

FILED
COURT OF APPEALS
DIVISION II
2012 MAY 23 AM 11:07
STATE OF WASHINGTON
BY SA [Signature]
DEPUTY

NO. 42823-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

JIMMY F. CAMPBELL and CHRISTINA L. CAMPBELL,
Appellants

vs.

JEAN ANN DAVOLT, as guardian for JOSEPH DUANE
BAILEY,
Respondent.

BRIEF OF RESPONDENT

Scott E. Blinks
Vander Stoep, Remund, Blinks and Jones
345 N.W. Pacific Avenue
Chehalis, WA 98532

TABLE OF CONTENTS

I. STATEMENT OF THE ISSUE.....1

II. STATEMENT OF THE CASE.....2

III. ARGUMENT AND AUTHORITY.....5

A. Standard of Review.....5

B. The Quit Claim Deed Allegedly Signed April 12,
1999 and Recorded August 2, 2001 is Invalid
Because a Conveyance of Community Real
Property Requires Signatures and Acknowledgment
by Both Spouses in the Document6

C. The Community Property Agreement Was Not
Rescinded.....8

IV. CONCLUSION.....10

TABLE OF AUTHORITIES

STATUTES

RCW 26.16.030.....1, 3, 7

WASHINGTON STATE CASES

Ambach v. French, 141 Wash. App. 782, 173 P.3d 941 (Div 3
2007).....5

Champagne v. Thurston County, 163 Wash. 2d 69, 178 P.3d 936
(2008).....5

In re Estate of Madsen v. Commissioner, 97 Wn.2d 792, 650 P.2d
196 (1982).....6

In re Estate of Wittman; 58 Wash 2d. 841, 365 P.2d 17 (1961).....8

Higgins v. Stanford, 123 Wash.2d 160, 866 P.2d 31 (Wash.
1994).....8

Vallandigham v. Clover Park Sch. Dist. No. 154 Wn.2d 16, 109
P.3d 805 (2005).....5

Wilson v. Steinbach, 98 Wn.2d 434, 656 P.2d 1030 (1982).....5

Wojcik v. Chrysler Corp., 50 Wn.App. 849, 751 P.2d 854
(1988).....5

Yesler v. Hochstettler, 4 Wash. 349, 30 P. 398 (1892).....6

I. STATEMENT OF THE ISSUE

Under RCW 26.16.030, a deed purporting to convey community real property is only valid if both spouses join in the execution of the deed. The deed which Appellants claim entitles them to an interest in the real property at issue purports to convey community real property while only containing the signature of one spouse. Is the deed invalid? YES.

II. STATEMENT OF THE CASE

Joseph Duane Bailey and Mary Margaret Bailey obtained the real property at issue in 1968.¹ They executed a Community Property Agreement thirty years later on October 10, 1998.² That agreement provided:

1. The parties agree that all property presently owned by either of them (including each party's separate property), is now their community property, regardless of the manner in which title to the property is held;

...

3. Upon the death of either of the parties hereto:
(a) All community property as defined in the pre-ceding paragraphs shall immediately vest in the survivor of them; and

...

³ Mary Bailey allegedly executed a quit claim deed for the community real property at issue in favor of Jimmy and Christina Campbell on April 12, 1999.⁴ Joseph Bailey's signature is not on that deed.⁵ Mary Bailey passed away May 31, 2001.⁶ The alleged

¹ Recorded Affidavit of Joseph Bailey, (hereinafter "Bailey Affidavit") Cowlitz County Auditor File Number 315050025, Exhibit A to Declaration of Scott Blinks, Clerk's Papers ("CP"), p. 22, ¶ 2.

² Community Property Agreement, Exhibit A to Bailey Affidavit (hereinafter "Community Property Agreement," CR pp. 25-27.

³ Id.

⁴ Quitclaim Deed from Mary Bailey to Jimmy and Christina Campbell, Exhibit B to Bailey Affidavit, CR p. 28.

⁵ Id.

quit claim deed signed April 12, 1999, was recorded thereafter on August 2, 2001 under Cowlitz County Auditor's file number 3122298.⁷

Jean Ann Davolt, as guardian for Joseph Bailey, filed an action to quiet title to the subject property on January 13, 2011.⁸ On summary judgment, the Court set aside two deeds that purported to transfer interests in the subject property to the Campbells.⁹ The first was a quit claim deed dated September 24, 2010 and recorded on September 29, 2010.¹⁰ Mr. Bailey, who resided at Monticello Park Retirement Center at the time of the deed's execution, was 86 years old, suffered from memory loss, and was highly vulnerable.¹¹ Christina Campbell had taken Mr. Bailey from his home to US Bank and convinced him to convey 50% of his former home to Jimmy and Christina Campbell in exchange for their "love and affection."¹² Not surprisingly, the deed was found to be void and set aside by the Court because Mr.

⁶ Id.

⁷ Id.

⁸ Complaint to Quiet Title to Real Property, Respondent's Supplemental Designation of Clerk's Papers and Exhibits.

⁹ Order Granting Partial Summary Judgment, Respondent's Supplemental Designation of Clerk's Papers and Exhibits; Order Granting Summary Judgment and Quieting Title to Real Property.

¹⁰ Order Granting Partial Summary Judgment, Respondent's Supplemental Designation of Clerk's Papers and Exhibits.

¹¹ See Declaration of Thomas Deutsch, Respondent's Supplemental Designation of Clerk's Papers and Exhibits, Declaration of Pam Rugh, Respondent's Supplemental Designation of Clerk's Papers and Exhibits, Declaration of Cordon Bittner, MD, Respondent's Supplemental Designation of Clerk's Papers and Exhibits.

¹² Motion for Summary Judgment Quieting Title to Real Property in Jean Davolt as Guardian for Joseph Duane Bailey, Respondent's Supplemental Designation of Clerk's Papers and Exhibits.

Bailey was not competent to execute a deed at the time of the conveyance.¹³

The second deed set aside by the Court is the subject of the current appeal.¹⁴ This was a quitclaim deed dated April 12, 1999 and recorded on August 2, 2001 under Cowlitz County Auditor's File Number 3122298.¹⁵ The Court found that said deed pertained to community property and did not contain the signatures and acknowledgments of both spouse as required by RCW 26.16.030.¹⁶ Title to the property was quieted in Jean Ann Davolt as guardian for Joseph Duane Bailey.¹⁷

¹³ Order Granting Partial Summary Judgment, Respondent's Supplemental Designation of Clerk's Papers and Exhibits.

¹⁴ Order Granting Summary Judgment and Quieting Title to Real Property.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

III. ARGUMENT AND AUTHORITY

A. Standard of Review

In reviewing an order granting summary judgment, the appellate court engages in the same inquiry as the trial court.¹⁸ Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.¹⁹ The court will consider the evidence in the light most favorable to the nonmoving party drawing all reasonable inferences therefrom.²⁰

In other words, summary Judgment is appropriate 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.”²¹ A material fact is one upon which the outcome of the litigation depends.²² Summary Judgment is granted only if reasonable persons could reach but one conclusion from all the evidence.²³ In opposing a motion for summary judgment, plaintiff cannot rest upon the mere allegations

¹⁸ *Champagne v. Thurston County*, 163 Wash. 2d 69, 178 P.3d 936, 940 (2008); see also *Ambach v. French*, 141 Wash. App. 782, 173 P.3d 941, 945 (Div. 3 2007), revd on other grounds, 167 Wash. 2d 167, 216 P.3d 405 (2009).

¹⁹ *Champagne*, 178 P.3d at 940.

²⁰ *Id.*

²¹ *CR 56(c)*.

²² *Wojcik v. Chrysler Corp.*, 50 Wn.App. 849, 853, 751 P.2d 854 (1988).

²³ *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)).

or denials in his complaint.²⁴

B. The Quit Claim Deed Allegedly Signed April 12, 1999, and Recorded August 2, 2001 is Invalid Because a Conveyance Of Community Real Property Requires Signatures and Acknowledgement By Both Spouses in the Document.

This Court should affirm the Superior Court's Order Granting Summary Judgment and Quieting Title to Real Property because the deed purported to convey community real property without the signatures and acknowledgment of both spouses.

Joseph Duane Bailey and Mary Margaret Bailey were married in 1967 and took title to the real property at issue in 1968.²⁵ As such, it was presumptively community property.²⁶ But even further, Mr. and Mrs. Bailey specifically declared all property to be community property immediately in the Community Property Agreement signed October 10, 1998.²⁷ In the agreement, they specifically declared "that all property presently owned by either of them (including each party's separate property), is **now** their community property."²⁸ Therefore, there cannot be any argument that the real property at issue was anything other than community property well before Mary Bailey allegedly signed the April 12, 1999, quit claim deed.

²⁴ See CR56(e).

²⁵ Bailey Affidavit, CP pp. 22-23, ¶¶ 2,4.

²⁶ *In re Estate of Madsen v. Commissioner*, 97 Wn.2d 792, 796, 650 P.2d 196 (1982); *Yesler v. Hochstettler*, 4 Wash. 349, 354, 30P. 398 (1892); See also RCW 26.16.030.

²⁷ Community Property Agreement, CP pp. 25-27.

²⁸ *Id.*, at ¶ 1 (emphasis added).

The quit claim deed allegedly signed by Mary Bailey on April 12, 1999, is invalid because the deed purported to convey an interest in community property without the signature and acknowledgment of both spouses. Washington law makes clear that the conveyance of community real property requires the signature and acknowledgment of both spouses or domestic partners. As RCW 26.16.030 plainly states:

Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both, is community property. *Either spouse or either domestic partner, acting alone, may manage and control community property, with a like power of disposition as the acting spouse or domestic partner has over his or her separate property, except:*

..

(3) Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.²⁹

...

The purported deed signed April 12, 1999, and recorded August 2, 2001, clearly does not contain the signature of Mr. Bailey nor does it contain his acknowledgement.³⁰ It contains only

²⁹ RCW 26.16.030 (emphasis added). This statute was amended in 2008, Laws 2008, ch. 6, §604, to add domestic partner language. The prior statute dated back to 1981.

³⁰ Quitclaim Deed from Mary Bailey to Jimmy and Christina Campbell, Exhibit B to Bailey Affidavit, CR p. 28.

the signature of Mary Margaret Bailey.³¹ It is, therefore, not valid.

Thus, when Mary Bailey passed away May 31, 2001, Joseph Bailey became the sole owner of the real property by operation of the Community Property Agreement. Ownership of the property remains with Joseph Bailey to date. The lower Court's ruling should be affirmed.

C. The Community Property Agreement Was Not Rescinded.

The Campbells further contend that the Baileys' Community Property Agreement was partially rescinded. However, on appeal of a motion for summary judgment, appellate courts consider only evidence and issues considered by the trial court.³² Because this is not an issue that was considered by the trial court, this issue is not properly before this Court. Nonetheless, the Campbells' claims related to this issue are without merit.

The Campbells' reliance on *Higgins v. Stafford* is misplaced.³³ As the Court in *Higgins* made clear, unilateral acts inconsistent with a community property agreement are not enough to achieve a rescission of the agreement.³⁴ Instead, mutual acts reflecting intent to rescind the agreement must be demonstrated.³⁵ In *In re Estate of Wittman*, for example, even when a husband and

³¹ Id.

³² *Ambach*, 173 P.3d at 945.

³³ See *Higgins v. Stafford*, 123 Wash.2d 160, 866 P.2d 31 (Wash. 1994); *In re Estate of Wittman*; 58 Wash 2d. 841, 365 P.2d 17 (1961).

³⁴ *Higgins*, 123 Wash.2d. at 4-5.

³⁵ Id.

wife each executed wills that conflicted with the prior community property agreement, the Court held that they had not abandoned the agreement because the wills had been executed separately and without the involvement of the other spouse.³⁶

In the present case, there was no mutual intent present to support the rescission of the Community Property Agreement. The quit claim deed was signed solely by Mary Bailey.³⁷ This was a unilateral act. No evidence has been supplied to indicate that Mr. Bailey even had knowledge of the deed. As such, this is not evidence of rescission.

But even further, the alleged acts which are used to support the Campbells' contention that Mr. Bailey intended the rescission occurred after Mary Bailey's death and after the property had already vested in Mr. Campbell by operation of the Community Property Agreement.

Finally, Mr. Bailey's recorded affidavit reflects his belief that the Community Property Agreement was not rescinded and that the property at issue passed to him pursuant to that agreement.³⁸ This directly contravenes the Campbells' argument. Not only was there a complete lack mutual intent, but to the contrary, there is evidence indicating Mr. Bailey's belief that the

³⁶ *In re Estate of Wittman*; 58 Wash 2d at 843.

³⁷ Quitclaim Deed from Mary Bailey to Jimmy and Christina Campbell, Exhibit B to Bailey Affidavit, CR p. 28.

³⁸ Bailey Affidavit, CR p. 23, ¶ 6.

property passed to him pursuant to the Community Property Agreement.

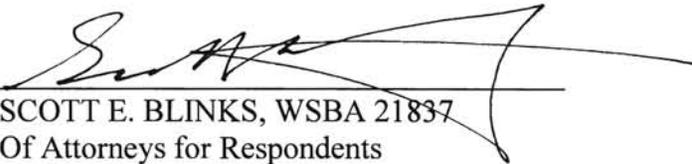
Accordingly, the Community Property Agreement was not rescinded and this Court should affirm the lower Court's ruling.

IV. CONCLUSION

This Court should affirm the lower court's Grant of summary judgment. The deed was invalid because it purported to convey community real property but did not contain the signatures of both spouses as required by Washington State law. Pursuant to their Community Property Agreement, when Mary Bailey died ownership passed to Joseph Bailey.

DATED this 22nd day of May, 2012.

VANDER STOEP, REMUND, BLINKS & JONES


SCOTT E. BLINKS, WSBA 21837
Of Attorneys for Respondents