COURT OF APPEALS OF THE
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

FILED JUL 27 2015

LYNN K. McDONALD
CLERK OF COURT

COURT OF APPEALS OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

In Re the Estate of Clarence Enyart, App. Court File: 042-15

Decedent

Opinion and Order

Before BUFFALO, HOGEN MOLINE, and MASON MOORE, Appellate Judges.

I. Introduction

This case concerns the estate of Clarence Enyart, who died on August 12, 2013. Nine years before his passing, Mr. Enyart relinquished his reservation land assignment to his daughter, Tracy Lanham (f/k/a Tracy Green). But in his 2011 will, he attempted to transfer that same land assignment to his son, Paul Enyart. The Trial Court ruled that the land assignment was not part of Clarence Enyart's estate, and that Paul Enyart was not entitled to either the land assignment or any compensation therefor upon his father's death. Paul Enyart appealed, and we affirm.

II. Issues on Appeal

Paul Enyart's appeal raises three issues:

1. Did Clarence Enyart effectively transfer his land assignment to Tracy Lanham in 2004?

   We affirm the Trial Court's decision that he did.

2. Should the Trial Court have permitted Paul Enyart to conduct more discovery on whether Clarence Enyart relinquished his land assignment subject to any conditions?

   We find that the Trial Court did not abuse its discretion by denying further time to conduct discovery on this issue.

3. Should the Trial Court have applied the rule against ademption by extinction to the land assignment?

   We hold that the rule did not apply to the facts presented in this case.

III. Factual Background

Sometime before the fall of 2004, Clarence Enyart obtained a Residential Land Lease to the residence located at 3157 Sweetgrass Circle in Prior Lake on the Community's Reservation.[1] In 2004, he relinquished his land assignment to his daughter, Tracy Lanham, under the Community's Consolidated Land Management Ordinance.[2] The Community General Council confirmed the re-assignment of the land to Tracy Lanham in General Council Resolution No. 9-14-04-013.[3] The record does not reflect that anyone challenged this re-assignment.

[1] Brief of Estate of Tracy Lanham ("Lanham Brief") at 1.
[2] Transcript of December 18, 2014 Hearing ("Dec. 18, 2014 Tr.") at 9-10.
[3] *Id.*

Tracy Lanham moved into the residence in the fall of 2004 with her two children, Brock and Brandon Lanham.[4] She continued to reside there until her death in September 2014.[5]

As noted above, Clarence Enyart died on August 12, 2013. In Section 2.1 of his Last Will and Testament, Mr. Enyart declared:

> Subject to Shakopee Mdewakanton Sioux Community law, I prefer that my land assignment and home site be offered to my son, Paul L. Enyart, should he survive me. Should Paul L. Enyart decline to take possession of my land assignment and home site, I prefer that my land assignment and home site be "re-couped" by the Shakopee Mdewakanton Sioux Community and that the proceeds of such recoupment be distributed in accordance with Article Three of this will.[6]

In his affidavit to the Trial Court, Paul Enyart stated his belief that his father had conditionally given his land assignment to Tracy Lanham, subject to a signed agreement that she build Clarence Enyart an apartment within the residence.[7] Under this alleged agreement, if Ms. Lanham failed to maintain an apartment for Clarence Enyart within the Sweetgrass Circle residence, the land assignment would revert back to Clarence Enyart.[8] Paul Enyart did not produce a copy of any such agreement.

In October 2013, Judge Jacobson directed that Clarence's estate be administered. During a probate hearing on November 18, 2014, Paul Enyart brought Section 2.1 of the

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[4] Lanham Brief at 2.
[5] *Id.*
[6] Last Will and Testament of Clarence W. Enyart, Tr. Ct. Dkt. 6 (the "Will") at § 2.1.
[7] Affidavit of Paul Enyart, Tr. Ct. Dkt. 18, at ¶ 4.
[8] *Id.*

Will to the Trial Court's attention, and raised the issue of whether the land assignment should be included in Clarence Enyart's estate.[9] At that same hearing, counsel for the personal representatives of the estate noted that "we contacted the tribal attorney multiple times and have been told multiple times over the couple years that the land assignment was Tracy Lanham's, it was not Clarence Enyart's."[10] Nonetheless, Paul Enyart requested that the court order formal discovery on whether the land assignment was subject to a condition that Tracy Lanham maintain an apartment in the home for Clarence Enyart.[11]

Rather than order formal discovery, Judge Jacobson suggested that Paul Enyart write a letter to the Community's legal counsel to request further information about the land assignment,[12] which he did shortly after the hearing.[13] In response, counsel for the Community informed the Clerk of Court that the Community would provide the court with a copy of Community General Council Resolution 09-14-04-13, titled "Approving Relinquishment of Land Assignment from Clarence Enyart to Tracy Green."[14]

At the final probate hearing of December 18, 2014, the Community's counsel showed a copy of Resolution 09-14-04-13 to the Trial Court and the parties and counsel

[9] Transcript of November 18, 2014 Hearing ("Nov. 18, 2014 Tr.") at 8.
[10] *Id.* at 7.
[11] *Id.* at 13.
[12] *Id.*
[13] *See* Dec. 10, 2014 Letter from L. Leventhal to W. Hardacker, Tr. Ct. Dkt. 17.
[14] *See* Dec. 16, 2014 Letter from Attorney Hardacker to SMSC Clerk of Court, Tr. Ct. Dkt. 20 (the "Hardacker Letter").

present at the hearing, including counsel for the personal representatives of the estate, for Ms. Lanham's children, and for Paul Enyart.[15] According to the Trial Court, the resolution stated that Clarence Enyart had relinquished his land assignment to his daughter, Tracy Lanham, and that the General Council had approved the relinquishment.[16] The Resolution contained no contingency under which the assignment would revert to Clarence Enyart.[17] After viewing Resolution 09-14-04-13, Judge Jacobson held that Clarence Enyart relinquished the Sweetgrass Circle land assignment in 2004, so that it was not part of his estate at the time he executed his will or at his death in August 2013.[18]

IV. Legal Analysis

A. The Status of the Land Assignment

In 2002, the Shakopee Mdewakanton Sioux Community General Council enacted the Consolidated Land Management Ordinance (the "Ordinance") by General Council Resolution No. 06-28-02-005, and the Secretary of the Interior approved it on July 29,

[15] Dec. 18, 2014 Tr. at 9.
[16] *Id.*
[17] *Id.* at 9-10.
[18] *Id.* at 16.

2002. The Ordinance established a comprehensive system for the allocation and transfer of land assignments.[19]

Under the definition of "assignment" in the Ordinance, a recipient of a land assignment does not receive any additional interest in the land, apart from eligibility to "receive a residential lease."[20] Indeed, Section 3.8 of the Ordinance confirms that "[r]eceipt of a land assignment does not convey any property interests in the assigned parcel of land. An assignment cannot be encumbered, conveyed, nor sublet by any person."[21] A residential land lease does not confer ownership rights to a parcel of land. Rather, a residential land lease is a "legal instrument . . . that grants a leasehold interest for residential purposes after assignment of a residential parcel."[22] The recipient of a residential land lease therefore only possesses a possessory interest in the assigned property.[23]

The General Council holds the sole authority to assign land or to convey any interest in a land assignment.[24] The Business Council may assign land parcels to eligible persons under Chapters 3 and 4 of the Ordinance. But when a holder of a land

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[19] The status of a land assignment is a legal question, which we review *de novo*. *See, e.g. Stopp v. Little Six*, 1 Shak. A.C. 23 (Jan. 29, 1996); *Welch v. SMS(D)C*, 1 Shak. A.C. 35 (Oct. 14, 1996) (plurality opinion).
[20] Ordinance at § 1.3(A).
[21] Ordinance at § 3.8.
[22] *Id.* at §1(H).
[23] *See* Black's Law Dictionary 909 (8th ed. 2004) (defining "leasehold" as a "tenant's possessory estate in land or premises . . ..").
[24] *See* Ordinance at § 2.1.

assignment dies, any proposed transfer of the *use* interest is subject to Community government approval, as provided in the Ordinance and governed by Community law.[25]

Paul Enyart argues that at the time of the execution of Clarence Enyart's will, Clarence was in possession of all interests associated with the assignment.[26] But the only property interest ever available to Clarence Enyart was a residential leasehold. Even if he had held a possessory interest in the land assignment at the time of his death, all proposed transfers of interest are subject to Community government approval.[27] Throughout the proceedings before Judge Jacobson, Paul Enyart did not present any evidence that the Community approved any land assignment transfer from Clarence to Paul. Rather, the record reflects that Clarence Enyart did not have a leasehold interest in the land assignment at the time of his death because he had relinquished it to his daughter several years earlier. And nothing in the record reflects that Clarence Enyart had attempted to enforce the alleged conditions on the transfer of the assignment to Tracy Lanham before his death.

Chapter 4 of the Ordinance provides procedures for an *inter vivos* relinquishment of a land assignment by an enrolled tribal member. Under Section 4.14 of the

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[25] *Id.* at § 4.12.1

[26] Brief of Paul Enyart ("Enyart Brief") at 12-13.

[27] Indeed, Mr. Enyart recognized as much in his will when he bequeathed his land assignment to Paul Enyart "[s]ubject to Shakopee Mdewakanton Sioux law." Will at § 2.1.

Ordinance, a member can voluntarily relinquish his or her land assignment for reassignment and lease to another enrolled member or to the Community. But doing so terminates the prior holder's residential land lease.[28]

In the present case, Clarence Enyart requested that his land assignment be transferred to his daughter Tracy Lanham.[29] The Community approved this land-assignment transfer in General Council Resolution No. 9-14-04-013.[30] Nothing in that document nor in any other evidence presented to the court indicated that the Community's approval of the land assignment transfer was subject to any conditions.

In fact, the land assignment was transferred to Tracy Lanham and she lived there for nearly ten years before Clarence Enyart's death. We agree that Clarence Enyart did not have any property interests in the land assignment to give to Paul at the time of his death, and affirm the Trial Court's ruling to that effect.

B. Additional Discovery

Paul Enyart doesn't really contend that—based on the evidence before it—the Trial Court was wrong to exclude the land assignment from Clarence Enyart's estate. Instead, his real argument is that the Tribal Court should have been permitted him to further explore his contention that his father *conditioned* relinquishment of the land

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[28] *Id.* at § 4.10.
[29] Dec. 18, 2014 Tr. at 9-10.
[30] *Id.* at 10.

assignment to Tracy Lanham on her providing an apartment on the property for him, and that Ms. Lanham violated that condition.

Whether to allow discovery and to what extent is within the Trial Court's discretion. And because a trial court has broad discretion to manage discovery of a pending proceeding, we review the issue of whether the Trial Court should have permitted additional discovery for abuse of discretion.[31]

In General Council Resolution 05-12-98-002, the Community authorized the Tribal Court to use the Uniform Probate Code ("UPC") to decide probate matters. Under section 1-304 of the UPC, the Federal Rules of Civil Procedure govern probate proceedings, and under Federal Rule 26(b), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Even so, discovery is subject to Rule 26(b)(2)(C), which permits a trial court to limit the "frequency or extent of discovery" on motion or on its own, if:

> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

[31] *See Wiggin v. Apple Valley Med. Clinic, Ltd.*, 459 N.W.2d 918, 919 (Minn. 1990) (citing *Erickson v. MacArthur*, 414 N.W.2d 406, 407 (Minn. 1987) ("[W]e will not disturb a trial court's decision regarding discovery absent a clear abuse of discretion")); *In re Hardieplank Fiber Cement Siding Litig.*, No. 12-MD-2539, 2014 WL 5654318, at *1 (D. Minn. Jan. 28, 2014) ("A decision regarding the scope of discovery is a procedural matter, reviewed for abuse of discretion.").

> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

The Trial Court didn't explicitly weigh those factors in its decision to deny further discovery in this case, but we nonetheless find that the court did not abuse its discretion by denying further discovery. As we have discussed, the Trial Court encouraged Paul Enyart to engage in informal discovery to obtain records of the Community regarding the land assignment because the Community was not party to the probate proceedings and enjoys immunity from suit.[32] He granted additional time to probate the estate to permit this informal discovery, even though the estate's personal representative was a Community employee who had served as Clarence Enyart's conservator of estate before Mr. Enyart's death and had represented to the Court that all the records he had seen regarding the land assignment—having asked for the records "multiple times over the years"—showed that Mr. Enyart unconditionally relinquished his land assignment to Tracy Lanham in 2004.

Further, after the Community presented the General Council resolution to the parties and the Trial Court confirming the unconditional assignment from Clarence Enyart to Tracy Lanham, what Paul Enyart actually asked the Trial Court to do was

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[32] *See supra* at 4.

allow more time so he could petition the Community's *Business Council* for relief regarding the land assignment:

> Mr. Leventhal: [I]t is specifically provided in the land code that determinations by General Council -- excuse me, by the Business Council can be made after death. I would make reference to 4.12.4, posthumous transfer of land assignment. And so that would be in the ability of the General Council -- of the Business Council.[33]

Judge Jacobson agreed that any relief regarding the land assignment would have to come from the Community's other branches of government:

> Judge Jacobson: I take your point, Mr. Leventhal, with respect to the powers of the Business Council and ultimately the General Council with respect to land assignments and, and the -- the imposing or requiring of compliance with laws and equitable considerations. *But this Court doesn't have that role.*
>
> In the, under the Consolidated Land Ordinance, when we're looking at the section, I cited Section 4 4.10 speaks only of the Business Council and the General Council. And looking again at the sections that are relevant to this relinquishment, this particular relinquishment, it seems to me or it seems clear to me that the relinquishment, when it is approved by the General Council, it is effective immediately. And Section 4.14.1 notes in its final sentence the decisions of the General Council on any request under this paragraph is final.
>
> So it seems to me that the estate is correct, the land assignment is not properly part of the estate and therefore is not, would not properly be included in the inventory. If your client believes, as he clearly does, that there should be effect given to Mr. Clarence Enyart's request in Article 2 Section 2.1 of his will, it seems to me that that case should be made to the Business Council.[34]

[3333] Dec. 18, 2014 Tr. at 12.

[34] *Id.* at 15-16 (emphasis added).

Particularly in light of Paul Enyart's admission that the Business Council—and not the Court—would have to act on the land assignment, it was reasonable for the Trial Court to deny further discovery so that the estate could be probated. Delaying the process so that Paul Enyart could seek political relief would have complicated the probate process for both Clarence Enyart and Tracy Lanham. Based on the facts presented to him, Judge Jacobson reasonably determined that any benefit derived from further discovery was outweighed by the burden of continuing discovery, and we find that he did not abuse his discretion.

C. Rule Against Ademption by Extinction

Enyart additionally argues that even if the land assignment itself cannot be transferred to him, he is entitled to any proceeds from a past or future sale of the property based on the non-ademption doctrine of the Uniform Probate Code.[35] Whether the doctrine applies is a question of law, which we review *de novo*.[36]

In support of this argument, Enyart cites *Estate of Tracy L. Stade-Rapasky*.[37] In that case, the decedent Community member had devised her land assignment to her granddaughter, who was a minor at the time of the member's death. The Court held

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[35] Enyart Brief at 13.
[3636] *See, e.g. Stopp v. Little Six*, 1 Shak. A.C. 23 (Jan. 29, 1996); *Welch v. SMS(D)C*, 1 Shak. A.C. 35 (Oct. 14, 1996) (plurality opinion).
[37] 6 Shak T.C. 111 (June 28, 2012).

that, under the Ordinance, only adult Community members could hold land assignments,[38] so the land assignment was not part of the estate.[39]

Under the doctrine of "ademption by extinction," when an individual devises property in his will, and the individual no longer owns that property at the time of his death, the devised property is considered adeemed and the gift is considered void.[40] The Court in *Estate of Tracy L. Stade-Rapasky* cited Section 2-606 of the UPC as an equitable doctrine to overcome the harsh effects of ademption. Under the UPC, a pecuniary award to a devisee may be permitted "to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution."[41] The *Stade-Rapasky* Court thus held that, because the decedent did not intend the property to be adeemed, the minor granddaughter was entitled to receive net proceeds from the sale of the land assignment and the home.[42]

The present case is, however, distinguishable from *Estate of Stade-Rapasky*. In the *Stade-Rapasky* case, the problem with the testamentary land-assignment gift was that as a matter of tribal law, it could not pass to a minor. Here, the problem is that, at the time Mr. Enyart purported to devise the land assignment to his son Paul, he had already relinquished it without qualification to his daughter Tracy Lanham seven years earlier.

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[38] *Id.* at 116.
[39] *Id.* at 118.
[40] *Id.* at 116 (citing James A. Casner & Jeffrey N. Pennell, *Estate Planning*, Vol. 1, 3062 § 3.2.5.2 (7th ed. 2006)).
[41] UPC § 2-606(a)(6).
[42] *Estate of Stade-Rapasky*, 6 T.C. at 118.

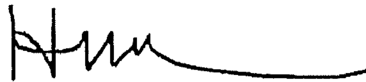
Once the General Council approved the relinquishment of his land assignment to Tracy Lanham in 2004, Clarence Enyart simply did not have the land assignment to bequeath or otherwise to anyone in his 2011 Will, and so the land assignment does not fit the doctrine of ademption or the UPC rule avoiding it. Were it otherwise, testators could create rights in property they didn't own simply by including devises to it in their wills.

V. Conclusion and Order

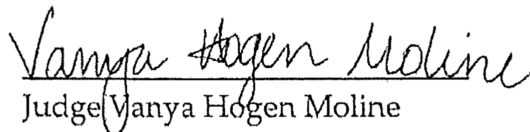
For all these reasons, we affirm the Trial Court's conclusion that Clarence Enyart legally transferred his land assignment to Tracy Lanham in 2004, find that Judge Jacobson's decision to deny further discovery on that issue was not an abuse of discretion, and affirm that ademption by extinction did not apply in this case. We AFFIRM the Trial Court's order settling the estate of Clarence Enyart.

SO ORDERED.

Dated: July 27, 2015



Judge Henry M. Buffalo, Jr.



Judge Vanya Hogen Moline

Pro Tem Judge Terry Mason Moore