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Division III
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35793-7-III

CHAD DAVIS, individually and as 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.

APPELLANT'S BRIEF

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I. INTRODUCTION

The Estate of Steven Ward Hall filed a TEDRA Petition against the Estate of Marianne Czyhold contending that deeds purporting to transfer property from Mr. Hall to Ms. Czyhold were invalid. The Czyhold Estate moved for summary judgment on the conveyance of this property located at 1803 E. Alder Street, Walla Walla, Washington (“Property”). At hearing, the trial court ruled that the deeds effectively transferred the Property. The Hall Estate now appeals.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred in granting the Czyhold Estate’s summary judgment motion.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Does the deed recorded on June 5, 2008 (“Recorded Deed”) effectively transfer the Property?

ISSUE NO. 2: Does the unrecorded deed dated January 15, 2008 (“Unrecorded Deed”) effectively transfer the Property?

ISSUE NO. 3: Was the trial court’s reliance on evidence unattached to any affidavit or declaration proper?

IV. STATEMENT OF THE CASE

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 quitclaim 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.

None of the evidence supporting the Czyhold Estate's summary judgment motion is attached to a declaration or affidavit. In addition to the alleged deeds, this includes alleged property tax documents, alleged Walla Walla County Assessor website printouts, and alleged utility statements for the Property. CP 33-49. The trial court order granting summary judgment states that it relied in part on these tax statements and utility bills. CP 65.

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.

V. ARGUMENT

Despite the legally insufficient language in the deeds and the inadmissible evidence in the record, the trial court improperly granted summary judgment, so its order should be reversed. In the alternative, to

the extent one of the deeds is effective—and they are not—the summary judgment order should be amended to state that the title transferred was a fee simple determinable.

The appellate court reviews summary judgment orders *de novo*. *Trimble v. Washington State University*, 140 Wn.2d 88, 93 993 P.2d 259 (2000).

I. The language of the Deeds does not convey title.

Under Washington law, the language of the Deeds fails to convey title as a matter of law.

All conveyances of land “shall be by deed.” RCW 64.04.010. Among other things, a quitclaim deed must include: 1) consideration; 2) a grantee; and 3) a legal description of the property. RCW 64.04.050.

Washington State has the strictest standards for a legal description in the nation. *Martin v. Seigel*, 35 Wash.2d 223, 212 P.2d 107 (1949). *Martin* is the seminal case on this issue. See *Tenco, Inc. v. Manning*, 59 Wash.2d 479,484, 368 P.2d 372 (1962). According to *Martin*, legal descriptions must include the correct lot number, block number, addition, city, county and state. 35 Wash.2d at 229. The full description of the portion of a lot conveyed must also reside in the deed without recourse to

extrinsic evidence. *Howell v. Inland Empire Paper Co.*, 28 Wash. App. 494, 624 P.2d 739 (1981).

The Unrecorded Deed contains no legal description whatsoever, so it conveys no title.

The Recorded Deed contains no consideration or grantee, so it too conveys no title. The Recorded Deed states that it is “for and in consideration of Steven W. Hall and Marianne Czyhold,” but these individuals are not consideration in a legal sense. The Recorded Deed states that it conveys property unto “1803 E. Alder and of 169 N. Wilbur Ave #13” but these are locations, not individuals or entities who can hold property.

The Recorded Deed also contains an inadequate legal description so the deed must fail under *Martin*. In addition to stating the appropriate lot number, block number, addition, city, county and state, a legal description must also account for each and every border of a parcel with exactitude. *Bigelow v. Mood*, 56 Wash.2d 340, 353 P.2d 429 (1960).

Here, the Recorded Deed’s legal description fails to include among other things the city, county and state. It describes the western and southern borders of the Property, but not its other borders.

For all of these reasons, the deeds fail to transfer title as a matter of law.

II. To the extent the deeds convey title, they convey a fee simple determinable.

In the construction of a deed, a court must give meaning to every word if reasonably possible. *Sunnyside Valley Irrigation Dist. V. Dickie*, 149 Wash.2d 873, 880, 73 P.3d 369 (2003). A fee simple determinable “is created by the use of durational language such as ‘for so long as,’ ‘while,’ ‘during,’ or ‘until.’” *Washington State Grange v. Brandt*, 136 Wash. App. 138, 150, 148 P.3d 1069 (2006). “The possibility of reverter arises automatically in the grantor as a consequence of the grantor’s conveying a determinable fee estate, and is not subject to the rule against perpetuities because the possibility of reverter is ‘vested’ in the grantor from its creation.” *Id.*

Here, both deeds state that a tenancy will only survive “until such time that Washington State tax lien is satisfied.” Accordingly, the trial court erred in failing to state that any conveyance was limited to a fee simple determinable, and that upon removal of any tax lien the property would revert to the grantor. *See Washington State Grange*, 136 Wash.

App. at 152 (Possibility of reverter “vests solely in the grantor and the grantor’s heirs.”).

III. The trial court erred in relying on inadmissible evidence.

The Czyhold Estate completely failed to obtain testimony swearing to the authenticity of its evidence, so all evidence except the deeds should not have been considered at the summary judgment hearing. As ER 901 states, authentication is a condition precedent to admissibility. While ER 901(h) may exempt notarized documents, in general other documents should be attached to the affidavit of an individual with knowledge who can testify to the documents’ authenticity. Failure to do so results in the exclusion of such evidence. *See SentinelC3, Inc. v. Hunt*, 181 Wash.2d 127, 141-142, 331 P.3d 40 (2014) (attaching expert report to attorney declaration instead of expert declaration failed to authenticate report, resulting in its exclusion).

Here, the trial court relied on unauthenticated tax statements and utility bills so at a minimum this Court should remand with instructions to consider summary judgment without this evidence.

VI. CONCLUSION

For the foregoing reasons, the trial court erred in granting the Czyhold Estate's summary judgment motion. Accordingly, this Court should: 1) reverse the decision of the trial court because the deeds fail to transfer title as a matter of law; or 2) remand with instructions to only consider admissible evidence and to rule on whether the conveyance—if any—was a fee simple absolute or a determinable fee with possibility of reverter.

RESPECTFULLY SUBMITTED this 11th day of May, 2018.

/s/ Jeremy Hyndman (signed electronically
to avoid delay)
JEREMY HYNDMAN, WSBA #44320
Attorney for Appellant

DECLARATION OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Mona Geidl
Minnick Hayner
PO Box 1757
Walla Walla, WA 99362

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 11th day of May, 2018 in Walla Walla, Washington.


Breanna Fogg

BASALT LEGAL, PLLC

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Transmittal Information

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