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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Estate of BEATRICE FAIRBANKS, Deceased.	2d Civ. No. B287087 (Super. Ct. No. 1470142) (Santa Barbara County)
PUTNAM R. FAIRBANKS et al., Petitioners and Appellants, v. MARGARITA F. LANDE, Objector and Respondent.	

Putnam R. Fairbanks, Fredrick Alden Fairbanks, Jr., Carlos K. Fairbanks, and Miguel L. Fairbanks (the Fairbankses) appeal a judgment in favor of Margarita F. Lande (Lande) on the Fairbankses' petition to invalidate a deed conveying title to real estate to Lande. We conclude, among other things, that substantial evidence supports the findings that the deed was

valid and the elements of delivery of the deed and acceptance by Lande, as the grantee, were established. We affirm.

FACTS

Beatrice Fairbanks (Beatrice) had five children – four sons, Putnam R. Fairbanks, Fredrick Alden Fairbanks, Jr., Carlos K. Fairbanks, Miguel L. Fairbanks, and a daughter, Margarita F. Lande. Beatrice owned a condominium.

On April 22, 2013, Beatrice executed a deed granting Lande title to the condominium and reserved a life estate in the property for herself. Beatrice died on October 1, 2013. The next day Steven Von Dollen, Beatrice's attorney, recorded the deed.

Beatrice's sons filed a petition "to invalidate" the deed in the probate case involving Beatrice's estate. They claimed the deed was "the [p]roduct of [Lande's] undue influence."

Lande filed an objection to the petition. She denied the undue influence allegations. She said when Beatrice executed the deed, Beatrice indicated she wished the transfer to occur "immediately." Lande said she "accepted" that transfer of title from Beatrice. The case proceeded to a court trial.

Alena Meeker, Beatrice's granddaughter and financial advisor, testified that beginning in 2005 Beatrice repeatedly said she wanted Lande to have her condominium.

Von Dollen testified Beatrice discussed her plan to give Lande title to her condominium, while retaining a life estate in that property. In April 2013, Von Dollen learned that in 10 days Lande planned to take a trip out of the country. He felt he needed to make the title change before she left.

On April 22, 2013, Von Dollen met with Beatrice and Lande to execute the deed to Lande with the reserved life estate for Beatrice. Beatrice signed the deed. She told Von Dollen she

understood the documents she signed, she "agreed with them," and "they carried out her intent." He showed the signed deed to Beatrice and Lande. Von Dollen had Beatrice and Lande sign additional documents relating to the transfer of the property to Lande. Lande signed the "preliminary change of ownership report" and the "claim for reassessment exclusion for transfer between parent and child." Beatrice signed the "transfer tax affidavit" certifying that Lande was the "transferee."

Von Dollen did not immediately record the deed. The deed remained in his file for more than five months. The news that Beatrice died "prompted" him to remember to record the deed. He recorded it the day after Beatrice died. Von Dollen testified he did not record the deed after the April 22 meeting. After putting the deed in his file, he "overlooked it."

Lande testified, "I was told by Mr. Von Dollen that my mother wished to deed me that condominium and I accepted." Beatrice's son-in-law Charles Lande (Charles) testified that Beatrice told him that she wanted to give her condominium to Lande. After deeding the condominium to Lande, Beatrice told him "how pleased she was she had done it."

The Fairbankses' expert, Wado Joe Bush, an estate planning lawyer, testified, "For a grant deed to be valid, it has to be delivered. When a transfer deed is recorded, that's tantamount to delivery." Von Dollen should have recorded the deed immediately. His conduct was not consistent with the standard for lawyers who have "the duty" to follow the grantor's "specific intent to pass title with that document."

Margaret Lodise, Lande's expert, testified Von Dollen "complied" with the "standard of care."

The trial court denied the petition to invalidate the deed. It found: 1) "the Deed accomplished a valid transfer of the property" to Lande; 2) Beatrice's "life estate was terminated at Beatrice's death"; 3) Beatrice had "adequate capacity to execute the Deed"; 4) Beatrice "was not unduly influenced" to execute "the Deed"; 5) "[d]elivery of the Deed was adequate"; and 6) "[m]ost importantly, the action of the Deed accomplished the clear intent of Beatrice that her daughter [Lande] would receive the Condo." It found Bush's testimony was "not persuasive."

DISCUSSION

Delivery of the Deed

The Fairbankses contend the deed to Lande was "ineffective." They claim there was no "delivery" of the deed because there was no evidence to show the "grantor's immediate intent to convey title to [Lande]." We disagree.

"[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 conclusions reached by the trial judge." (*Estate of Pieper* (1964) 224 Cal.App.2d 670, 684.) We view the record in the light most favorable to the judgment and draw all reasonable inferences to support it. We do not weigh the evidence, resolve evidentiary conflicts, or decide the credibility of the witnesses. (*In re Marriage of Hill & Dittmer* (2011) 202 Cal.App.4th 1046, 1051-1052.)

For an effective deed, there must be a delivery by the grantor and an acceptance of the deed by the grantee. (*Estate of Pieper*, *supra*, 224 Cal.App.2d at p. 684.) " '[T]o constitute a valid delivery there must exist a mutual intention on the part of the parties, and particularly on the part of the grantor, to pass title

to the property immediately.' " (*Ibid.*) "[T]he delivery of an instrument is a question of intent, and . . . to complete delivery no precise form of words and no particular character of act is necessary." (*Moore v. Trott* (1912) 162 Cal. 268, 274.) "The delivery is sufficient and complete if from any or all of the circumstances the grantor has made known his intention irrevocably to part with his dominion and control over the instrument, to the end that it may presently vest title in another." (*Ibid.*)

The Fairbankses rely on evidence they introduced at trial or evidence they claim supports reversal. But the issue is not whether some evidence supports the appellants, it is only whether substantial evidence supports the judgment.

Here Von Dollen prepared the deed to change title to the condominium. The trial court found Beatrice's deed with her retained life estate "accomplished Beatrice's intent – to provide for her ability to stay in the Condo, and to give [Lande] title immediately." These findings are supported by Von Dollen's and Lande's testimony. Von Dollen said Beatrice wanted Lande to have title to her condominium and Beatrice wanted to retain a life estate. He knew Lande would be leaving for a trip within 10 days and he wanted to make that title change before that trip.

On April 22, 2013, Von Dollen met with Beatrice and Lande to execute the grant deed. He said Beatrice understood the documents, "she agreed with them," and "they carried out her intent." On that day, the signing of the documents for the title change was completed; Beatrice signed the "transfer tax affidavit" certifying that Lande was the "transferee"; and Lande signed two other change of ownership documents. Lande notes that the execution of *all these* documents *on the same day*

supports a trier of fact's reasonable inference that a delivery took place on that day. (Civ. Code, § 1055[1]; *Miller v. Jansen* (1943) 21 Cal.2d 473, 476; *20th Century Plumbing Co. v. Sfregola* (1981) 126 Cal.App.3d 851, 853; *Belli v. Bonavia* (1959) 167 Cal.App.2d 275, 279; *Neely v. Buster* (1920) 50 Cal.App. 695, 698-699.) The testimony that these documents "carried out" Beatrice's "*intent*" on April 22 is consistent with the court's delivery finding. (*Moore v. Trott, supra*, 162 Cal. at p. 274.) The signing of the *transfer tax affidavit with the deed* is relevant evidence supporting a reasonable inference that Beatrice intended to make an immediate title transfer. (*Prudential Ins. Co. v. Fromberg* (1966) 240 Cal.App.2d 185, 189.) That it was Von Dollen's responsibility to record the deed following the April 22 meeting does not invalidate the transfer.

Moreover, the grantor's statements made prior to "the making of the deed are admissible upon the issue of delivery." (*Coffey v. Cooper* (1960) 185 Cal.App.2d 464, 468.) Meeker testified that, beginning in 2005, Beatrice repeatedly said she wanted Lande to have her condominium. Charles testified that Beatrice told him that she wanted "to give her condominium to Margarita [Lande]."

A grantor's statements after executing a deed are also admissible on intent and "the issue of delivery." (*Coffey v. Cooper*, *supra*, 185 Cal.App.2d at p. 468; *Dinneen v. Younger* (1943) 57 Cal.App.2d 200, 207.) Lande notes Meeker testified that, after executing the deed to her, Beatrice told Meeker, " 'I'm so happy the condo is your mother's [Lande's].' " Charles also testified Beatrice told him "how pleased she was *she had done it*, *she had given it* to [Lande] and she was very excited about it."

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[1] All statutory references are to the Civil Code.

(Italics added.) That evidence supports a finding of delivery. (*Coffey*, at p. 468.) Lande testified the claim she made in her objection to the petition that Beatrice "indicated she *wished the transfer to occur immediately*" was "*accurate*, I believe." (Italics added.) A trier of fact believing the above testimony from these witnesses "could not escape a finding of fact that the deed was delivered." (*Stewart v. Silva* (1923) 192 Cal. 405, 411.)

The Fairbankses claim Lande contradicted herself by later testifying that the condominium was "her mother's property" until "she's not living there anymore." They interpret this to be favorable evidence and claim the trial court should have relied on this portion of her testimony and ruled in their favor. They argue Lande's testimony that the transfer was to occur immediately was not credible and deserved no evidentiary weight. But we do not weigh the evidence, resolve evidentiary conflicts, or decide the credibility of the witnesses as those are matters exclusively decided by the trier of fact. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1121.) Moreover, Lande claims the Fairbankses have "cherry-pick[ed]" a portion of her testimony that she gave as a result of her "confusion in response to unclear questions from [the Fairbankses'] counsel about the legal[] effective date of the instrument." The weight given to such testimony is exclusively resolved by the trial court. (*Dillard v. McKnight* (1949) 34 Cal.2d 209, 223-224.)

Lande also claims that, "[e]ven if her lay understanding of the 'legal import' of the effective date of the instrument was less than clear," it is not dispositive because other evidence supports the judgment. "[I]f the findings relating to the delivery of the deed to the respondent are substantially supported by the evidence, or if there is a substantial conflict in the evidence upon

which the findings are made to rest, the resulting judgment may not be disturbed." (*Longley v. Brooks* (1939) 13 Cal.2d 754, 758.) The trial court's finding that there was a delivery is supported by the record. (*Ibid.*; *Moore v. Trott*, *supra*, 162 Cal. at p. 274; *Neely v. Buster*, *supra*, 50 Cal.App. at pp. 698-699.)

Possession of the Deed by Beatrice's Attorney

The Fairbankses contend "Von Dollen's holding of the deed" meant Beatrice "retained possession" and there was no delivery. We disagree.

A third party's possession of the deed may, in some cases, be evidence that the grantor did not intend to immediately deliver the deed to the grantee. But here the trial court found Beatrice's intent was to immediately deliver title to Lande. Von Dollen retained the deed for the purpose of recording it. Giving the deed to counsel for this purpose was not inconsistent with Beatrice's intent to immediately transfer title to Lande. (§ 1059; *Neely v. Buster*, *supra*, 50 Cal.App. at pp. 698-699.) "Manual delivery of a deed to the grantee is not essential to the passing of title." (*Drummond v. Drummond* (1940) 39 Cal.App.2d 418, 423.)

In *Neely*, the grantor signed the deed and gave it to his attorney "with directions to give it to the grantee." (*Neely v. Buster*, *supra*, 50 Cal.App. at p. 698.) The grantor "parted with it without any reservation or condition." (*Id.* at pp. 698-699.) The court held, "These circumstances show quite conclusively that when he delivered the deed to his attorney he parted with all control over it, and intended that it should *operate as a present transfer* of the title to the land." (*Id.* at p. 699, italics added.)

Here the trial court could reasonably find that Beatrice gave Von Dollen possession of the deed without conditions, without reserving a right to retake possession, and that she did

not ever have possession of that document again. As in *Neely*, Beatrice "parted with all control over it" so that it "should operate as a present transfer" to Lande. (*Neely v. Buster*, *supra*, 50 Cal.App. at p. 699.) "The manual delivery having been established, and there being no evidence to show that the possession of the [deed] ever reverted to the grantor, the [grantee] should be entitled to the inference . . . that delivery in the sense of effecting a legal conveyance was intended." (*Mecchi v. Picchi* (1966) 245 Cal.App.2d 470, 483.) That Von Dollen took the executed deed does not invalidate the delivery. Section 1059, subdivision 2 provides, in relevant part, "Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered . . . [¶] . . . [w]here it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed." (See also *Herman v. Mortensen* (1945) 72 Cal.App.2d 413, 417.)

Delayed Recording of the Deed

The Fairbankses note Von Dollen did not record the deed until after Beatrice's death. They claim this shows the deed was only to "become operative" after Beatrice's death, and because it was "testamentary in character," it was "void as a deed." (Boldface omitted.)

Recording a deed after the grantor's death is a factor the court may consider in determining the grantor's intent. (*Blackburn v. Drake* (1963) 211 Cal.App.2d 806, 814.) But such post-death recording is not evidence of testamentary intent where "the grantor intended that title should immediately vest in the grantee" at the time the grantor executed the deed. (*Herman v. Mortensen*, *supra*, 72 Cal.App.2d at p. 417.)

Here the trial court found Beatrice intended to immediately transfer title to Lande. The grantor's intent is the critical factor, not the date the attorney recorded the deed. (*Moore v. Trott*, *supra*, 162 Cal. at p. 274.) Von Dollen testified that when he learned Beatrice had died, this "prompted" him to record the deed. He did not record it before her death because he put it in his file and "overlooked it." The court could reasonably find the delay in recording the deed was due solely to Beatrice's attorney's inadvertence, and not the result of Beatrice's direction or intent. Moreover, Von Dollen's failure to immediately record the deed "does not destroy the validity of the conveyance as between the parties." (*Mecchi v. Picchi*, *supra*, 245 Cal.App.2d at p. 485.) "[R]ecordation is not essential to the validity of a deed and . . . failure to record in and of itself does not vitiate delivery or the intent to make a present transfer." (*Blackburn v. Drake*, *supra*, 211 Cal.App.2d at p. 814; *Herman v. Mortensen*, *supra*, 72 Cal.App.2d at p. 417; *Merritt v. Rey* (1930) 104 Cal.App. 700, 707.)

In addition, the Fairbankses have not considered the significance of the trial court's *positive finding* on delivery. "The fact that the conveyance was not recorded until some time after the death of the grantor is *not of sufficient significance* to justify the setting aside of the conveyance in view of *the positive finding* of the trial court *with relation to the delivery* and effect thereof." (*Goodman v. Goodman* (1931) 212 Cal. 730, 733, italics added.)

Lande's Acceptance of the Deed

The Fairbankses contend there was no evidence showing Lande accepted the deed. They claim the deed was therefore not operative.

"[T]he assent of the grantee is necessary in order to make a delivery effective and the deed operative . . . ." (*Reina v. Erassarret* (1949) 90 Cal.App.2d 418, 426.) But "the law presumes that the grantee has accepted the grant or gift even though he has no knowledge of it or there is no express consent to such gift, where such gift would be beneficial to such grantee." (*Windiate v. Moore* (1962) 201 Cal.App.2d 509, 515.) There has been no showing that the deed to this property would not be beneficial to Lande.

The Fairbankses contend Lande's testimony shows she did not accept the deed. They cite portions of the record where Lande testified, among other things, "I don't recall," when she was asked if Beatrice said she wished the transfer to occur immediately, and where Lande said she did not recall "being presented with [the] deed." But citing conflicts in the evidence does not change the result. The trial court alone resolves the evidentiary conflicts. (*Muzquiz v. City of Emeryville*, *supra*, 79 Cal.App.4th at p. 1121.) Here it resolved them against the Fairbankses, and there is sufficient evidence to support the finding that Lande accepted the deed.

The Fairbankses omit a relevant part of Lande's testimony. Lande said, "I was told by Mr. Von Dollen that my mother wished to deed me that condominium *and I accepted*." (Italics added.) Moreover, Von Dollen testified that on April 22, 2013, he showed the signed deed to Beatrice and Lande, and Lande signed transfer of ownership documents that day, including the "preliminary change of ownership report" and the "claim for reassessment exclusion for transfer between parent and child." A trier of fact could reasonably consider Lande's execution of these documents in deciding this issue against the Fairbankses.

(*Mayers v. Loew's, Inc.* (1950) 35 Cal.2d 822, 827; *Prudential Ins. Co. v. Fromberg*, *supra*, 240 Cal.App.2d at p. 189.) The evidence supports a finding that there was both a delivery and an acceptance on the day the deed was signed.

Rejecting the Testimony of the Fairbankses' Expert

The Fairbankses contend the trial court erred by rejecting the testimony of Bush, their expert.

But the trial court found Bush "was not persuasive." The court said that "[h]e contradicted himself a number of times while being cross-examined."

The credibility of experts is a matter decided exclusively by the trial court. (*Biren v. Equality Emergency Medical Group, Inc.* (2002) 102 Cal.App.4th 125, 139.) "A trial court is not required to accept even unanimous expert opinion at face value." (*In re Marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1345.) They have not shown an abuse of discretion.

We have reviewed the Fairbankses' remaining contentions and we conclude they have not shown grounds for reversal.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to the respondent.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

James P. Ballantine for Petitioners and Appellants.

Cappello & Noel, LLP, A. Barry Cappello and Lawrence J. Conlan for Objector and Respondent.