams, Sandra's child from a previous relationship. Eva Howard Provost, the eldest of Howard's living children, was appointed independent executrix for his estate. Sandra passed away the following year. This appeal relates to a dispute concerning the children's respective rights to Earl and

Sandra's residence (the "Property") located in south Houston on Wuthering Heights. We reverse and render judgment dismissing appellee's cause of action.

I. FACTUAL AND PROCEDURAL BACKGROUND

Earl Howard purchased the Property in September 1983. The following June, Howard married Sandra Williams. Shortly thereafter, Sandra and her son moved in with Howard in the Property. At the time they moved in, Sandra's son, appellant, Bryan Williams, was about fourteen years old and lived there until left for college in Tennessee.

In 2005, Williams returned to Houston with his own family including his two daughters. Since then he has remained in Houston, and at times lived with Earl and Sandra. Williams testified that both during the times he lived with Earl and Sandra and when he had his own residence in Houston he assisted Earl and Sandra in tending to their medical needs, cooking, managing affairs related to a rental property, and in assisting with other household matters.

On November 11, 2011, Earl signed a Gift Deed Without Warranty ("Gift Deed") which purports to grant his "one-half (1/2) community property interest" in the Property to appellant Williams.

In May 2014, Earl passed away, and the following year, Sandra passed away. Williams testified that, based on his understanding of his mother's will, he owned the home. Williams, who had been living at the Property with his mother and Earl up until shortly before Earl passed away moved back into the house shortly after his mother's passing. He testified that he began paying taxes on the property at this time.

On behalf of Earl's estate, appellee Provost challenged Earl's will, an instrument that, had it been deemed effective, would have transferred title to the

property to Sandra, and in conjunction with Sandra's will and her successive passing, would have transferred title to the Property to Williams. Provost succeeded in challenging the will.[1]

Provost brought the current action on behalf of the estate to void the 2011 Gift Deed and collect back rents from Williams. The matter was tried before the court in November 2021.

At the close of trial, the trial court rendered findings and a judgment that the Gift Deed, although valid and not obtained by forgery or fraud, had no effect and therefore the estate had the right to possession of the Property, and that the estate had the right to collect rental payments from Williams. The court awarded Provost $27,000 in back rental payments owed from Williams.

II. ISSUES AND ANALYSIS

Williams raises two issues in his appeal. First, he challenges the trial court's finding that the Gift Deed failed to transfer the Property to Williams because the community property interest described in the deed was not one Earl had to transfer. Second, he challenges the trial court's assessment of rental charges.

When, as here, the trial court does not enter findings of fact and conclusions of law to support its ruling after a bench trial, we infer all findings necessary to support the judgment. *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); *George Joseph Assets, LLC v. Chenevert*, 557 S.W.3d 755, 764 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). The judgment of the trial court must be affirmed if it can be upheld on any legal theory that is supported by the evidence. *Land v. Land*, 561 S.W.3d 624, 641 (Tex. App.—Houston [14th

[1] Although the will contest is not at issue in this appeal, testimony during the trial suggested that the misspelling of one of his daughters' name served an important basis for challenging Earl's Will.

Dist.] 2018, pet. denied).

Did the trial court err in ruling that the Gift Deed was ineffective to transfer the right to possession in the Property?

At trial the court was tasked to determine Earl's interest in the Wuthering Heights property and the right he intended to convey to Williams in the Gift Deed. In concluding that Earl intended to convey a community property interest in the Property when, in fact, he had a separate property interest in the land, the trial court found the deed, while not void for any reason alleged by Provost, ineffective to convey a valid interest to Williams. We review two inquiries pertinent to the trial court's determination.

Was Earl's property right in the Wuthering Heights property a community-property right or a separate-property right?

Property possessed by either spouse on dissolution of the marriage is presumed to be community property, and to overcome this presumption, a party must establish by clear and convincing evidence that the disputed property is separate property. Tex. Fam. Code § 3.003; *Zagorski v. Zagorski*, 116 S.W.3d 309, 314 (Tex. App.—Houston [14th Dist.] 2003, pet. denied); *see also* Tex. Const. art. XVI, § 15; *Stavinoha v. Stavinoha*, 126 S.W.3d 604, 607 (Tex. App.—Houston [14th Dist.] 2004, no pet.) ("'Clear and convincing' evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm conviction or belief as to the truth of the allegations sought to be established."). Any doubt as to the character of property should be resolved in favor of the community estate. *Nguyen v. Pham*, 640 S.W.3d 266, 271–72 (Tex. App.—Houston [14th Dist.] 2021, pet. denied).

Some testimony in the record illustrates a prior uncertainty when Earl purchased the property and it appears, by review of the instruments offered into evidence, that the Howards were operating under the view that the Wuthering

Heights property was community property in 2011 and 2013, and that Provost's attorney was operating under the same assumption in 2019 when he demanded rental payments. However, at the time of trial and in the briefs on appeal, neither party disputes the characterization of the Wuthering Heights property as separate property, purchased by Earl before he married Sandra. See Tex. Fam. Code Ann. § 3.001(1) ("A spouse's separate property consists of: the property owned or claimed by the spouse before marriage. . ."). Without objection, a special warranty deed was admitted into evidence illustrating Earl's purchase of the Property on September 21, 1983, and likewise a marriage license issued the following year. No attempt was made to elicit facts of a common-law marriage between Earl and Sandra predating the Wuthering Heights purchase in 1983, and no evidence was offered to show that the funds used to purchase the property were linked to Sandra. On appeal, Williams concedes "the property at issue in this suit was a home purchased before the marriage, and therefore Mr. Howard's separate property." Upon this record, we cannot disturb the trial court's conclusion that Provost overcame the community-property presumption, showing by clear and convincing evidence that the that the Wuthering Heights property was Earl's separate property at the time the 2011 Gift Deed was executed.

Did the 2011 Gift Deed transfer any present or future property right in the Wuthering Heights property to Williams?

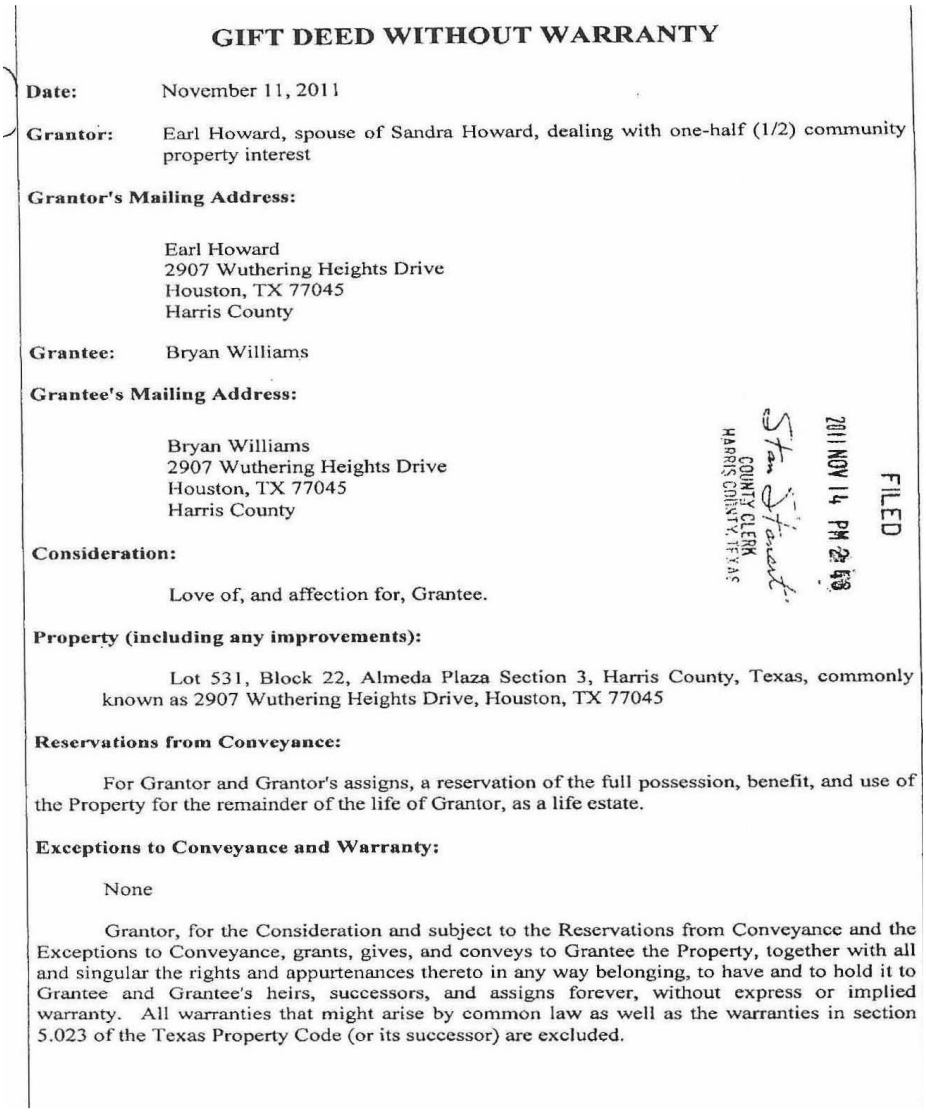
The construction of an unambiguous deed is a question of law for the court. *Luckel v. White*, 819 S.W.2d 459, 461 (Tex. 1991); *Meekins v. Wisnoski*, 404 S.W.3d 690, 698–99 (Tex. App.—Houston [14th Dist.] 2013, no pet.). We review this question under a *de novo* standard of review. *Jordan v. Parker*, 659 S.W.3d 680, 684 (Tex. 2022). In construing deeds, our primary objective is to ascertain the intent of the parties from all of the language in the deed. *See Luckel*, 819 S.W.2d at 461. To ascertain the parties' true intention, we examine all of the

deed's language. *Id.* That intention, when ascertained, prevails over arbitrary rules of construction. *Id.* at 462.

On November 11, 2011, Earl Howard executed an instrument titled "Gift Deed Without Warranty" in favor of Williams. On the first of two pages, the instrument contains nine (9) bolded subheadings describing various categories of information pertinent to the deed, in the following order: "Date", "Grantor", "Grantor's Mailing Address", "Grantee", "Grantee's Mailing Address", "Consideration", "Property (including any improvements)", "Reservations from Conveyance", and "Exceptions to Conveyance and Warranty". Beside or below each bolded subheading, or field of information, the instrument contains, specific descriptive entries. The operative grant clause follows the last of these entries and states as follows:

> Grantor, for the Consideration and subject to the Reservations from Conveyance, grants, gives, and conveys to Grantee the Property, together **with all and singular the rights** and appurtenances thereto **in any way belonging**, to have and to hold to Grantee and Grantee's heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

The second page of the Gift Deed contains the signature line, which is signed by Earl Howard, subscribed by a notary, and stamped by the County Clerk as the indicia the instrument was recorded.



GIFT DEED WITHOUT WARRANTY

Date: November 11, 2011

Grantor: Earl Howard, spouse of Sandra Howard, dealing with one-half (1/2) community property interest

Grantor's Mailing Address:

Earl Howard
2907 Wuthering Heights Drive
Houston, TX 77045
Harris County

Grantee: Bryan Williams

Grantee's Mailing Address:

Bryan Williams
2907 Wuthering Heights Drive
Houston, TX 77045
Harris County

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COUNTY CLERK
HARRIS COUNTY, TEXAS

Consideration:

Love of, and affection for, Grantee.

Property (including any improvements):

Lot 531, Block 22, Almeda Plaza Section 3, Harris County, Texas, commonly known as 2907 Wuthering Heights Drive, Houston, TX 77045

Reservations from Conveyance:

For Grantor and Grantor's assigns, a reservation of the full possession, benefit, and use of the Property for the remainder of the life of Grantor, as a life estate.

Exceptions to Conveyance and Warranty:

None

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance, grants, gives, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

The Gift Deed was admitted into evidence at trial and included in the record.

In her pleadings, Provost asserted that the language entered following the "Grantor" field — "Earl Howard, spouse of Sandra Howard, dealing with one-half (1/2) community property interest" — constituted "a reservation which limits the conveyance to Decedent's purported one-half (1/2) community property interest in the property." Accordingly, she contends, this limited, non-existent interest, was all that Earl conveyed. The trial court agreed, implicitly rejecting the construction that Earl conveyed any part of the interest that he actually owned at the time the deed was executed. On appeal, with reference to the property description and

reservation clause, Williams contends that the Gift Deed reflects Howard's intent to convey all of his interest in the Property.

We have found no case in Texas providing any standards particularly tailored to interpreting a "gift deed without warranty", but there is ample authority relating to the construction of deeds, with and without warranty, gift deeds, as well as principles pertinent to the common deed components such as "exceptions" and "reservations." *See, e.g., Target Corp. v. D&H Properties, LLC*, 637 S.W.3d 816, 836 (Tex. App.—Houston [14th Dist.] 2021, pet. denied); *Rogers v. Ricane Enterprises, Inc.*, 884 S.W.2d 763, 769 (Tex. 1994).

Consideration is not necessary to the validity of a conveyance; a deed of gift is enforceable with or without consideration. *Anderson v. Anderson*, 620 S.W.2d 815, 820 (Tex. App.—Tyler 1981, no writ). Additionally, a warranty is unnecessary to the validity of a deed. *Young v. Rudd*, 226 S.W.2d 469 (Tex. Civ. App. Texarkana 1950); See Tex. Prop. Code Ann. § 5.022(b)("A covenant of warranty is not required in a conveyance."). Whether or not a deed is made with warranty does not affect the scope of the conveyance. *See Chicago Title Ins. Co. v. Cochran Investments, Inc.*, 602 S.W.3d 895, 903 (Tex. 2020)(explaining that warranties of title made in connection with a conveyance of property does not affect the scope of the conveyance).

The words "exception" and "reservation," though at times used interchangeably, each have their own meaning. *Target Corp. v. D&H Properties, LLC*, 637 S.W.3d at 836; *Klein v. Humble Oil & Refining Co.*, 67 S.W.2d 911, 915 (Tex. App.—Beaumont 1934). A reservation is the creation of a new right in favor of the grantor, while an exception operates to exclude some interest from the grant. *Wenske*, 521 S.W.3d at 806 (discussing exception); *Patrick v. Barrett*, 734 S.W.2d 646, 647 (Tex. 1987) (discussing reservation).

Under the plain language of the deed, with particular focus on the stated language under the subheadings containing the property description, exception and reservation in the deed—none of which make any mention of a ½ community property interest, taken in conjunction with the fact the grant clause purports to convey "the Property . . . ***with all rights***. . .thereto in any way," we conclude the only reasonable construction of the deed is a conveyance of all of Earl's then-existing right in the Property to Williams while reserving a life estate.

We do not willfully ignore the language contained in the "Grantor" field, which Provost contends operates as a reservation. However, we cannot conclude the language— "dealing with one-half (1/2) community property interest" — operated as Provost alleged, as a *reservation*, creating a new right in favor of Earl. The naturally appropriate substance of the language entered beside the "Grantor" field is the person identified, "Earl Howard"; the fraction to be conveyed and character of Earl's property, whether separate property or community property, is unequivocally not the "Grantor". Moreover, the plain language of the deed, explicitly provided a place to indicate any reservations, under the subheading "Reservations from Conveyance", but contains no such reservation for "a one-half (1/2) community property interest". Rather Earl's only reservation — a life estate — is plainly stated under the "Reservations from Conveyance" subheading.

To the extent Provost contends that the language— "dealing with one-half (1/2) community property interest"—operated as an exception, we again reach a logical barrier. The deed provided Earl a place to describe any exceptions under the subheading "Exceptions to Conveyance and Warranty" but affirmatively denies any exception, by indicating "None".

We also note that under the subheading, "Property (including any improvements)", a reasonably appropriate place to provide any fraction and

character description of the interest, the Gift Deed only describes the land, without any limitation, and makes no reference to the community property interest.

We do not deem the language—"dealing with one-half (1/2) community property interest"—striken, nor read this language as a reservation to conflict with the grant clause as Provost does, but interpret it to serve a purpose that can be harmonized with other language in the Gift Deed. We can only reasonably interpret the language—"dealing with one-half (1/2) community property interest"—as a premise or recital yielding to the substantive portions of the Gift Deed. *Gulf Oil Corp. v. Shell Oil Co.*, 410 S.W.2d 260, 264–65 (Tex. App.—Beaumont 1966, writ ref'd n.r.e.)(explaining that when construing a deed, premises or recitals that conflict with language in the granting, habendum or warranty clauses, such premises or recitals must yield); *Cockrell v. Tex. Gulf Sulphur Co.*, 299 S.W.2d 672, 676 (Tex. 1956)(Even though different parts of the deed may appear to be contradictory and inconsistent with each other the courts must construe the deed so as to give effect to all parts thereof and will harmonize all provisions therein and not strike down any part of a deed unless there is an irreconcilable conflict). The recital, though inaccurate, may provide insight into the parties' unconfirmed beliefs about the character and extent of Earl's ownership interest at the time of the conveyance, but does not alter the unambiguous terms of the grant clause, purporting to convey the Property "together with all the rights", or convert the Property into a non-existent property interest. *See McMahan v. Greenwood*, 108 S.W.3d 467, 484 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (holding that recital language that may speak "intent of the parties in executing the contract" does not convert covenants under the contract into conditions precedent). To the extent the character of the property interest was uncertain, it is logical Earl would include this in a recital, rather than the grant clause, reservation clause, or in the

Property description, and provide no express warranty.

Accordingly, we sustain Williams's first issue.

B. Did the trial court commit error in its award based on the assessment of rent owed on the property?

Because we find the Deed passed full title to Williams, trial court's award of rental payments to Provost was improper. We accordingly sustain his second issue challenging the court award of rental payments.

III. CONCLUSION

Having sustained Williams two issues, we reverse the judgement granting Provost possession of the Property and awarding Provost Back Rent, and render judgment in favor of Williams and that Provost take nothing.

/s/ Randy Wilson
Justice

Panel consists of Chief Justice Christopher, Justice Bourliot and Justice Wilson.