

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

WILLIAM GRABER, as Trustee, etc., et
al.,

Plaintiffs and Appellants,

v.

COUNTY OF SAN BERNARDINO,

Defendant and Respondent.

E054233

(Super.Ct.No. CIVRS1009797)

OPINION

APPEAL from the Superior Court of San Bernardino County. David A. Williams, Judge. Affirmed.

William N. Graber and Lucinda H. Graber, in pro. per., for Plaintiffs and Appellants.

Jean-Rene Basle, County Counsel, and Alan L. Green, Deputy County Counsel, for Defendant and Respondent.

Plaintiffs and appellants William N. Graber (William) and Lucinda H. Graber (Lucinda), cotrustees of the 2005 Graber Trust (the Graber Trust), sued defendant and respondent San Bernardino County (the County) for a refund of the Graber Trust's property tax payments, based upon the theory the County Assessment Appeals Board (the AAB) should have granted the Graber Trust's appeal for an exclusion from a property tax reassessment, due to the relevant land transfer being between a parent and child.¹ The trial court ruled against the Graber Trust. The Graber Trust contends the trial court erred because (1) the transfer of property was between a parent and child; (2) the court misapplied Government Code section 800, which concerns awards of attorney's fees; and (3) the court improperly limited the Graber Trust's first cause of action. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

William and Lucinda are husband and wife. William's parents were William Graber, Sr. (Father) and Lucille Graber (Mother). William has three siblings: Don, Tom, and Georgiana (the four siblings are collectively referred to as "the siblings"). In 1946, Father started a canning business known as Old Ranchers Canning Co., Inc.

¹ The Graber Trust filed a verified first amended complaint against the County, which included, among other things, (1) a cause of action for a writ, and (2) a request for a tax refund. The trial court treated the complaint as a writ petition. At this court, we treat the document as a complaint for a tax refund. (See *Little v. Los Angeles County Assessment Appeals Bd.* (2007) 155 Cal.App.4th 915, 923 ["The 'mechanism for judicial review of decisions by a county assessment appeals board is significantly different from that of other administrative agency decisions. Ordinarily the aggrieved taxpayer's remedy is not to seek administrative mandate pursuant to Code of Civil Procedure section 1094.5, but to pay the tax and file suit in superior court for a refund. [Citations.]' [Citation.]".])

(ORC), in Upland. In the late 1960s, Father personally purchased two adjoining parcels of real property to be used by ORC. The properties were located at 1059 East Eighth Street and Gilmore Drive (no street number) in Upland (collectively referred to as “the property”).

In 1975, Mother and Father created a revocable family trust, which was amended in 1984. The property was transferred into Mother’s and Father’s trust. Mother’s and Father’s trust provided William the right of first refusal to the 1059 East Eighth Street property in the event of a future estate distribution. Father died in 1996. Mother died on June 12, 2001. Upon Mother’s death, Mother’s and Father’s trust became irrevocable and the siblings became cotrustees of Mother’s and Father’s trust.

On December 24, 2002, Mother’s and Father’s trust was terminated and the property was transferred to the siblings as tenants-in-common, with each sibling holding a 25 percent interest in the property. William’s 25 percent portion of the property was held by the Graber Trust. In March 2003, Tom filed for an exclusion from tax reassessment based upon the property being transferred from a parent to children. The San Bernardino County Assessor (the Assessor) granted the exclusion.

Also in 2003, ORC received notice from a major client that the client would not be renewing its canning contract for the 2004 canning season. All four siblings worked for ORC. Due to the loss of the major client and the ages of the siblings, the siblings decided to close ORC. In 2003, the siblings began the multi-year process of winding-down ORC’s business. ORC exclusively occupied the property until 2006; however,

William resided part time in a caretaker residence on the property for the purpose of providing security. ORC issued its final payroll and ceased operating on May 31, 2008.

On May 23, 2008, the siblings' Property Division and Partnership Dissolution Agreement (the agreement) was finalized. Per the agreement, the remaining 75 percent of the property was transferred from the siblings, as tenants-in-common, to the Graber Trust. On May 20, 2009, the Graber Trust received notice 75 percent of the property was being reassessed based upon the May 23, 2008, transfer. The taxes increased from \$1,460 in 2008 to \$17,770 in 2009. On June 11 or 12, 2009, the Graber Trust filed a claim for the property to be excluded from reassessment based on the transfer being between a parent and child. In support of the claim, the Graber Trust asserted Mother and Father wanted the property transferred to William, but because the siblings were operating ORC and due to "complicated family dynamic[s]" it was simpler to have the property held equally by the siblings until ORC ceased operations. The Graber Trust explained the transfers were "step-transactions," wherein the substance of the transfers was ultimately a transfer from parent to child, although there was an intermediate step that was necessary due to the operation of ORC.

The Assessor denied the Graber Trust's claim for the property to be excluded from reassessment. The Graber Trust appealed the decision to the AAB. At the hearing before the AAB, Christine Lantis of the Assessor's Office explained that 75 percent of the property was transferred from William's three siblings to the Graber Trust, which triggered a reassessment of 75 percent of the property, because the transfer was between siblings. The AAB found the reassessment to be valid and denied the Graber Trust's

appeal. Also, the County denied the Graber Trust's claims for a partial refund of its property tax payments.

On November 22, 2010, the Graber Trust filed a first amended complaint in the trial court. The Graber Trust asserted the claim for the property to be excluded from reassessment should have been granted because the property was transferred from parent to child on May 23, 2008. The Graber Trust requested a refund of the overpaid taxes and a writ directing the Assessor to grant the claim for exclusion.

The County responded to the Graber Trust's first amended complaint. The County asserted the parent-child reassessment exclusion did not apply to the transfer between the siblings, and there was no exclusion for a transfer between siblings. The County further argued the transfer was not from the three siblings to William, but from the three siblings to the Graber Trust, which had two cotrustees—William and Lucinda. Mother and Father wanted the property to go to William, not the Graber Trust, so the County asserted the 2008 transfer was technically not made per Mother's and Father's wishes.

On May 20, 2011, the trial court held a hearing on the Graber Trust's first amended complaint. The trial court asked the parties to provide supplemental briefing on the case of *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635 (*Shuwa*). In *Shuwa*, the appellate court explained the idea of the "step transaction doctrine," in which a property is transferred in multiple stages, but with the ultimate intent of reaching the final transfer in the process. (*Id.* at pp. 1646-1648.) The concept places the substance of the transaction over the form, and permits the fiction that there

was only one transaction, when, in reality, the ultimate transfer was reached through multiple steps. (*Id.* at p. 1650.) So, for example, the transfer of the property to the siblings would be the first stage of the transfer process, with the ultimate goal being the Graber Trust having a 100-percent ownership interest once ORC ceased operations, thus creating a single transaction with multiple transfer steps.

The *Shuwa* court discussed the “end result test,” as a means of determining whether the step transaction doctrine should be applied: “Under the ‘end result test,’ purportedly separate transactions will be amalgamated with a single transaction when it appears that they were really component parts of a single transaction intended from the outset to be taken for the purpose of reaching the ultimate result. [Citations.]” (*Shuway, supra*, 1 Cal.App.4th at pp. 1650-1651.) A second test that could be used in determining application of the step transaction doctrine is the “‘interdependence test’ which requires an evaluation of ‘whether on a reasonable interpretation of objective facts the steps [are] so interdependent that the legal relations created by one transaction would have been fruitless without a completion of the series.’ [Citations.]” (*Id.* at pp. 1651-1652.) A third, stricter, test discussed by the *Shuwa* court is the “binding commitment” test, which “generally forbids the use of the step transaction doctrine unless ‘if one transaction is to be characterized as a “first step” there [is] a binding commitment to take the later steps.’ [Citations.]” (*Id.* at pp. 1652-1653.)

The County argued the step transaction doctrine did not apply to the instant case because “there is no evidence to support the claim that the interim transfers were in accordance with [Mother’s] directions.” The County argued that Mother wanted the

property transferred directly to William—not to the Graber Trust via multiple steps. The County asserted the transfer to the siblings was a choice made by “happenstance,” and not part of an overall plan to ultimately transfer the property to William in accordance with Mother’s wishes. The County further argued Mother’s and Father’s trust only concerned the parcel on East Eighth Street, it did not specifically mention the adjoining parcel on Gilmore. Thus, the County asserted that even if the step doctrine applied, it should only apply to the East Eighth Street parcel.

In the Graber Trust’s supplemental brief, it argued the trial court should apply the end result test, and conclude the transfer to the siblings was part of the ultimate transfer to the Graber Trust. The Graber Trust further asserted it would be unreasonable to treat the East Eight Street property as separate from the adjoining Gilmore property.

In issuing its written ruling, the trial court first addressed the Graber Trust’s argument that the AAB acted in an arbitrary and capricious manner, in that the AAB was inattentive and did not show an interest in the facts of the case. In discussing the issue, the trial court cited the phrase “arbitrary and capricious,” as it is used in Government Code section 800, which concerns attorney’s fees. The trial court used the law related to Government Code section 800 to form a definition of “arbitrary and capricious.” Ultimately, the trial court concluded the Graber Trust did not demonstrate the AAB’s decision was unreasonable, unauthorized, or made in bad faith.

Second, the trial court addressed the Graber Trust’s argument that there technically was not a change in ownership until 2008 because, until that time, ORC was still using the property, so there was no change in the beneficial use of the property.

The trial court rejected this argument, finding the siblings held full beneficial legal title to the property. The trial court reasoned the siblings could have changed the beneficial use of the property if they desired. Thus, the trial court found a change of ownership occurred on June 12, 2001—when the siblings took the property as tenants-in-common.

Third, the trial court addressed the application of the step transaction doctrine. The trial court found there was no evidence of a binding commitment to ultimately transfer 100 percent of the property to William, at the time the property was initially transferred to the siblings. The court concluded the property was ultimately transferred to the Graber Trust, which is controlled by William and Lucinda, seven years after Mother’s death. The court wrote, “The court does not believe that this series of transactions fits well into any of the three tests (end result, interdependence, or binding commitment) for application of the step transaction doctrine so as to require the AAB to find that the ultimate deed to the Graber Trust in 2008 was solely a transfer from parent to child and therefore excluded from reassessment.” Thus, the trial court ruled against the Graber Trust—entering its findings in favor of the County.

DISCUSSION

A. BENEFICIAL INTEREST

The Graber Trust asserts the trial court erred in denying its claim for a tax refund because the beneficial use of the property did not change at the time of the June 2001 transfer to the siblings, and thus there was not a change in ownership until the property was transferred to the Graber Trust in 2008—making the transfer one between a parent and child. We disagree.

At the outset, we note the Graber Trust clarifies it “did not rely on [the] step transaction doctrine” in trying to win its case. The Graber Trust asserts its argument relies on the theory that the beneficial use of the property did not change due to the June 2001 transfer to the siblings, and thus the only change in ownership was from Mother’s and Father’s trust to the Graber Trust. We apply the de novo standard of review when determining whether a change in ownership occurred. (*Phelps v. Orange County Assessment Appeals Bd. No. 1* (2010) 187 Cal.App.4th 653, 658.)

A “change in ownership” is defined as “‘a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.’ [Citation.]” (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1321; Rev. & Tax. Code, § 60.)² The beneficial use prong of the definition “requires that to constitute a change in ownership there must be a transfer not only of bare legal title but also of the transferor’s beneficial or equitable interest in the land.” (*Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 163 (*Pacific*)). “‘The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.’ [Citation.]” (*Id.* at p. 164.)

The legislative history of section 60 reflects, “the concept of ‘[b]eneficial use’ in the definition of a ‘change of ownership’ was meant ‘to protect custodianships, guardianships, trusteeships, security interests, and other fiduciary relationships from

² All subsequent statutory references will be to the Revenue and Taxation Code unless otherwise indicated.

unintended change in ownership treatment.’ [Citation.]” (*Fashion Valley Mall, LLC v. County of San Diego* (2009) 176 Cal.App.4th 871, 884.)

For example, in *Pacific*, the plaintiff conveyed title for an office building complex to Metropolitan Life Insurance Company in fee simple absolute, with a leaseback provision for 73 percent of the property. (*Pacific, supra*, 1 Cal.4th at p. 159.) The plaintiff paid rent at the market rate. The State Board of Equalization determined the sale and leaseback resulted in a change in ownership of the whole parcel, thus, the Los Angeles County Assessor reassessed the entire property. (*Id.* at p. 160.) In reviewing the matter, our Supreme Court wrote, “[T]here is no evidence showing a custodial or trust relationship, or that plaintiff sold the property for less than essentially the market price. Nor is plaintiff paying below-market rent under the lease; rather, the record reveals the contrary. There can therefore be no question that when Metropolitan Life purchased the property in fee simple absolute it acquired its beneficial use during the lease term.” (*Id.* at p. 164.)

The record in the instant case reflects ORC did not pay rent to the siblings. However, all four siblings were employed by ORC from 1970 through May 31, 2008. In September 1970, William moved into a caretaker residence on the property; William continues to occupy the caretaker residence part-time. The siblings took the property as tenants in common. “All tenants in common have the right to share equally in the possession of the entire property. [Citation.]” (*Kapner v. Meadowlark Ranch Assn.* (2004) 116 Cal.App.4th 1182, 1189.) Further, “‘one cotenant may encumber his undivided interest in property without the consent of the other tenants’” (*Kane v.*

Huntley Financial (1983) 146 Cal.App.3d 1092, 1097.) A tenant in common may also sell his individual interest in the property. (*Waterford Irr. Dist. v. Turlock Irr. Dist.* (1920) 50 Cal.App. 213, 217.)

In the present case, the siblings used the property to permit ORC, their family business, to operate on the property rent-free. Meanwhile, the siblings were all employed by ORC, gaining their livelihoods from the operation of ORC. Thus, the fact that the siblings did not collect rent from ORC is not per se determinative of the siblings not having beneficial use of the property, because the siblings were deriving a benefit from holding legal title—their family business was operating rent free. Additionally, the siblings benefitted from being able to encumber or sell their shares of the property. Thus, it appears from the record the siblings gained beneficial use of the property upon the transfer from Mother’s and Father’s trust. Thus, we conclude the trial court did not err.

The Graber Trust does not contest “that the livelihood of the Graber family was inextricably tied to [ORC] since its founding by [Father] and [Mother] in 1946.” The Graber Trust concedes ORC was the Graber family’s “sole source of livelihood.” However, the Graber Trust reasons that since the family was receiving this economic benefit before and after Mother’s death, the beneficial use of the property did not change when the property was transferred from Mother’s and Father’s trust to the siblings. The Graber Trust’s argument is not persuasive because the siblings had beneficial use of the property—the fact that they used the property for the same purpose as Mother and Father does not mean the siblings lacked beneficial use of the property.

There does not appear to be a requirement that the beneficial use of the property must change in order for there to be a change in ownership. The siblings were able to have the family business operate rent free and count their shares in the property as assets to be encumbered or sold. Plus, the siblings could have changed the use of the property if they desired. Thus, the siblings had beneficial use of the property, even if they used it in the same manner as Mother and Father.

Next, the Graber Trust argues the siblings had de facto control of the property prior to Mother's death because in her final years of life, Mother was unable to manage the property so she gave those responsibilities to the siblings. The Graber Trust asserts the siblings' "fundamental" ownership interest was in place before Mother's death, and thus, there was not a change in ownership in 2001. While the siblings may have assisted Mother with the care and maintenance of the property, the record reflects the siblings did not gain legal title to the property until Mother's death. Thus, we are not persuaded an ownership change did not occur in 2001.

In a third argument, the Graber Trust asserts the 2001 property transfer to the siblings was "contingent and inchoate," in that the transfers were dependent upon ORC's ability to continue operating on the property. The Graber Trust does not explain what contract or other document required the siblings to continue permitting ORC to operate the property. In other words, the Graber Trust does not demonstrate why the siblings could not have changed the use of the property if they chose to do so. Rather, the record reflects three of the siblings, in their roles as directors of ORC, made the

decision to close ORC in 2007. Thus, it appears from the record the siblings were not required to keep ORC operating on the property.

Fourth, the Graber Trust asserts the siblings were merely holding the property in trust for future distribution per Mother's and Father's wishes. While the siblings may have intended to merely be trustees of the property until a future distribution date, this does not alter the fact that a change in ownership occurred. Mother's and Father's trust directed that William had the right of first refusal to the East Eighth Street property. Instead, the property was distributed to the siblings as tenants-in-common, and then transferred to the Graber Trust, which is controlled by William and Lucinda. Thus, it appears William passed upon his right to inherit 100 percent of the East Eighth Street property upon Mother's death, and instead, he chose to share the East Eighth Street property with his siblings. As a result, we are not persuaded the siblings were merely holding the property until a future time when it could be distributed as Mother and Father desired, because it appears from the record William passed upon his right to inherit 100 percent of the East Eighth Street property upon Mother's death.

Fifth, the Graber Trust contends there was an oral family trust that conveyed only bare legal title upon the siblings when the property was transferred in 2001. As a general rule, the statute of frauds forbids the creation of an oral trust in real property. (*Jose v. Pacific Tile & Porcelain Co.* (1967) 251 Cal.App.2d 141, 143; Civ. Code, § 1624, subd. (a)(3).) Further, "the statute of frauds precludes an otherwise incomplete trust instrument from being completed by oral instructions. [Citations.]" (*Reagh v. Kelley* (1970) 10 Cal.App.3d 1082, 1093.) Accordingly, to the extent the Graber Trust

is asserting an oral trust required only legal title be transferred to the siblings, it appears the statute of frauds would cause such an argument to fail, because such a trust would need to be in writing.

The Graber Trust further argues the record supports the finding that an oral trust existed, and the oral trust required the siblings to hold various properties for a future distribution among themselves. Assuming for the sake of argument that an oral trust is applicable to the property at issue in this case, perhaps via equitable principles such as estoppel (see *Quan Shew Yung v. Woods* (1963) 218 Cal.App.2d 506, 512 [equitable estoppel can apply to an oral trust in land]), there would still be a reassessment change in ownership in 2008. The Legislature has provided that the “termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63” constitutes a change in ownership. (Former § 61, subd. (f) [eff. Jan. 1, 2007].) Section 62, subdivision (a), involves changing the method of holding title between partners, for example from tenants-in-common to joint tenancy. Section 63 concerns interspousal transfers. Neither of these exceptions would apply in this case. Thus, when the siblings terminated their tenancy-in-common, even if the oral trust existed, by statute there was a change in ownership—a transfer from the siblings’ tenancy-in-common oral trust to the Graber Trust.

Again, the problem is that it appears William passed upon his right to inherit 100 percent of the property upon Mother’s death, instead opting to share the East Eighth Street property with his siblings. Accordingly, if an oral trust existed, it seems it would have been between the siblings—after Mother died, the siblings orally agreed to hold

the property until ORC ceased operating; thus causing the transfer from the siblings to the Graber Trust to still fall outside the parent-child exception—the transfer was between the siblings, not parent and child.

Sixth, in clarifying that the Graber Trust is not relying on the step transaction doctrine, the Graber Trust asserts the “foundational legal principle” of the step transaction doctrine should be applied in this case—the principle of substance over form. The Graber Trust asserts the 2001 transfer to the siblings was, in form, a change in ownership, but was not a change in ownership in substance. While the siblings may not have intended a substantive change in ownership, their act of taking the property as tenants-in-common did create a substantive change in ownership in 2001, and a second substantive change in ownership in 2008 when the tenancy-in-common terminated, as explained *ante*. Thus, we are not persuaded by the Graber Trust’s “substance over form” argument.

B. GOVERNMENT CODE SECTION 800

The Graber Trust asserts the trial court’s decision was arbitrary because it relied upon Government Code section 800 when the Graber Trust was not seeking attorney’s fees. We disagree.

Government Code section 800, subdivision (a), provides a complainant may be awarded attorney’s fees in any civil action involving an appeal of an administrative proceeding if it is shown the “award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity.” In the Graber Trust’s first amended complaint, it

alleged the AAB's decision was "arbitrary and capricious." The trial court relied on Government Code section 800 for a definition of the terms "arbitrary and capricious." It was reasonable for the trial court to look to Government Code section 800 for a definition of the terms, because the law encourages consistent interpretations of similar terms. (*Estate of Maron* (1986) 183 Cal.App.3d 707, 712-713.)

In this case, the Graber Trust was accusing an administrative agency of acting arbitrarily and capriciously, while Government Code section 800 also addresses the issue of administrative agencies acting arbitrarily and capriciously. It is logical that the definition of "arbitrary and capricious" used for Government Code section 800 would also apply to the Graber Trust's first amended complaint, since they both involve the actions of administrative agencies. Thus, we conclude the trial court did not act arbitrarily by relying on Government Code section 800.

C. ASSESSOR

We now turn to the Graber Trust's contention that the trial court improperly limited the Graber Trust's first cause of action. The Graber Trust asserts it alleged, in its first amended complaint, that the fact-finding procedures used by the Assessor and AAB were inadequate, but the trial court only addressed the issue as it related to the AAB, and therefore the trial court erred. We disagree.

As explained *ante*, the trial court treated the first amended complaint as a petition for a writ of administrative mandate. A petition for a writ of administrative mandate concerns "any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and

discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer” (Code Civ. Proc., § 1094.5, subd. (a).) It is the AAB that must provide a hearing. (Rev. & Tax Code, §§ 1605.5, 1605.6.) It does not appear an assessor is required to provide a hearing. (Rev. & Tax Code, §§ 1361-1367.) Thus, the trial court only needed to review the Graber Trust’s allegations as they concerned the AAB, because only the AAB was required to provide the Graber Trust with a hearing, which could trigger the administrative mandate writ. Accordingly, we conclude the trial court did not arbitrarily ignore a portion of the Graber Trust’s first amended complaint.

DISPOSITION

The judgment is affirmed. Respondent, County of San Bernardino, is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

KING
Acting P. J.

CODRINGTON
J.