No. A09-1591

STATE OF MINNESOTA

IN COURT OF APPEALS

Mirab Y. Bakken f/k/a Mirab Y. Helgeson,

Plaintiff/Appellant,

vs.

Olaf Helgeson, Estate of Olaf Helgeson, Walter Holcomb, Carol J. Lindgren, Myrna O. Warwick, Mary A. Hickerson, Linda L. Winkler, Wayne H. Yoemans, Catherine Yoemans, Spruce Shadows, Inc., a Minnesota Corporation, Erich Schissel, First National Bank, Bagley, Fosston,

Defendants/Respondents.

BRIEF OF RESPONDENTS FOR THE ESTATE OF OLAF HELGESON, CAROL J. LINDGREN, MYRNA O. WARWICK, MARY A. HICKERSON, AND LINDA L. WINKLER

ATTORNEYS FOR APPELLANT

Richard C. Mollin (#74342)
Mollin Law Office
118 North Johnson
Fosston, MN 56542
Telephone: (218) 435-1030

ATTORNEYS FOR RESPONDENTS

I. Jenny Winkler (#0339659)
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Telephone: (612) 340-2600

Ryan P. Winkler (#315874)
Nazca Solutions, Inc.
331 Second Avenue South, Suite 500
Minneapolis, MN 55401
Telephone: (612) 279-6134

Ryan K. Kieson (#0280471)
Drahos Kieson & Christopher, P.A.
502 – 24th Street NW
Bemidji, MN 56601
Telephone: (218) 444-1750

Table of Contents

Table of Authorities ii

Statement of the Legal Issue Presented 1

Statement of the Case 2

Statement of the Facts 3

Legal Argument 4

I. Standard of Review on Appeal. 4

II. The Trial Court Correctly Held That Appellant's Claim is Barred by The Statute of Limitations. 5

CONCLUSION 7

Table of Authorities

Page(s)

CASES

Dent v. Casaga,
208 N.W.2d 734 (Minn. 1973) 1, 5

Farm Credit Serv. of America v. American State Bank,
339 F.3d 764, 767 (8th Cir. 2003) 6

Nazarenko v. Mader,
362 N.W.2d 1 (Minn. App. 1985) 1, 5

Schulte v. Corner Club Bar,
544 N.W.2d 486, 488 (Minn. 1996) 4

Wallin v. Letourneau,
534 N.W.2d 712 (Minn. 1995) 4

STATUTES

Minn. Stat. § 548.09 ..... 1, 2, 5

Minn. Stat. § 550.01 ..... 1, 2, 5

OTHER AUTHORITIES

Minn. R. Civ. P. 56.03 4

Statement of the Legal Issue Presented

Did the trial court err in holding that Minnesota law bars a claim to enforce a judgment brought twenty-five years after the judgment was entered?

The trial court correctly held that Minnesota law bars a claim to enforce a judgment brought twenty-five years after the judgment was entered.

Minn. Stat. § 548.09; Minn. Stat. § 550.01; Dent v. Casaga, 208 N.W.2d 734 (Minn. 1973); Nazarenko v. Mader, 362 N.W.2d 1 (Minn. App. 1985).

Statement of the Case

Appellant Mirab Y. Bakken (formerly Mirab Y. Helgeson) brought this claim to enforce a lien included in a divorce decree and judgment entered in Beltrami County, Minnesota, on June 15, 1983. Appellant sought a foreclosure by action as the means to enforce the 1983 judgment lien, which she filed in September 2008. She brought the action against Respondents Olaf Helgeson, the Estate of Olaf Helgeson, Walter Holcomb, Carol J. Lindgren, Myrna O. Warwick, Mary A. Hickerson, Linda L. Winkler, Wayne H. Yeomans, Catherine Yeomans, Spruce Shadows, Inc., Erich Schissel, and First National Bank, Bagley Foston.

Respondents Spruce Shadows, Inc., and Erich Schissel filed a motion for summary judgment on December 8, 2008. Respondents Estate of Olaf Helgeson, Carol J. Lindgren, Myrna O. Warwick, Mary A. Hickerson, and Linda L. Winkler filed a motion for summary judgment on March 27, 2009. All of the respondents asked the trial court to dismiss Appellant's action in its entirety.

In an order filed June 29, 2009, the trial court dismissed Appellant's claims in their entirety and with prejudice. The trial court held that the divorce decree and judgment was filed on June 15, 1983, that the subject property was conveyed multiple times between 1983 and 1994, and that there were no genuine issues of material fact. The trial court held that Minn. Stat. § 548.09, subd. 1, and Minn. Stat. § 550.01 barred Appellant's claim because the ten-year period to enforce judgments had expired before Appellant brought her claim.

Appellant now appeals the trial court's order granting summary judgment and dismissing Appellant's claims in their entirety and with prejudice.

Statement of the Facts

Appellant Mirab Bakken and Olaf Helgeson were married until June 15, 1983, when a divorce decree and judgment were entered in Beltrami County, Minnesota. See Appellants' Appendix, at 1-6 ("A-1-6"). The divorce decree and judgment provided in part:

> [Mirab Bakken] shall have a lien against said homestead real estate in the amount of Five thousand and 00/100 ($5,000.00) payable when the premises are sold.

Id., at 5. The homestead real estate in question was described in the divorce decree and judgment as follows:

> Northeast Quarter of the Northeast Quarter (NE¼ NE ¼), Section 14, Township 148, Range 35 West, Beltrami County, Minnesota

Id.

In 1987, Olaf Helgeson conveyed the south sixty feet of the homestead property to Walter Holcomb (Appellant's father), and Mr. Holcomb conveyed the north sixty feet to Mr. Helgeson. See Exhibits 1-6 of the Affidavit of Ryan K. Kieson in support of Defendants Spruce Shadows Inc. and Erich Schissel's Motion for Summary Judgment, dated December 5, 2008, ("Kieson Aff."). In 1993, Olaf Helgeson transferred the property to his daughters, Respondents Carol Lindgren, Myrna Warwick, Mary Hickerson and Linda Winkler, reserving to himself a life estate. See id. In 1994, Mr. Holcomb sold the south sixty feet to Wayne Yeomans (Appellant's son). See id.

Mr. Helgeson died in 2007, and his life estate in the real estate described in the divorce decree and judgment was extinguished. Respondents Carol Lindgren, Myrna Warwick, Mary Hickerson and Linda Winkler then sold the property to Respondent Spruce Shadows, Inc., which then sold the property to Respondent Erich Schissel.

At no time between the entry of the divorce decree and judgment in 1983 and filing suit twenty-five years later in 2008 did Appellant renew her judgment or seek to enforce the lien contained in the divorce decree and judgment. During this time period, the property in question was transferred or conveyed, in whole or in part, a total of six times. See Kieson Aff., Ex. 1-6. These transactions involved Appellant's former husband, her father and her son.

Legal Argument

I. Standard of Review on Appeal.

On appeal from a summary judgment order, this Court reviews de novo (1) whether the trial court correctly held that there was no genuine issue of material facts; and (2) whether the trial court correctly applied the law to those facts. See Wallin v. Letourneau, 534 N.W.2d 712 (Minn. 1995).

Summary judgment must be granted where the record shows "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Summary judgment is appropriate when the only issue before the trial court is how to apply statutory language to the undisputed facts. See Schulte v. Corner Club Bar, 544 N.W.2d 486, 488 (Minn. 1996).

The trial court correctly determined that there are no genuine issues of material fact, and that the only issue to be decided by the trial court was the application of Minnesota law to the undisputed facts. The trial court's summary judgment Order was correct.

II. The Trial Court Correctly Held That Appellant's Claim is Barred by The Statute of Limitations.

The trial court correctly dismissed Appellant's claim based on the undisputed facts. Minn. Stat. § 548.09, subd. 1, establishes that a lien of judgment continues for ten years after entry of the judgment. Minn. Stat. § 548.09, subd. 1 (2008). Likewise, Minn. Stat. § 550.01 establishes that a judgment may be enforced "at any time within ten years after the entry thereof." Minn. Stat. § 550.01 (2008). A divorce decree and judgment requiring payment from one spouse to the other is a final judgment and becomes a lien on the property at the time the judgment is entered. See Dent v. Casaga, 208 N.W.2d 734 (Minn. 1973); Nazarenko v. Mader, 362 N.W.2d 1 (Minn. App. 1985). The lien that Appellant seeks to enforce was entered as part of a divorce decree and judgment in 1983 and was not renewed. This action was brought twenty-five years "after the entry" of judgment, and is therefore barred by Minnesota law.

Appellant seeks to overturn the trial court order by arguing that a question of fact exists as to whether a "sale" of the property occurred in the period between 1983 and 2008. Whether or not a sale occurred during this time period has no bearing on the passage of twenty-five years before Appellant sought to enforce the lien contained in the divorce decree and judgment. Whether or not a "sale" occurred during this time period is

not a fact material to whether Appellant's claim can still be brought. Minnesota law prohibits enforcing a judgment more than ten years after it is entered. Appellant's claim is barred by the statute of limitations, and the trial court correctly dismissed her claim.

Even if determining whether a "sale" of the property took place between 1983 and 2008 were material, it is not an issue of fact. The record contains all documents relied on by the parties that describe the transfers and conveyances. Those documents are deeds recorded at Beltrami County, Minnesota, and can be interpreted as a matter of law. See Farm Credit Serv. of America v. American State Bank, 339 F.3d 764, 767 (8th Cir. 2003). This Court need not consider whether a "sale" occurred in reviewing the trial court Order, but even if such a determination were necessary, this Court need not remand to the trial court to make that determination. Accordingly, this Court should uphold the trial court's summary judgment Order.

Conclusion

Respondents the Estate of Olaf Helgeson, Carol J. Lindgren, Myrna O. Warwick, Mary A. Hickerson, and Linda L. Winkler respectfully request that this Court uphold the trial court's ruling of June 29, 2009.

RESPECTFULLY SUBMITTED,

Dated: December 7, 2009

DORSEY & WHITNEY LLP

By _____
Jenny Winkler #0339659

Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

Attorney for Respondent Linda Winkler

Dated: December 7, 2009

By _____
Ryan P. Winkler #315874

331 Second Avenue South, Suite 500
Minneapolis, Minnesota 55401
Telephone: (612) 279-6134

Attorney for Respondents the Estate of Olaf Helgeson, Mary A. Hickerson, Carol J. Lindgren, and Myrna O. Warwick

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3, for a brief produced with a proportional font, Time New Roman 13 pt. The length of this brief is.1,309 words. This brief was prepared using Microsoft Word 2003.

Dated: December 7, 2009

DORSEY & WHITNEY LLP

By

I. Jenny Winkler #0339659

Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

Attorney for Appellant Linda Winkler