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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

Estate of ERNELL VELARDE, Deceased.

NANCY GONZALEZ,
Petitioner and Respondent,

v.

LAURA VELARDE SUPERVILLE,
Objector and Appellant.

A133760

(San Francisco City & County
Super. Ct. No. PES-10-293375)

Laura Velarde Superville appeals from a judgment after a court trial determining she holds only a 50 percent tenancy-in-common interest in her decedent father's former residence, with his estate owning the other 50 percent. She contends the evidence shows she succeeded to a 100 percent interest in the property as a joint tenant upon her father's death. We find the judgment is supported by substantial evidence, and affirm it.

I. BACKGROUND

Ernell Velarde, the father of Nancy Gonzales, Laura Velarde Superville, and Alfredo Velarde, died intestate on March 8, 2010.¹ Nancy was appointed administrator of the estate. During his life, Ernell owned the property commonly known as 167 Rome Street, San Francisco, California (hereafter the Rome Street property). The history of Ernell's interest in the property is as follows:

¹ For ease of reference and meaning no disrespect to the parties, we will refer hereafter to the Velarde family members by their given names except when quoting documents in the record.

1. On February 24, 1993, Rebecca C. Osborne, a widow, conveyed the Rome Street property to “Ernie A. Velarde, an unmarried man” by quitclaim deed.
2. On April 1, 1999, Ernell executed a deed transferring a one-half interest in the Rome Street property to “Laura Velarde Torres . . . in joint tenancy.”
3. On July 19, 2006, Ernell executed a deed transferring his “one half interest” in the property to Nancy Velarde Gonzales “as a co owner.”
4. On July 22, 2007, Ernell, Laura, and Nancy executed a deed transferring the property to “Ernell A. Velarde + Laura Velarde.” No language designating the grantees as co-owners, tenants in common, or joint tenants, or referring to a right of survivorship, appeared next to or after their names. The form deed was entitled “GRANT DEED.” Underneath the title, in lower case letters the following form language appears: “The undersigned grantor(s) declare(s): Documentary transfer tax is _____ () computed on full value of property conveyed, or () computed on full value less of liens and encumbrances remaining at time of sale. () Unincorporated area: () City of _____.” In the blank space for writing in the amount of the documentary transfer tax, Ernell hand-printed the words “Joint Tenancy.” The parties dispute whether Ernell wrote those words on the deed before or after Nancy signed it.

On June 18, 2010, Nancy filed a “Petition for Determination by Court Quieting Title to Real Property and for Declaratory Relief,” to which Laura filed opposition. Nancy contended the handwritten reference to “Joint Tenancy” in the 2007 deed did not create or convey any joint tenancy interest in the property but, at most, gave Ernell and Laura equal tenancy in common interests in the property such that Ernell’s one-half interest would have to be turned over to the administrator to be divided equally among Ernell’s three heirs. Laura took the position the 2007 deed created a joint tenancy in the property between her and Ernell, and that she succeeded to 100 percent of Ernell’s interest by right of survivorship.

Following an evidentiary hearing on the petition, the trial court adopted a statement of decision finding the 2007 grant deed created a tenancy in common in the property between Ernell and Laura. It specifically found the handwritten words “Joint

Tenancy,” in the location in which they were written, were insufficient as an express declaration of the grantors’ intent to create a joint tenancy. (See Civ. Code, § 683, subd. (a).)² Although the trial court acknowledged there was extrinsic evidence Ernell intended the 2007 transfer to provide Laura a place to live after he died, it did not find the evidence persuasive in light of conflicting evidence, discussed *post*, that Ernell did not in fact intend to create a joint tenancy. The court entered judgment ordering Laura to transfer a one-half interest in the Rome Street property to Nancy as administrator of Ernell’s estate. This timely appeal followed.

II. DISCUSSION

Laura contends this court should (1) independently construe the meaning and effect of the 2007 deed; (2) find the deed is patently ambiguous; and (3) determine based on specified extrinsic evidence, which is assertedly not in conflict, that the parties intended to convey the property to Ernell and Laura as joint tenants. We agree the trial court’s legal conclusion—that the deed on its face did not create a joint tenancy—is subject to independent review on appeal. In our view, however, writing the words “Joint Tenancy” on the deed in a blank space for the amount of the documentary transfer tax is insufficient to satisfy the express declaration requirement of Civil Code section 683. At most it creates an ambiguity as to the grantors’ intention to create a joint tenancy. Substantial evidence supports the trial court’s finding the parties did not intend to create a joint tenancy.

A. *Standard of Review*

We note at the outset California law does not favor joint tenancy. (*Reiss v. Reiss* (1941) 45 Cal.App.2d 740, 747.) The burden of establishing its existence is on the person claiming it. (*Estate of Kann* (1967) 253 Cal.App.2d 212, 219.)

² Subdivision (a) of Civil Code section 683 states in relevant part that “[a] joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, *when expressly declared in the will or transfer to be a joint tenancy . . .*” (Italics added.)

In *Estate of MacDonald* (1990) 51 Cal.3d 262 (*MacDonald*), our Supreme Court construed the meaning of statutory language requiring an “express declaration” in writing to transmute the separate property of a spouse into community property. (*Id.* at pp. 267–268.) The court relied on its analysis in an earlier case of similar wording in Civil Code section 683, as it read at the time, that a joint tenancy could be created by certain transfers from a husband and wife “ ‘when expressly declared in the transfer to be a joint tenancy. . . .’ ” (*MacDonald*, at pp. 271–272, citing and discussing *California Trust Co. v. Bennett* (1949) 33 Cal.2d 694 (*Bennett*), italics added by *MacDonald*.) The court summed up its analysis of the italicized words in section 683 and the holding in *Bennett* as follows: “[J]ust as [Civil Code] section 5110.730[, subdivision] (a) requires an ‘express declaration’ for a valid transmutation, section 683 requires that the creation of a joint tenancy be ‘expressly declared.’ Unlike section 5110.730[, subdivision] (a), however, section 683 explains what the express declaration it calls for must include. Specifically, section 683 requires that an express declaration creating a joint tenancy must, ‘in the transfer,’ declare the interest being transferred ‘to be a joint tenancy.’ (Civ. Code, § 683, subd. (a).) *Section 683 thus ensures that a court need not look beyond the face of a proffered writing to determine whether its writer intended to create a joint tenancy.*” (*MacDonald*, at pp. 271–272, italics added.)

MacDonald and *Bennett* do not hold, however, that a court may never resort to extrinsic evidence of intent. *MacDonald* states: “ ‘[I]t is well settled that where a statute requires the formality of a writing for the creation of an interest in property, it must contain words indicating an intent to transfer such interest, and *in the absence of words which could be interpreted to show such intent*, no parol evidence will be admitted.’ ” (*MacDonald*, *supra*, 51 Cal.3d at p. 271, quoting *Bennett*, *supra*, 33 Cal.2d at p. 699, italics added.) *Bennett* offers an instructive discussion of a case in which the trial court properly considered extrinsic evidence to determine if one of the corenters of a safe deposit box had a joint tenancy interest in the box’s contents. (See *Bennett*, at pp. 698–699, discussing *Estate of Dean* (1945) 68 Cal.App.2d 86 (*Dean*).) In *Dean*, the court found there was a conflict between the caption of a rental agreement for a safe deposit

box which read, “ ‘Joint Tenants’ . . . ‘([)One signature required—Right of survivorship[)],’ ” and the body of the rental agreement, which contained no express declaration of title or survivorship rights. (*Id.* at pp. 90–92.) The *Dean* court found the writing was “uncertain and ambiguous as to whether it was the intention of the parties to create a joint tenancy in the ownership of the contents of the box,” and therefore the trial court properly received parol and documentary evidence to determine the decedent’s intent in signing the agreement. (*Id.* at pp. 92, 97.) Ultimately, the trial court in *Dean* found no joint tenancy and the Court of Appeal affirmed. (*Id.* at pp. 87, 98.) *Bennett* discussed *Dean* with apparent approval and distinguished it as a case in which words appearing in the writing *could* be interpreted as expressing an intent to create a joint tenancy. (*Bennett*, at pp. 698–699.)

Here, the trial court in essence made alternative findings. It first found the deed was not ambiguous or uncertain and did not require the consideration of extrinsic evidence of intent: “The words ‘joint tenancy’ after the words ‘documentary transfer tax’ do not create a joint tenancy in the Rome Street property. In the absence of an express declaration of a joint tenancy, the deed creates a tenancy in common with Ernell and Laura. Even if there [was] evidence that Ernell intended to create a joint tenancy, which this Court does not find, the language is ineffective to create a joint tenancy.” In the alternative, the court implicitly assumed the handwritten reference to a joint tenancy did create ambiguity, and went on to discuss the extrinsic evidence concerning Ernell’s intent or lack of intent to create a joint tenancy, finding the evidence was in conflict, but there was insufficient evidence of an intent to create a joint tenancy. We will review the trial court’s interpretation of the deed independently, and its analysis of the extrinsic intent evidence under the substantial evidence rule. (See *City of Chino v. Jackson* (2002) 97 Cal.App.4th 377, 383–384.)

B. Admissibility of Extrinsic Evidence

We assume for purposes of analysis Ernell printed the words “Joint Tenancy” on the deed before Nancy and Laura signed it. If Nancy’s signature on the deed did not evidence her lawful consent to a joint tenancy, no valid joint tenancy interest was created.

(See, e.g., *Hernandez v. Hernandez* (1952) 109 Cal.App.2d 903, 910; *McNulty v. Copp* (1949) 91 Cal.App.2d 484, 492–493.) Since there was conflicting testimony on this issue, and the statement of decision seems to have assumed implicitly, without deciding, that the handwritten words were on the document when it was executed by the parties, we will proceed from the same assumption, at least initially.

Bennett and *MacDonald* suggest the first issue for decision under Civil Code section 683 is whether the 2007 deed contained any words which “could be interpreted” to show an intent by the grantors to create a joint tenancy interest. (*Bennett, supra*, 33 Cal.2d at p. 699, *MacDonald, supra*, 51 Cal.3d at p. 271.) On that question, we disagree with the trial court.³ In *Dean*, the Court of Appeal found a bank rental agreement for a safe deposit box was uncertain and ambiguous where the caption contained words indicating the parties were joint tenants with survivorship rights, but the body of the agreement contained no such declaration of title. (*Dean, supra*, 68 Cal.App.2d at pp. 90–92.) Here, we have the words “Joint Tenancy” capitalized and hand-printed near the center of the document, above the granting clause of the deed, and placed immediately below the caption reading “GRANT DEED.” It is true the words are written into a blank space intended for inserting the amount of the documentary transfer tax due, but nothing in the record suggests any tax-related reason Ernell would have had for placing the words there. Without regard to whether the deed created a joint tenancy, no documentary transfer tax would have been due since there was no change of ownership or “realty sold” for tax purposes. (Rev. & Tax. Code, § 11911, subd. (a); *Thrifty Corp. v. County of Los Angeles* (1989) 210 Cal.App.3d 881, 886.) We have no reason to believe Ernell wrote the words in issue because he thought they had transfer tax consequences. We note he had written in zeros next to the documentary transfer tax spaces on other form deeds he had executed in connection with intra-family transfers. Thus, one possible inference from Ernell’s placement of the words is that he was attempting to denominate the deed as

³ We note the parties did not cite *Bennett*, *MacDonald*, or *Dean* to the trial court and the court did not refer to or rely on these cases in its statement of decision.

a joint tenancy deed. At the same time, the granting clause itself contains no indication a joint tenancy was intended. The grantees are not designated there as joint tenants, and no reference is made to any right of survivorship. As in *Dean*, this creates a conflict between the caption and body of the deed.⁴

While the caption language at issue in *Dean* was much more explicit in showing an intent to create a joint tenancy, we think there was enough ambiguity and uncertainty in the deed before us that the trial court was required to consider extrinsic evidence of Ernell's intent.

C. Extrinsic Evidence

Laura contends the extrinsic evidence of Ernell's intent is not in conflict, but "uniformly points toward the conclusion that the 2007 deed created a joint tenancy" between her and Ernell. Laura focuses on discounting Nancy's testimony that (1) the words "joint tenancy" were not on the deed when she signed it, and (2) she would not have signed it if the those words had been present. According to Laura, this testimony cannot be considered substantial evidence because Nancy made other statements contradicting these claims in the context of this litigation.

"When a finding is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence in the record, contradicted or uncontradicted, that will support the finding. When two or more inferences can be reasonably deduced from those facts, the reviewing court has no power to substitute its deductions for those of the fact finder." (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 374.) Here, the fact in issue is whether the grantors intended the 2007 deed to convey a joint tenancy

⁴ We reject Laura's argument that Civil Code section 1651 and Code of Civil Procedure section 1862 dictate a result in her favor. These statutes require that we resolve a conflict between printed and handwritten words on a document in favor of the latter. But, here, Ernell also handwrote the operative words of the granting clause, which omitted any reference to joint tenancy or a right of survivorship. When there is a conflict between different handwritten terms, these statutory preferences do not provide a rule for resolving it.

interest in the Rome Street property to Laura. While Laura focuses on Nancy’s testimony about the form of deed she signed, there was other evidence in the record bearing on Ernell’s intentions as the deed’s author that Laura does not discuss—Ernell’s answers to questions on two form documents about the transfer he filled out and submitted contemporaneously with the deed.

In connection with the 2007 deed, Ernell filled out and signed a form “Preliminary Change of Ownership Report” (change of ownership report) required by the county for property tax assessment purposes. By his signature, Ernell certified his answers to the questionnaire were “true, correct and complete to the best of [his] knowledge and belief.” One of the questions asked was, “F. Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants?” To this, Ernell checked the box for “No.” The next question asked, “G. Does this transfer return property to the person who created the joint tenancy (original transferor)?” Ernell checked “No” in response to this question as well. While Laura asserts Ernell “mistakenly” checked the box for “No” on question F., she cites no evidence showing it was a mistake, or if it was not a mistake, explaining why Ernell would have answered questions F. and G. in the negative if he believed the deed did in fact create a joint tenancy in which he was one of the joint tenants. Similarly, in a “Transfer Tax Affidavit” Ernell executed under penalty of perjury in connection with the 2007 transfer, he describes the nature of the transaction as the “[r]emoval of one name on deed,” wrote in the word “co owner” as a response to a question about whether the transfer was a gift, and does not include any response representing a joint tenancy was created.

Laura argues another contemporaneous document Ernell filled out in connection with the 2007 transfer—a “Claim for Reassessment Exclusion for Transfer Between Parent and Child”—contradicts the other “ancillary” documents. She states, “at worst, the ancillary documents are ambiguous on Mr. Velarde’s intent and therefore cannot be deemed ‘substantial evidence’ that he did not intend to create a joint tenancy” Ernell’s reassessment exclusion claim does not in fact contradict Ernell’s other responses. The claim form included the question, “Was this property owned in joint tenancy?,”

which Ernell answered in the affirmative. But the question was phrased in the past tense, and it is not at all clear any inference can be drawn from his answer that Ernell believed the 2007 transfer *created* a joint tenancy interest. In any event, the substantial evidence standard does not require that evidence supporting the judgment be uncontradicted. “[T]he power of the appellate court begins and ends with a determination as to whether there is *any* substantial evidence, *contradicted or uncontradicted*, which will support the conclusion reached by the [trier of fact]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court.” (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429, italics added.)

Other evidence in the record also supports the trial court’s finding Ernell did not intend to create a joint tenancy. When Ernell wanted to create a joint tenancy he knew how to do so. In an April 1999 grant deed for another property he owned on Bryant Street, the granting clause itself provided he was granting a one-half interest “in joint tenancy” to himself and his daughters, and one-quarter interests to the daughters “each in joint tenancy.” In the April 1999 grant deed for the Rome Street property he specified in the granting clause he was transferring the property to himself and Laura “in joint tenancy.”

Although it is unnecessary to our decision, we are also of the opinion Nancy’s testimony that the words “joint tenancy” had not been written on the deed when she signed it constitutes substantial evidence no joint tenancy was created. Nancy’s testimony was not negated by her verified petition in which she attached a copy of the grant deed containing Ernell’s handwritten addition of the words “Joint Tenancy,” and represented it was a “true and correct copy” of the deed, or by her trial testimony that she believed her father had been entitled to dispose of the Bryant Street property according to his own wishes in 2005, even though her name was on the title and she received no compensation.

Substantial evidence in the record therefore supports the judgment. While there was also contrary evidence of Ernell’s intent—Nancy’s testimony Ernell told her in 2007

that he wanted Laura to have the property upon his death—this at most established a conflict in the extrinsic evidence of intent. The fact that the extrinsic evidence of Ernell’s intent was in conflict is not grounds for reversing the judgment.

We decline Nancy’s request that our order affirming the judgment specify the Rome Street property is owned 50 percent by Laura and 50 percent by Nancy in her capacity as the administrator of Ernell’s intestate estate. The judgment in force declares that Laura and Ernell’s estate each own 50 percent interests in the property. We find no basis in the record to modify or restate the judgment in the manner requested.

III. DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Dondero, J.