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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 35793-7-III

In the Matter of the Estate of

STEVEN WARD HALL,

Deceased,

CHAD DAVIS, individually and as personal representative

of the Estate of Steven Ward Hall, Petitioner

v.

RICHARD CZYHOLD, administrator of the Estate of

Marianne E. Czyhold, and Persons or Parties

with interest in these proceedings, Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner Chad Davis is the son of Steven Ward Hall and primary beneficiary of the Estate of Steven Ward Hall, Appellant.

II. DECISION OF THE COURT OF APPEALS

Petitioner seeks review of the decision of the Court of Appeals filed on March 12, 2019, affirming a grant of summary judgment in favor of Respondent concluding that two documents transferred title from Steven Hall to Marianne Czyhold. On April 4, 2019, the Court of Appeals denied Mr. Davis' Motion for Reconsideration, although it did revise its opinion. The Court of Appeals denied Mr. Davis' Motion for Publication. A copy of the Court of Appeals' unpublished opinion is attached hereto, along with its Order revising this opinion.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err by concluding that deeds lacking grantees, legal descriptions, or consideration nevertheless conveyed title?
2. Did the Court of Appeals err by concluding the deeds at issue did not at most convey a fee simple determinable?

IV. STATEMENT OF THE CASE

This case of first impression involves two novel issues, whether a court may properly rely on information provided for the auditor in interpreting a deed, and the effect of combining the classic language of a fee simple determinable (“FSD”) with the language of a joint tenancy with right of survivorship.

In 2008, Mr. Hall signed two deeds in favor of Marianne Czyhold. The Hall Estate sued the Czyhold Estate for possession of the Property, contending that the Recorded and Unrecorded Deeds did not transfer the Property. It is undisputed that Mr. Hall owned the Property prior to the alleged transfers.

The Recorded Deed states:

THE GRANTOR Steven W. Hall of 1803 E. Alder Street, City of Walla Walla, County of Walla Walla, State of Washington, for and in consideration of Steven W. Hall and Marianne Czyhold convey and quit-claim to 1803 E. Alder and of 169 N. Wilbur Ave #13, City of Walla Walla, County of Walla Walla, State of Washington, all interest in the following described Real Estate: Valley Homes W '74 of S 110' of Lot 7 until such time Washington State Tax Lien is satisfied this document will be recorded as Joint Tenancy with right of survival. CP 31.

The Recorded Deed bears a notarization dated June 4, 2008.

The Unrecorded Deed states:

THE GRANTOR Steven W. Hall of 1803 E Alder Street, City of Walla Walla, County of Walla Walla, State of Washington, for and in consideration of such Love + Affection + 100 convey and quitclaim to Marianne E. Czyhold of 169 N. Wilbur Ave #13, City of Walla Walla, County of Walla Walla, State of Washington, all interest in the following described Real Estate: until such time that Washington State tax lien is satisfied, this document will be recorded as Joint Tenancy, with right of survivorship situated in the County of Walla Walla, State of Washington, Dated this 15th day of January 2008. CP 30.

The trial court order states that title to the Property is “vested in the Estate of Marianne E. Czyhold as joint owner with right of survivorship.”

CP 65. It does not state whether the title conveyed is a fee simple absolute (“FSA”) or fee simple determinable (“FSD”), although this issue was raised in the moving papers and at the summary judgment hearing. *See* CP 59, RP 8.

The Court of Appeals concluded that these deeds conveyed title to Marianne Czyhold, relying heavily on language contained above the deed in space reserved for language required by the auditor under RCW 36.18 and RCW 65.04. The Court of Appeals also concluded that although the deeds contained “typical fee simple determinable language,” the language of a joint tenancy with right of survivorship that was also included in the deed instead created a fee simple absolute. Opinion, p. 9. The Court of Appeals concluded that “either deed conveyed a joint tenancy to Ms. Czyhold.” *Id.*

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case presents two important issues for property owners in the State of Washington. The first is whether the language in the space reserved for information for auditors should be used to interpret deeds or as a gap filler where deeds lack essential terms, in all real estate transactions, a significant burden when multiplied by thousands of real estate transactions. The second is the result of using fee simple determinable language in a deed that also attempts to convey a joint tenancy with right of survivorship. Accordingly, review should be accepted under RAP 13.4(b)(4).

1. On their face, the deeds fail to meet the minimum requirements of Washington law to transfer title.

Clear, predictable legal rules support an orderly and efficient marketplace for transferring real estate. When it comes to complying with the law for conveying something as important as real estate, this Court has explained, “We do not apologize for the rule. We feel that it is fair and just to require people dealing with real estate to properly and adequately describe it, so that courts may not be compelled to resort to extrinsic evidence in order to find out what was in the minds of the contracting parties.” *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 882, 983 P.2d 653 (1999), citing *Martin v. Seigel*, 35 Wn.2d 223, 228, 212 P.2d 107 (1949). The same reasoning applies to the basic rule that a deed must name the

grantee. RCW 64.04.050; Wash. State Bar Ass'n, Washington Real Property Deskbook, § 32.4(2), at 32-8 (3d ed. 1997) (“A deed must designate a grantee to whom title passes.” ... “If the name does not refer to a legal entity, it is not a valid conveyance.”).

Neither deed in its language contains both an adequate legal description and grantee. The Unrecorded Deed contains no legal description whatsoever, which obviously falls short of this Court’s requirements in *Martin*. The Recorded Deed contains no grantee, instead referencing an address. Without a legal entity referenced as the grantee, it is not a valid conveyance. It also contains an insufficient, abbreviated legal description, which does not include the city, county, or state, or describe all borders of the property. See *Bigelow v. Mood*, 56 Wn.2d 340, 353 P.2d 429 (1960).

2. The Court of Appeals erred in relying on information designated for the auditor to remedy errors in the deeds.

The Court of Appeals erred in resolving these discrepancies by resorting to extrinsic evidence, the information provided for use by the Auditor. Extrinsic evidence is only appropriate to interpret an ambiguity in terms present in a deed, not to supply terms that are simply not there. *Wilkinson v. Chiwawa Communities Ass'n*, 180 Wn.2d 241, 251, 327 P.3d 614 (2014).

Although it might—or might not—be on the same piece of paper as the deed, information provided for the auditor is extrinsic evidence. RCW 65.04.045; RCW 65.04.047. Not only is this information extrinsic evidence, but the Washington legislature forbids courts from using it to interpret deeds. Any errors in this information “shall not affect the transactions contained in the instrument itself.” RCW 65.04.047. The “names and legal description in the instrument itself will determine the legal chain of title.” *Id.*

The Court of Appeals erred in relying on this information to supply essential terms—the grantee and legal description—that were missing from the deeds themselves. Therefore, this Court should maintain the legal standards relied on to efficiently transfer property in Washington State by ruling that these deeds failed to transfer title.

3. The Court of Appeals erred in ruling the deeds conveyed fee simple absolute, notwithstanding typical language for conveying a fee simple determinable.

Although the deeds state that any conveyance is only “until such time that Washington State tax lien is satisfied,” the Court of Appeals gave no effect to this language. “In the construction of a deed, a court must give meaning to every word if reasonably possible.” *Hodgins v. State*, 9 Wn. App. 486, 492, 513 P.2d 304 (1973). The Court of Appeals should not have disregarded this language.

A fee simple determinable “is an estate that automatically terminates on the happening of a stated event and reverts to the grantor by operation of law.” *Wash. State Grange v. Brandt*, 136 Wn. App. 138, 150, 148 P.3d 1069 (2006). Washington law upholds a fee simple determinable where the words used in the deed clearly indicate such intent. *King County v. Hanson Inv. Co.*, 34 Wn.2d 112, 119, 208 P.2d 113 (1949). Using “until” in describing a fee is typical language for establishing a fee simple determinable. *Brandt*, 136 Wn. App. at 150.

The Court of Appeals concluded that, despite this language, the deeds conveyed a fee simple absolute, because the deeds also included language commonly used to establish a joint tenancy with right of survivorship. However, this fails to give any meaning to the language in the deeds that Ms. Czyhold would only hold an interest in the land “until such time that Washington State tax lien is satisfied.”

This also ignores the fact that parties can hold a fee simple determinable as joint tenants with right of survivorship. There is nothing in the language of joint tenancy with right of survivorship that is antithetical to or creates ambiguity regarding intent to establish a determinable fee. To establish a joint tenancy with right of survivorship requires the four unities of time, title, possession, and interest.

Holohan v. Melville, 41 Wn.2d 380, 391, 249 P.2d 777 (1952). As to the fee simple determinable, to the extent the deeds transferred anything, they met the requirements of the four unities.

Alternatively, if one concludes that the four unities were not present, perhaps because Mr. Hall sought to retain the possibility of reverter, then the four unities were not established, so no joint tenancy with right of survivorship was created. In that case, Ms. Czyhold should have only received an interest as a tenant in common, lacking the right of survivorship. The Court of Appeals erred in failing to give the deeds' durational language any meaning, so it should be reversed.

VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(4) and this Court should enter a ruling that the deeds failed to convey title. Alternatively, the Court should enter a ruling that the deeds conveyed a fee simple determinable or, at most, a joint tenancy as tenants in common.

RESPECTFULLY SUBMITTED this 6th day of May, 2019.

BASALT LEGAL PLLC

BY 

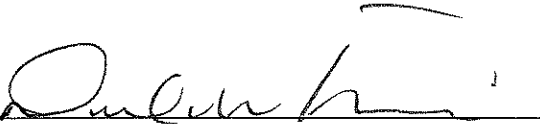
Jeremy Hyndman, WSBA #44320
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on May 6, 2019, I delivered a true and correct copy of the foregoing Petition for Review to the following:

Mona Geidl
Minnick-Hayner
249 W. Alder Street
Walla Walla, WA 99362

SIGNED this 6 day of May, 2019, at Walla Walla, Washington


Donelda Todorovich

APPENDIX A

FILED
MARCH 12, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Estate of)	
)	No. 35793-7-III
STEVEN WARD HALL,)	
)	
Deceased,)	
)	
CHAD DAVIS, individually and as)	UNPUBLISHED OPINION
personal representative of the Estate of)	
Steven Ward Hall,)	
)	
Appellant,)	
)	
v.)	
)	
RICHARD CZYHOLD, administrator of)	
the Estate of Marianne E. Czyhold, and)	
Persons or Parties with interest in these)	
proceedings,)	
)	
Respondent.)	

KORSMO, J. — The estate of Steven Hall (Hall Estate) appeals from a summary judgment in favor of the estate of Marianne Czyhold (Czyhold Estate). The trial court determined that Hall vested title in his house to Czyhold. Agreeing that Hall conveyed a joint tenancy to Czyhold, we affirm.

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In re the Estate of Steven Ward Hall

FACTS

In 2008, Steven Hall signed two deeds in favor of his longtime companion, Marianne Czyhold. Each document consists of handwriting on a statutory quitclaim deed form. Both deeds are notarized.

The first deed, dated January 15, 2008, reads:

THE GRANTOR Steven W. Hall of 1803 E Alder Street, City of Walla Walla, County of Walla Walla, State of Washington, for and in consideration of such Love + Affection + 1⁰⁰ convey and quit-claim to Marianne E. Czyhold of 169 N. Wilbur Ave #13, City of Walla Walla, County of Walla Walla, State of Washington, all interest in the following described Real Estate: until such time that Washington State tax lien is satisfied, this document will be recorded as Joint Tenancy, with right of survival situated in the County of Walla Walla, State of Washington. Dated this 15th day of January, 2008.

Clerk's Papers (CP) at 30 (handwriting in italics).

The second deed, dated June 4, 2008, provides:

THE GRANTOR Steven W. Hall of 1803 E. Alder Street, City of Walla Walla, County of Walla Walla, State of Washington, for and in consideration of Steven W. Hall + Marianne Czyhold convey and quit-claim to 1803 E. Alder and of 169 N. Wilbur Ave #13, City of Walla Walla, County of Walla Walla, State of Washington, all interest in the following described Real Estate: Valley Homes W/ 74' of S 110' of Lot 7 until such time Washington State Tax Lien is satisfied this document will be recorded as Joint Tenancy with right of survival situated in the County of Walla Walla, State of Washington. Dated this Fourth day of June, 2008.

CP at 31 (handwriting in italics).

Near the top of each deed form is a box that bears the heading, "Indexing information required by the Washington State Auditor's/Recorder's Office." On each

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In re the Estate of Steven Ward Hall

deed, the information in the index box names Steven W. Hall as the grantor, Marianne Czyhold as the grantee, the abbreviated legal description of the property as “Valley Homes W/ 74’ of S 110’ of Lot 7” and the tax parcel as number 360722560096. CP at 30, 31.

A notarized document addressed to Steven W. Hall from the Washington Department of Revenue titled, “NOTICE OF LIEN FOR DEFERRED PROPERTY TAXES AND/OR SPECIAL ASSESSMENTS” (Notice) contains the following legal description for the property at 1803 E. Alder Street, Walla Walla:

Beginning at the Southwest corner of Lot 7 (seven) of Valley Homes, according to the official plat thereof of record in the office of the Auditor of said Walla Walla County, and running thence East along the South line of said Lot 7 (seven) a distance of 74 feet; thence North and parallel to the West line of said Lot 7 (seven) a distance of 110 feet; thence West and parallel to the South line of said Lot 7 (seven), a distance of 74 feet to a point in the West line of said Lot 7; thence South on said West line a distance of 110 feet to the point of beginning, Walla Walla County Washington, A.K.A. Assessor’s Parcel Number 36-07-22-56-0096.

CP at 51.

Mr. Hall died on October 7, 2016. Ms. Czyhold died on February 12, 2017. On May 12, 2017, Chad Davis, as personal representative of the Hall Estate, petitioned the Walla Walla County Superior Court to declare the Hall Estate the sole owner in fee simple of real property at 1803 East Alder Street, Walla Walla. The Hall Estate named as respondent Richard Czyhold, administrator of the Estate of Marianne E. Czyhold.

The Czyhold Estate moved for summary judgment. In support of the motion, it submitted a memorandum and six attached exhibits, including the deeds and notice mentioned earlier. The exhibits were not submitted through a declaration.

Overruling an objection to the exhibits, the trial court granted the motion for summary judgment, determining that the deeds vested title in the property to Ms. Czyhold as a joint tenant with right of survivorship. The Hall Estate timely appealed to this court. A panel considered the case without hearing argument.

ANALYSIS

This appeal presents one evidentiary and two substantive issues.¹ After first addressing the evidentiary concern, we then turn to the two substantive issues: did Mr. Hall convey a property interest to Ms. Czyhold and, if so, what type of estate did he convey?

Evidentiary Challenge

The Hall Estate argues that the trial court erred in considering the three exhibits quoted above.² By the terms of ER 902(h), the documents were admissible. The trial court did not err.

¹ The Czyhold Estate argues that the Hall Estate's petition for declaratory judgment is barred by the doctrine of laches. Because neither party nor the court addressed this theory below, we do not address it here. RAP 9.12.

² Hall also challenges the other three, non-notarized, exhibits. Since those exhibits were unauthenticated and are unnecessary to our analysis, we do not consider them.

Well-settled standards govern review of a summary judgment ruling. “We review summary judgments de novo.” *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). A party is entitled to summary judgment “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.” CR 56(c). “When determining whether an issue of material fact exists, the court must construe all facts and inferences in favor of the nonmoving party.” *Ranger*, 164 Wn.2d at 552.

It is understood that “evidence submitted in opposition to summary judgment must be admissible.” *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 141, 331 P.3d 40 (2014). “Unauthenticated or hearsay evidence does not suffice.” *Id.* Notarized documents are self-authenticating. ER 902(h). Moreover, records of documents affecting an interest in property also satisfy an exception to the hearsay rule. ER 803(14).

The two deeds and the tax notice were admissible since they were self-authenticating. The trial court did not err by considering them.

Effectiveness of the Deeds

The Hall Estate argues that the two deeds are ineffectual because they fail to satisfy the statutory requisites set forth by our legislature. Although deficient in some regards, we conclude that the second deed was adequate.

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The construction of a deed is a legal matter to be determined by a court. *Niemann v. Vaughn Cmty. Church*, 154 Wn.2d 365, 374, 113 P.3d 463 (2005). A court’s “primary objective” when interpreting a deed “is to discern the parties’ intent.” *Id.* That intent “is to be derived from the entire instrument.” *Harris v. Ski Park Farms, Inc.*, 120 Wn.2d 727, 739, 844 P.2d 1006 (1993). If an “ambiguity exists, the situation and circumstances of the parties at the time of the grant are to be considered.” *Id.*

“Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed.” RCW 64.04.010. “Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by []this act to take acknowledgments of deeds.” RCW 64.04.020.

Consideration is not required to convey an interest in property. *Bale v. Allison*, 173 Wn. App. 435, 445, 294 P.3d 789 (2013). “It is the unusually strict but well-settled rule in Washington that to comply with these statutes, real estate subject to a conveyance must be described in sufficient detail that the court is not compelled to resort to extrinsic evidence in order to find out what was in the minds of the contracting parties.” *Kofmehl v. Baseline Lake, LLC*, 167 Wn. App. 677, 689-690, 275 P.3d 328 (2012), *aff’d*, 177 Wn.2d 584, 305 P.3d 230 (2013). In addition, “compliance with the statute of frauds in land transaction contracts or deeds requires a description of land sufficiently definite to locate it without recourse to extrinsic evidence or else reference must be made to another

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instrument which does contain a sufficient description.” *Tenco, Inc. v. Manning*, 59 Wn.2d 479, 485, 368 P.2d 372 (1962); *accord Bingham v. Sherfey*, 38 Wn.2d 886, 889, 234 P.2d 489 (1951).

Thus, Washington permits an insufficient deed description to be supplemented by internal reference to another document containing descriptive information. In *Bingham*, for instance, reference to the county assessor’s tax number was found sufficient to supplement the inadequate description in the contract to purchase real property. *Id.* at 887-889. The court “assumed” that the assessor’s record would furnish “the legal description of the real property involved.” *Id.* at 889.

Here, the second deed, when considered with reference to the tax parcel number, effectively complied with the statute and conveyed an interest in the property to Ms. Czyhold. Both deeds are in writing, signed by Mr. Hall, and notarized, and both deeds name the grantor as Mr. Hall and the grantee as Ms. Czyhold. Each deed identifies the property subject to the conveyance by tax parcel number, county, and state. Each deed also references a pending tax lien. The lien document, in turn, provides a complete legal description of the property. The second deed also includes a partial legal description.

Taken together, this information shows that Mr. Hall intended to convey an interest in tax parcel no. 360722560096, which corresponds to 1803 E. Alder St., to Ms. Czyhold. On the basis of the partial description in the second deed, we conclude that the

trial court correctly determined that Mr. Hall effectively conveyed an interest to Ms. Czyhold.

Estate Conveyed

Having answered the threshold question of whether there was a conveyance, the question remaining is what kind of property interest did Mr. Hall convey to Ms. Czyhold? His estate contends that, at most, all that was conveyed was a fee simple determinable. We disagree.

“A fee simple determinable, also called a determinable fee simple, is an estate that automatically terminates on the happening of a stated event and reverts to the grantor by operation of law.” *Wash. State Grange v. Brandt*, 136 Wn. App. 138, 150, 148 P.3d 1069 (2006). This type of fee “is created by the use of durational language such as ‘for so long as,’ ‘while,’ ‘during,’ or ‘until.’” *Id.* “The possibility of reverter arises automatically in the grantor as a consequence of the grantor’s conveying a determinable fee estate.” *Id.* There must be clear intent to create a determinable fee interest. “It is the almost universal rule that, in order to make an estate conditional, the words used in the deed must clearly indicate such an intent, either by express terms or by necessary implication from the language used.” *King County v. Hanson Inv. Co.*, 34 Wn.2d 112, 119, 208 P.2d 113 (1949). “Washington courts do not favor estates upon condition and if the creating language is unclear that a conditional estate was intended, courts will generally construe a fee simple absolute.” *Niemann*, 154 Wn.2d at 373 n.6.

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The language of the deeds does not clearly indicate intent to create a conditional estate. Each deed indicates that it will be recorded as a joint tenancy with right of survivorship “until such time that Washington State tax lien is satisfied.” CP at 30-31. While “until such time” is typical fee simple determinable language, the entire phrase suggests that Mr. Hall intended to create a joint tenancy immediately, and that something unspecified would happen after the lien was satisfied. Because the conditional language of the deeds is ambiguous, we disregard the phrase beginning with, “until such time.” Absent that language, either deed conveyed a joint tenancy to Ms. Czyhold.


The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Korsmo, J.

WE CONCUR:


Fearing, J.


Lawrence-Berrey, C.J.

APPENDIX B

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

In re:

STEVEN WARD HALL,

Deceased.

CHAD DAVIS, individually and as
personal representative of the Estate of
Steven Ward Hall,

Appellant,
vs.
RICHARD CZYHOLD, administrator of
the Estate of Marianne E. Czyhold, and
Persons or Parties with interest in these
proceedings,

Respondent.

Court of Appeals #35793-7-III
Walla Walla County #17-4-00095-5

APPELLANT'S MOTION FOR
RECONSIDERATION

1. PERSON FILING THE MOTION

This motion is filed by Jeremy Hyndman, Basalt Legal PLLC, attorney of record for the Appellant, Chad Davis, individually and as personal representative of the Estate of Steven Ward Hall.

1 2. RELIEF REQUESTED

2 Appellant respectfully requests that the Court reconsider its opinion filed herein
3 on March 12, 2019.

4 3. REFERENCE TO RECORD

5 The Estate of Steven Ward Hall appealed a grant of summary judgment ruling
6 that Mr. Hall established a joint tenancy with right of survivorship with himself and
7 Marianne E. Czyhold for property located at 1803 E. Alder Street in Walla Walla.

8 In its opinion, this Court affirmed the grant of summary judgment, concluding that
9 the second deed, dated June 4, 2008, conveyed title, "[a]lthough deficient in some
regards." *Unpublished opinion*, P. 5.

10 On the issue of whether the second deed referenced a grantee, this Court
11 acknowledged that the grantee in this deed was "1803 E. Alder and of 169 N. Wilbur
12 Ave #13, City of Walla Walla, County of Walla Walla, State of Washington."
13 *Unpublished opinion*, P. 2. However, in a section of this document reserved for
information required by the auditor, the second deed listed Marianne E. Czyhold as
grantee. *Unpublished opinion*, PP. 2-3.

14 On the issue of whether the second deed contained an adequate legal
15 description, this Court concluded that reference to a tax lien in the section of the
16 document reserved for information required by the auditor, reference to a tax lien in the
17 deed, and an abbreviated legal description in the deed were an adequate legal
description under the statute of frauds and Washington case law.

18 Regarding the nature of the estate conveyed, this Court concluded that Mr. Hall
19 established a joint tenancy with right of survivorship. In doing so, this Court concluded
20 it should disregard the phrase, "until such time Washington State Tax Lien is satisfied
21 this document will be recorded as Joint Tenancy with right of survival." *Unpublished
opinion*, P. 9.

22 4. GROUNDS FOR RELIEF REQUESTED

23 a. **The Court's reliance on information provided for the auditor is
24 misplaced.**

25 The Court relies on information provided for the auditor to supply a grantee and
26 legal description for the second deed, but reliance on this information is misplaced.
Under Washington statute, this information may appear above a deed or on a separate

1 coversheet. RCW 65.04.045; RCW 65.04.047. Any errors in this information “shall not
2 affect the transactions contained in the instrument itself.” RCW 65.04.047. This
3 information is only used to generate the grantor/grantee index; “the names and legal
description in the instrument itself will determine the legal chain of title.” *Id.*

4 In determining the parties’ intent, analysis first starts with the deed, and extrinsic
5 evidence—such as information provided for the auditor above the deed—is only
6 considered if the deed is ambiguous.¹ *Newport Yacht Basin Ass’n of Condo. Owners*
7 *v. Supreme Northwest, Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012). A statement is
8 ambiguous when it is capable of two or more meanings. *Id.* At 66. Upon finding
9 ambiguity, a court uses extrinsic evidence “to illuminate what was written, not what was
intended to be written,” and does not consider extrinsic evidence that would “show an
intention independent of the instrument.” *Wilkinson v. Chiwawa Communities Ass’n*,
180 Wn.2d 241, 251, 327 P.3d 614 (2014).

10 The grantee in the second deed is property, “1803 E. Alder and of 169 N. Wilbur
11 Ave #13, City of Walla Walla, County of Walla Walla.” This is unambiguous. This
12 language clearly references two pieces of property, identified by their addresses, and is
not capable of two or more meanings.

13 The second deed fails for lack of a grantee. “A deed must designate a grantee
14 to whom title passes,” and if “the name does not refer to a legal entity, it is not a valid
15 conveyance.” Wash. State Bar Ass’n, *Washington Real Property Deskbook*, § 32.4(2),
16 at 32-8 (3d ed. 1997). Here, the deed unambiguously names property which is not a
legal entity which can hold land, so it is not a valid conveyance.

17 **b. Reliance on the tax parcel number in the information designated for**
18 **the auditor is also misplaced.**

19 For similar reasons, the Court’s reliance on the tax parcel number is also
20 misplaced. This reference is not part of the deed itself, nor is it a reference to a
21 document with a correct legal description, so it should not be considered when
22 determining whether the deed complies with the statute of frauds.
23

24 _____
25 1 Where the law states that this information does not determine the legal chain of title,
26 it should not be determined as evidence of intent at all. “One is presumed to know the
law.” *Nugget Props., Inc. v. County of Kittitas*, 71 Wn.2d 760, 765, 431 P.2d 580
(1967).

1 **c. The opinion simultaneously relies on and disregards the same**
2 **language in the deed.**

3 The unpublished opinion relies on the deed's reference to the tax lien, which
4 provides a complete legal description of the property, in concluding the deed complies
5 with the statute of frauds. *Unpublished opinion*, P. 7. At the same time, the Court
6 states that the very phrase containing this reference should be disregarded. *Id.* If this
7 phrase should be disregarded, then the Court should not rely on it.

8 **d. The opinion should give at least some effect to the phrase starting**
9 **with "until such time" by concluding that the parties held a joint**
10 **tenancy as tenants in common and not with right of survivorship.**

11 "In the construction of a deed, a court must give meaning to every word if
12 reasonably possible." *Hodgins v. State*, 9 Wn. App. 486, 492, 513 P.2d 304 (1973).
13 However, for purposes of interpreting the nature of any interest held by the Estate of
14 Marianne E. Czyhold, the Court elected to disregard the phrase, "until the time
15 Washington State Tax Lien is satisfied this document will be recorded as Joint Tenancy
16 with right of survival." *Unpublished opinion*, P. 9. The unpublished opinion then holds
17 that the parties held a joint tenancy. The unpublished opinion does not explicitly state
18 whether the joint tenancy is held as tenants in common or with right of survivorship, but
19 the order granting summary judgement states that the deeds conveyed a joint tenancy
20 with right of survivorship. CP at 66.

21 A joint tenancy with right of survivorship requires the four unities of time, title,
22 possession, and interest. *Holohan v. Melville*, 41 Wn.2d 380, 391, 249 P.2d 777
23 (1952). By using what the unpublished opinion described as "typical fee simple
24 determinable language," Mr. Hall, at a minimum displayed an intent to convey to Ms.
25 Czyhold less of an interest than he himself possessed. As grantor, he alone would
26 retain a possibility of reverter, potentially severing unity of interest. If after
27 reconsideration the Court concludes the second deed conveyed an interest, it should
28 conclude that it was a joint tenancy as tenants in common.

29 For the foregoing reasons, the unpublished opinion is erroneous to the extent it
30 relies on information provided for the auditor, to the extent it simultaneously relies on
31 and disregards the same phrase in the deed, and to the extent it concludes any
32 conveyance was with right of survivorship.

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DATED this 15 day of March, 2019.

BASALT LEGAL, PLLC


BY 
Jeremy Hyndman, WSBA #44320
Attorney for Appellant

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on the 15 day of March, 2019, I mailed by regular mail, with postage thereon prepaid, a copy of the foregoing Appellant's Motion for Reconsideration to the following:

Mona Geidl Gonzales
Minnick-Hayner
249 W Alder St
Walla Walla, WA 99362



Donelda Todorovich
Signed this 15 day of March,
2019, at Walla Walla, WA

APPENDIX C

FILED
APRIL 4, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Estate of)	
)	
STEVEN WARD HALL,)	
)	No. 35793-7-III
Deceased,)	
)	
CHAD DAVIS, individually and as)	
personal representative of the Estate of)	ORDER DENYING MOTION
Steven Ward Hall,)	FOR RECONSIDERATION
)	AND AMENDING OPINION
Appellant,)	
)	
v.)	
)	
RICHARD CZYHOLD, administrator of)	
the Estate of Marianne E. Czyhold, and)	
Persons or Parties with interest in these)	
proceedings,)	
)	
Respondent.)	

THE COURT has considered Appellant's motion for reconsideration, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of March 12, 2019, is hereby denied.

IT IS FURTHER ORDERED the opinion filed March 12, 2019, is amended as follows:

The paragraph on page 9 that reads:

The language of the deeds does not clearly indicate intent to create a conditional estate. Each deed indicates that it will be recorded as a joint tenancy with right of survivorship "until such time that Washington State tax lien is satisfied." CP at 30-31.

While "until such time" is typical fee simple determinable language, the entire phrase suggests that Mr. Hall intended to create a joint tenancy immediately, and that something unspecified would happen after the lien was satisfied. Because the conditional language of the deeds is ambiguous, we disregard the phrase beginning with, "until such time." Absent that language, either deed conveyed a joint tenancy to Ms. Czyhold.

shall be amended to read:

The language of the deeds does not clearly indicate intent to create a conditional estate. Each deed indicates that it will be recorded as a joint tenancy with right of survivorship "until such time that Washington State tax lien is satisfied." CP at 30-31. While "until such time" is typical fee simple determinable language, the entire phrase suggests that Mr. Hall intended to create a joint tenancy immediately, and that something unspecified would happen after the lien was satisfied. Because the conditional language is ambiguous, there was not sufficient intent to create a fee simple determinable. Absent that language, either deed conveyed a joint tenancy to Ms. Czyhold.

PANEL: Judges Korsmo, Fearing, Lawrence-Berrey

FOR THE COURT:


ROBERT LAWRENCE-BERREY
Chief Judge

BASALT LEGAL, PLLC

May 06, 2019 - 4:30 PM

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