IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHARON NIELSON, Guardian of the Person and Estate of Marvel F. Robbins, Respondent, v. RHINARD G. ROBBINS, Personal Representative of the Estate of Benjamin W. Robbins, Deceased, and Dale R. Leishner, a single man, Appellants.	)	NO. 63479-8-I DIVISION ONE UNPUBLISHED OPINION FILED: June 1, 2010

Leach, A.C.J. — This case requires that we decide whether reformation is available to correct either a scrivener's error or a mutual mistake in the legal description of a deed gifting real property. Rhinard Robbins and Dale Leishner appeal a summary judgment order holding that two deeds containing incorrect legal descriptions purporting to gift property from Marvel F. Robbins to her son were void because they violated the statute of frauds and the unilateral gift exception barred their reformation. Finding no error, we affirm.

FACTS

The property at issue in this case is located at 9401 Grandview Road, Arlington, Snohomish County, Washington. This property was the only real estate owned by Marvel Robbins.[1]

In 1966, Marvel and her husband entered into a real estate contract to purchase the property as a single parcel. They received and recorded a statutory warranty fulfillment deed in 1976. Sometime later the Snohomish County Assessor divided the property into two tax parcels.

In 1977, Marvel's husband passed away, survived by Marvel and their nine children: Marvel, Gail, Ben, Sharon, Sheila, Rhinard, Anthony, Victorine, and Dale.

Around 1983, Ben began living on the property. Rhinard makes the following disputed claims. Marvel incurred substantial debt following her husband's death since she received no income other than minimal Social Security benefits.[2] Ben provided Marvel with financial assistance and care, including payment of more than $20,000 of Marvel's debts and her property

[1] The first names of the Robbins family members are used for clarity.

[2] Appellants' counsel estimated that Marvel's monthly income in 1986 was not more than $350.

taxes.[3] Ben and Marvel subsequently entered into an oral agreement in which she agreed to convey the property to Ben for his past and continued support. Rhinard supports this last claim with the declarations of Anthony and Sharon that they were aware of a verbal agreement between Ben and Marvel.[4]

In 1986, Marvel executed two quitclaim deeds purporting to convey the property to Ben. The deeds were signed by Marvel and notarized on October 9, 1986. The record does not disclose who drafted the deeds. In answers to interrogatories, appellants stated that either Marvel or Ben prepared the deeds, but in their cross motion for summary judgment they claimed that the deeds were

[3] Rhinard submitted various documents reflecting the financial status of Ben and Marvel to demonstrate that "Ben was financially secure, and had an income much greater than our mother. Ben did not take from our mother, he gave to her." For example, a bank statement from Marvel's checking account in January 1997 showed a balance of $1,659.68 and a statement in January 2000 showed the balance was $7,400.07. Because Marvel's monthly income in 2000 was about $670.00, Rhinard asserted that these statements showed that "Ben was paying my mother's living expenses with his own monies." As another example, Rhinard presented a statement showing that Ben had a KeyBank account with a balance in 2007 of $7,701.18, which named Marvel as "a joint tenant with right of survivorship." To prove that Ben paid the property taxes, appellants' counsel submitted evidence that Ben held a "Senior/Disabled Level A" exemption from 2003 to 2006.

[4] In his declaration in response to the vulnerable adult petition for Marvel, Anthony stated, "Ben has been living with our mother, taking care of her, and helping her for over twenty years. Mother and Ben made an agreement when he moved to 9401 Grandview Rd. in Arlington, WA, that he would take care of the property and manage things for her. I do not know all the details of their agreement as it was between Mom and Ben." In her declaration in support of the vulnerable adult petition for Marvel, Sharon stated, "Our mother gave Ben the family home in 1986 with the verbal agreement that she had a home there for the rest of her life and that he would take care of her for the rest of her life." Nielson stated in later court filings that Marvel "agreed to convey her interest in the Subject Property to [Ben] upon her death if he agreed to care for her and her possessions throughout the rest of her life."

prepared by a third party scrivener. The metes and bounds descriptions in the deeds are incomplete. The parties agree that, because the description in the first deed (Deed One) omitted a series of calls, it does not close and, because the description in the second deed (Deed Two) omitted one call, it does not describe the correct property.

A separate real estate excise tax affidavit was prepared for each deed. These affidavits repeated the deficient descriptions in the deeds but contained the correct tax parcel numbers. They also described the transaction as a "gift from mother to son." Ben signed the affidavit for Deed One; Marvel signed the affidavit for Deed Two.

The deeds and affidavits were submitted to the Snohomish County Treasurer for review. The treasurer's office placed on each of the documents the stamped notation "NO EXCISE TAX REQUIRED OCT 14 1986." A treasurer's office employee also hand wrote on each deed the receipt number for the corresponding affidavit. The auditor recorded each deed and stamped each "RECORDED 1986 Oct 13."

Ben and Marvel continued living together on the property until August 2007. About this time, Ben was hospitalized for cancer treatment, and Marvel's five daughters filed a petition for a protective order for Marvel as a vulnerable adult and to establish a guardianship. Around August 20, 2007, Marvel was moved from the property to an assisted living facility and ultimately diagnosed with dementia and blindness. On November 8, 2007, the Snohomish County

Superior Court appointed Sharon Nielson as the guardian of Marvel's person and estate.

On December 12, 2007, Ben executed a last will and testament, leaving the property to his friend Dale Leishner. He also left $10,000 each to Rhinard and Anthony and $1 to each of his sisters. Ben passed away on January 5, 2008, and Rhinard was appointed the personal representative of his estate.

On March 18, 2008, Nielson filed a petition to quiet title in the property against the claims of Rhinard and Leishner (hereinafter "Robbins") and for other relief. In the petition, Nielson asserted that the deeds should be set aside on several grounds, including fraud, financial and mental abuses, undue influence, breach of contract, neglect, and violation of the statute of frauds. Robbins filed a response denying petitioner's claims and cross-claiming for reformation of the deeds. Nielson later stipulated to the dismissal of all of her claims except for the statute of frauds claim.

The parties filed cross motions for summary judgment. The court granted Nielson's motion for summary judgment and denied Robbins's cross motion. The court held that the legal descriptions in the deeds did not satisfy the statute of frauds, rendering them void. The court further held that the deeds did not incorporate descriptive information contained in the real estate tax affidavits and that these deeds could not be reformed under the unilateral gift exception.

The court denied Robbins's motion for reconsideration and entered a final order quieting title to Marvel. Robbins timely appealed.

STANDARD OF REVIEW

We review an order granting summary judgment de novo, engaging in the same inquiry as the trial court.[5] Summary judgment is affirmed if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[6] In determining whether a genuine issue of material fact exists, we construe the facts and reasonable inferences in the light most favorable to the nonmoving party.[7] The burden lies with the moving party to show that there is no genuine issue as to any material fact.[8] If the moving party satisfies this burden, the nonmoving party must present evidence demonstrating that material facts are in dispute.[9] If the nonmoving party fails to do so, then summary judgment is appropriate.[10]

Whether a deed violates the statute of frauds is a question of law reviewed de novo.[11]

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[5] Dumont v. City of Seattle, 148 Wn. App. 850, 860-61, 200 P.3d 764, (2009) (quoting Sellsted v. Wash. Mut. Sav. Bank, 69 Wn. App. 852, 857, 851 P.2d 716 (1993), overruled on other grounds by Mackay v. Acorn Custom Cabinetry, Inc., 127 Wn.2d 302, 898 P.2d 284 (1995)).

[6] CR 56(c); Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

[7] Gossett v. Farmers Ins. Co. of Wash., 133 Wn.2d 954, 963, 948 P.2d 1264 (1997).

[8] Vallandigham, 154 Wn.2d at 26 (citing Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990)).

[9] Vallandigham, 154 Wn.2d at 26 (quoting Atherton, 115 Wn.2d at 516).

[10] Vallandigham, 154 Wn.2d at 26 (citing Atherton, 115 Wn.2d at 516).

[11] Dickson v. Kates, 132 Wn. App. 724, 733, 133 P.3d 498 (2006).

ANALYSIS

Statute of Frauds

Robbins challenges the court's determination that the legal descriptions in the two quitclaim deeds were insufficient to satisfy the statute of frauds.

The real estate statute of frauds provides, "Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed."[12] To satisfy this statute, the description of the land in a deed must be "sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description."[13] A deed containing an inadequate legal description is void.[14] Washington's rule is "the strictest in the nation. . . . In most states an incomplete description or a street address is sufficient, and parol evidence may be received to locate the land. Not so in Washington."[15]

In this case, the parties agree that the deeds contained incomplete metes and bounds descriptions. These descriptions, with the omitted calls indicated in bold, are shown below. Deed One described the first parcel as follows:

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[12] RCW 64.04.010.

[13] Bigelow v. Mood, 56 Wn.2d 340, 341, 353 P.2d 429 (1960) (citing Bingham v. Sherfey, 38 Wn.2d 886, 889, 234 P.2d 489 (1951)).

[14] Howell v. Inland Empire Paper Co., 28 Wn. App. 494, 495, 624 P.2d 739 (1981).

[15] 18 William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Transactions § 16.3, at 225 (2d ed. 2004). Our Supreme Court confirmed in Martin v. Seigel, 35 Wn.2d 223, 227-29, 212 P.2d 107 (1949), the requirement of a full legal description.

> SEC 13 TWP 32 RGE 05 RT-38 PTN SW1/4 NE1/4 DAF BEG SE COR TH W ALG S LN 372 FT TPB TH N30*0500W 200FT TH E200 FT PLW S LN SD SUB TH N30*05 00W 576FT **TH** W 250 FT TH S 393 FT TO N LN 00 **CO RD R/W TH SELY ALG SD N LN CO RD 488 FT TO S LN SD SUB TH E AL SD S LN 83 FT TO TPB**.

Deed Two described the second parcel as follows:

> SEC 13 TWP 32 RGE 05 TH PTN SW 1/4 **NE 1/4** DAF BEG SE COR SD SUB TH W 172 FT TPB TH CONT W ALG S LN SD SUB 200FT TH N30*05 00W 220 FT TH E PLW S LN SD SUB 200FT TH S30*05 00E 220 FT TO TPB.

According to the surveyors retained by the parties, the description in Deed One fails to "include calls which would take it back to the True Point of Beginning," while the description in Deed Two does not "include the proper quarter sections."

Nielson compares these incomplete descriptions to the one held to be insufficient in Bigelow v. Mood.[16] There, our Supreme Court decided that a metes and bounds description did not satisfy the statute of frauds because it described the north boundary of the property "only by course, not by distance" and was "utterly silent as to any western boundary."[17] As the defect in Deed One is like the one in Bigelow, that deed fails to meet the requirements of the statute of frauds. While the defect in Deed Two is arguably less deficient than the one in

[16] 56 Wn.2d 340, 353 P.2d 429 (1960).
[17] Bigelow, 56 Wn.2d at 341.

Bigelow, Robbins has not cited any authority demonstrating that the description in this deed satisfies the statute of frauds.[18]

Instead, Robbins attempts to distinguish Bigelow, characterizing it as a case about "specific performance, and not reformation." The fact that Bigelow involved an action for specific performance does not render it inapposite.[19] Robbins, however, correctly notes that the parties in Bigelow did not ask the court to reform the defective description. We therefore address the availability of reformation.

Robbins claims that the legal descriptions in the deeds should be reformed because the defects were due to a scrivener's error or mutual mistake. Nielson responds that reformation is not available under either theory because the unilateral gift exception applies. We agree with Nielson.

Generally, in Washington, an inadequate legal description may not be reformed by the court[20] unless the description resulted from a scrivener's error or mutual mistake.[21] According to Nielson, reformation is unavailable to correct

[18] We further note that Earl Morriss, the surveyor retained by Robbins, stated in his declaration that he referenced other materials to identify both parcels. In particular, he stated that he referenced the excise tax affidavits to obtain the tax parcel numbers and then reviewed the Snohomish County Assessor's Tax Roll of December 31, 1985, to obtain the correct legal descriptions. Morriss further explained that he used the tax parcel maps for the properties and legal descriptions of adjoining parcels. With respect to Deed Two, Morriss maintained that "[t]he correct quarter-quarter section is apparent with even minimal research."

[19] Indeed, Robbins acknowledges that Bigelow addresses the "sufficiency of the legal description, and is in accord with the general Martin rule."

[20] See, e.g., Snyder v. Peterson, 62 Wn. App. 522, 525-26, 814 P.2d 1204 (1991).

[21] See, e.g., Berg v. Ting, 125 Wn.2d 544, 553-54, 886 P.2d 564 (1995);

either a scrivener's error or a mutual mistake when the property is conveyed by a deed of gift because a gift is a unilateral act[22] involving no consideration.[23]

Geoghegan v. Dever, 30 Wn.2d 877, 889, 194 P.2d 397 (1948) ("'Where there has been an agreement actually entered into which the parties have attempted to put in writing, but have failed because of a mistake either of themselves or of the scrivener, the courts having jurisdiction in matter of equitable cognizance have power to reform the instrument in such a manner as to make it express the true agreement.'" (quoting Silbon v. Pac. Brewing & Malting Co., 72 Wash. 13, 14-15, 129 P. 581 (1913))).

[22] Fleury v. Bowden, 11 Wn. App. 617, 620, 524 P.2d 449 (1974); Bergstrom v. Olson, 39 Wn.2d 536, 542-43, 236 P.2d 1052 (1951); Tenco, Inc. v. Manning, 59 Wn.2d 479, 482-83, 368 P.2d 372 (1962)); Williams v. Fulton, 30 Wn. App. 173, 177 n.2, 632 P.2d 920 (1981) (holding that a written agreement between two parties could not be reformed where the evidence "merely demonstrates a unilateral mistake"); Associated Petroleum Prods., Inc. v. Nw. Cascade, Inc., 149 Wn. App. 429, 437, 203 P.3d 1077, 1082 (2009) ("Unilateral mistake entitles a party to reform a contract only if the other party engaged in fraud or inequitable conduct." (citing Gammel v. Diethelm, 59 Wn.2d 504, 507, 368 P.2d 718 (1962))); Wilhelm v. Beyersdorf, 100 Wn. App. 836, 843, 999 P.2d 54 (2000) ("A trial court has equitable power to reform an instrument if there is clear, cogent and convincing evidence of a mutual mistake or a unilateral mistake coupled with inequitable conduct." (citing Kaufmann v. Woodard, 24 Wn.2d 264, 270, 163 P.2d 606 (1945))).

[23] See Snyder, 62 Wn. App. at 529; Providence Square Ass'n, Inc. v. Biancardi, 507 So. 2d 1366, 1370 (Fla. 1987) ("[R]eformation principles cannot be applied to certain kinds of unilaterally generated legal documents which are noncontractual in nature. . . . [W]here a deed is given gratuitously and thereby constitutes a unilateral act on the part of the grantor, or where the only consideration is 'love and affection' rather than material value, equity will not decree reformation on the ground of mistake.").

Other courts have held that the general rule precluding reformation on the basis of unilateral mistake applies only where deeds are given in exchange for some type of compensation, and thus are contractual in nature. These courts have reasoned that, because gifts are unilateral in nature and thus only a unilateral mistake is likely to occur, deeds conveying property as a gift may be reformed due to a unilateral mistake made by the grantor. See Wright v. Sampson, 830 N.E.2d 1022, 1027-28 (Ind. Ct. App. 2005) (holding that a trial court can reform a deed that has been given to a grantee as a gift upon a showing that the grantor made a unilateral mistake); Yano v. Yano, 144 Ariz. 382, 386-87, 697 P.2d 1132 (1985) (holding that a grantor's unilateral mistake was sufficient ground for the court to reform a voluntary conveyance); Kemna v. Graver, 630 S.W.2d 160, 161 (Mo. Ct. App. 1982) ("It is a well-settled general

Snyder v. Peterson[24] supports Nielson's position. There, the grantor executed a purported gift deed conveying a farm, which was the only property he owned, in equal shares to his four children.[25] The grantor sought to avoid estate taxes due upon his death.[26] The deed recited "consideration of ten dollars ($10.00) and love and affection."[27] Each of the four siblings paid one-quarter of the gift tax incident to the conveyance plus the attorney and accountant fees.[28] But the attorney who drafted the deed inadvertently omitted from the deed's legal description the section, township, range numbers, and meridian.[29] A few years later, the grantor attempted to reconvey the farm to only one of the siblings,

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rule that equity will reform a voluntary instrument of conveyance at the suit of the donor when the instrument does not express the donor's intent in making the gift."); Davidson v. Lane, 566 S.W.2d 891, 892 (Tenn. Ct. App. 1978) ("[A] court of equity will reform a voluntary conveyance, made without consideration, to reflect the intention of the grantor."); Dodge v. United States, 413 F.2d 1239, 1242 (5th Cir. 1969) ("'Many jurisdictions, however, recognize an exception to the general rule and hold that the donor-grantor of a voluntary conveyance, or his heirs or successors in title, may have reformation as against the grantee, on the ground of mistake and in such case mutuality of mistake is not essential, it being immaterial that the grantee was not cognizant thereof.'" (quoting Jonas v. Meyers, 410 Ill. 213, 101 N.E.2d 509, 515 (1951))); 69 A.L.R. 423, 439-42 (1930) (citing conflicting authority as to whether love and affection of the grantor for the grantee, without any valuable consideration, is sufficient to entitle the grantee to a reformation of the deed).

[24] 62 Wn. App. 522, 814 P.2d 1204 (1991).
[25] Snyder, 62 Wn. App. at 524.
[26] Snyder, 62 Wn. App. at 524 n.1.
[27] Snyder, 62 Wn. App. at 524.
[28] Snyder, 62 Wn. App. at 524.
[29] Snyder, 62 Wn. App. at 524.

Peterson.[30] Peterson secretly recorded this second deed.[31] The other three siblings subsequently filed a lawsuit to reform the defective description in the original deed.[32] The trial court granted summary judgment to the three siblings, holding that the deed was subject to reformation due to a scrivener's error.[33]

On appeal, Peterson asked this court to apply the unilateral gift exception to bar reformation.[34] The Snyder court declined to do so, noting the grantor's intent at the time of the transaction to avoid estate taxes upon his death and the grantees' payment of the applicable gift tax and related fees.[35] The court also observed that the deed recited consideration of $10 and love and affection.[36] In a footnote, the court cited case law supporting the proposition that "any nominal consideration accompanied by 'love and affection' is sufficient to justify reformation of a deed."[37] Notably, the court quoted White v. Reading[38] for the proposition that "'[w]hile a court of equity will not undertake to enforce a mere gratuity, yet where there is a meritorious consideration a court of equity will take cognizance of the mistake and correct it.'"[39] In its conclusion, the Snyder court

[30] Snyder, 62 Wn. App. at 524-25. Apparently, this was done since the other three siblings had initiated guardianship proceedings to have the grantor, who was experiencing failing mental capabilities, declared incompetent and to have a guardian appointed.

[31] Snyder, 62 Wn. App. at 525.

[32] Snyder, 62 Wn. App. at 525.

[33] Snyder, 62 Wn. App. at 525.

[34] Snyder, 62 Wn. App. at 529.

[35] Snyder, 62 Wn. App. at 529.

[36] Snyder, 62 Wn. App. at 529.

[37] Snyder, 62 Wn. App. at 529 n.7 (emphasis added).

[38] 293 Mo. 347, 239 S.W. 90 (Mo. 1922).

[39] Snyder, 62 Wn. App. at 529 n.7 (alteration in original) (quoting White, 239 S.W. at 94).

stated, "Even though the parties at the time referred to the transaction as a gift, these facts establish sufficient consideration to take the deed out of the 'unilateral gift exception' to reformation."[40]

The evidence in this case does not create any issue of fact as to whether the deeds were supported by sufficient consideration to avoid application of the unilateral gift exception. Unlike in Snyder, the deeds here were not supported by any consideration other than "Love and Affection." In addition, the conveyances are each described in the excise tax affidavits as a "gift from mother to son," and no excise tax was paid in connection with the transaction. Thus, the unilateral gift exception applies to bar reformation.

Robbins claims to have raised an issue of material fact as to whether the deeds were supported by consideration, citing In re Estate of Little[41] and Crow v. Crow.[42] In those cases, the trial court failed to consider proffered parol evidence in determining the existence or absence of consideration. In Little, the deed described the conveyance as "this gift." But the deed also contained a recital that it was made "[f]or and in consideration of Ten Dollars and Love and Affection."[43] Noting that this "recital raise[d] a rebuttable presumption that the consideration expressed in the deed was in fact paid,"[44] the Little court reversed and remanded, holding that the deed was ambiguous and presented an issue of

[40] Snyder, 62 Wn. App. at 529.
[41] 106 Wn.2d 269, 721 P.2d 950 (1986).
[42] 66 Wn.2d 108, 401 P.2d 328 (1965).
[43] Little, 106 Wn.2d at 272, 286.
[44] Little, 106 Wn.2d at 286.

fact.[45] In Crow, the court held that the trial court erred in denying admission of oral testimony that supported the appellant's contention that a $6,000 advance was not a loan but was a consideration in addition to that expressed in the written agreement.[46]

Here, Robbins points to various financial statements and to statements in the declarations of Anthony and Sharon, as well as in his own declaration, as evidence that Marvel transferred the property to Ben "in consideration of Ben's agreement to pay Marvel's debts, which were in excess of $20,000.00; providing additional financial support and caring for her, and Ben's payment of real estate taxes on the property." We agree with the trial court that this evidence is insufficient to raise any issue of material fact as to whether the transfers were unilateral acts involving no consideration. The court correctly ruled that the deeds were not subject to reformation.

Next, Robbins contends that the descriptions satisfy the statute of frauds because they contain "latent ambiguities, and parol evidence is admissible to determine what Marvel and Ben intended." To support this contention, Robbins relies principally on Maxwell v. Maxwell.[47]

In that case, the parties disputed the size of the parcel the grantor intended to convey through a deed of gift that contained a description in which the calls failed to close.[48] On appeal, both parties requested reformation of the

[45] Little, 106 Wn.2d at 287.
[46] Crow, 66 Wn.2d at 109-10.
[47] 12 Wn.2d 589, 123 P.2d 335 (1942).

deed; no argument was raised as to whether the deed satisfied the statute of frauds. The respondent asked the court to correct two errors in the description so that the calls would close and delineate a parcel of 185.5 feet.[49] The appellant, on the other hand, argued that the grantor intended to convey a much smaller parcel and sought not only to correct those errors, but also to add a series of additional calls.[50] In affirming the trial court, the Maxwell court considered parol evidence to determine what property the grantor intended to convey with the legal description used.[51] The court concluded that with the defective description, which was due to scrivener's error, the grantor intended to describe the parcel claimed by the respondent.[52]

Here, in contrast to Maxwell, the parties do not dispute what property was intended to be conveyed by the legal description used. At oral argument, counsel for Nielson conceded this but maintained that the deeds were void under the statute of frauds solely on the basis of "technical error." Since Maxwell does not address the application of the statute of frauds, Robbins's reliance on it is misplaced.

The other cases cited by Robbins are similarly distinguishable. Vavrek v. Parks[53] and Thomas v. Nelson[54] are cases in which parol evidence was allowed

[48] Maxwell, 12 Wn.2d at 592.
[49] Maxwell, 12 Wn.2d at 592.
[50] Maxwell, 12 Wn.2d at 592-93.
[51] Maxwell, 12 Wn.2d at 599.
[52] Maxwell, 12 Wn.2d at 596, 598-99.
[53] 6 Wn. App. 684, 495 P.2d 1051 (1972).
[54] 35 Wn. App. 868, 670 P.2d 682 (1983).

to explain the use of a meander line as a call in a legal description. Again, in those cases parol evidence was considered to determine what property was meant to be conveyed by the legal description used.[55] In neither case did the court address whether the description satisfied the statute of frauds.[56]

Finally, Robbins relies on the doctrine of incorporation by reference, arguing that the excise tax stamps on the deeds refer to and incorporate the real estate excise tax affidavits. In support of this argument, Robbins cites Bingham v. Sherfey[57] as well as Snyder.

In Bingham, the court held that a legal description that included the county assessor's tax parcel number was adequate because "a reference to this public record furnishes the legal description of the real property involved with sufficient definiteness and certainty to meet the requirements of the statute of frauds."[58] The court assumed that the county assessor properly performed his statutory duties requiring him to assign a tax number to each parcel described by metes and bounds. But Bingham is distinguishable as the description there

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[55] Thomas, 35 Wn. App. at 871 ("Evidence extrinsic to the deed may be considered to ascertain the real intent of the parties because we are not seeking to contradict the deed but to determine what property was meant to be conveyed by the legal description used." (citing Vavrek, 6 Wn. App. at 690-91)).

[56] Robbins cites other cases involving tax foreclosure and boundary disputes that are inapposite for this same reason. See Booten v. Peterson, 34 Wn.2d 563, 209 P.2d 349 (1949); City of Centralia v. Miller, 31 Wn.2d 417, 197 P.2d 244 (1948); Turpen v. Johnson, 26 Wn.2d 716, 175 P.2d 495 (1946); Dixon v. City of Bremerton, 25 Wn.2d 508, 171 P.2d 243 (1946); Wingard v. Pierce County, 23 Wn.2d 296, 160 P.2d 1009 (1945); Ontario Land Co. v. Yordy, 44 Wash. 239, 87 P. 257 (1906).

[57] 38 Wn.2d 886, 234 P.2d 489 (1951).

[58] Bingham, 38 Wn.2d at 889.

specifically contained the tax parcel number.[59] Here, neither deed refers to any tax parcel number. We further reject Robbins's contention that the presence of the treasurer's stamp including the number of the excise tax affidavit cures the absence of any express reference to the tax parcel number. Even if the stamps could be used to refer to the tax parcel numbers, the stamps were placed after October 9, 1986, the date on which the deeds were signed.[60] Therefore, the stamps and information derived through them were not part of the deed actually signed by Marvel.

Nor does Snyder support Robbins's argument. Robbins quotes language from a footnote stating that, in addition to finding that scrivener's error allowed reformation, the trial court determined that the deed satisfied the statute of frauds because the excise tax stamp referred to the excise tax affidavit.[61] This language is dicta as the Snyder court affirmed the trial court on grounds that a scrivener's error provided a basis for reformation.[62]

Attorney Fees

Both parties seek attorney fees on appeal. Nielson requests attorney

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[59] The deed in Bingham contained the following description: "Tax No. 3, in Section Thirty-one, in Township Twelve, North, of Range Forty-two, as at present designated on the tax rolls in the office of the County Assessor of said county." Bingham, 38 Wn.2d at 887.

[60] Although the parties dispute the chronology of events, it makes no difference that the treasurer's office stamp shows the date October 14, 1986, while the auditor's office stamp shows the date October 13, 1986. Both events occurred after the parties signed the deed.

[61] Snyder, 62 Wn. App. at 525-26.

[62] Snyder, 62 Wn. App. at 525-26.

fees under RAP 18.9 for a frivolous appeal. "An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal."[63] While Robbins has not prevailed, his arguments are not frivolous. We therefore decline to award attorney fees to Nielson. Robbins's request for attorney fees is also denied.

CONCLUSION

The trial court correctly determined that the unilateral gift exception applied to bar reformation and that the legal descriptions of the deeds failed to satisfy the statute of frauds. The trial court's judgment is affirmed.[64]

Leach, A.C.J.

WE CONCUR:

Grosse, J.

Becker, J.

[63] Eugster v. City of Spokane, 139 Wn. App. 21, 34, 156 P.3d 912 (2007).

[64] In view of our disposition of this case, we deem it unnecessary to address Robbins's motion to strike portions of Nielson's brief.