

NO. A11-180

State of Minnesota
In Court of Appeals

In the Matter of the Petition of Beachside I Homeowners
Association, a Minnesota non-profit corporation, for a
New Certificate of Title After Foreclosure of Assessment Lien

BRIEF OF RESPONDENTS PALLADIUM HOLDINGS, LLC
AND NORTHERN REALTY VENTURES, LLC

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INTRODUCTION

Petitioner Beachside I Homeowners Association (“**Beachside**”) challenges the lower court ruling presenting only one issue in this appeal: whether Thomas Schafer, obtained an interest in real property immediately upon the death of his Aunt Florence Schafer, in 2001, even though her estate was not probated and there was no judicial determination regarding Florence’s heirs. Beachside does not dispute that Thomas was an heir to Florence under laws of intestate succession. Rather, Beachside argues that Thomas and the rest of Florence’s heirs could not obtain any interest in the property unless, and until, her estate was probated or a legal determination was made regarding Florence’s heirs.

The Examiner of Title’s rejected Beachside’s arguments and determined that Respondent Palladium Holdings, LLC (“**Palladium**”) was entitled to judgment as a matter of law validating the interest that Thomas acquired upon the death of Florence and his subsequent conveyance to Northern Realty Ventures, LLC (“**NRV**”). Upon motion of Palladium, the lower court adopted the report of the Examiner and entered judgment for Palladium. This court should affirm the judgment of the trial court concluding that under the Uniform Probate Code and Minnesota case law, Thomas Schafer, as an heir of Florence Schafer, acquired an interest in her property upon her death.

LEGAL ISSUE

In its simplest form, the only question this Court must answer is:

Upon death, does title to a decedent's real property immediately devolve and vest in her heirs by operation of law?

This issue was raised in the parties' cross-motions for summary judgment before the Hennepin County Examiner of Titles, Kimball Foster and Palladium's motion before Hennepin County District Court Judge Susan N. Burke to adopt the report and recommendation of the Examiner of Titles. *See* APP 99-109, 142-151, 155-173, 175-190.

The Examiner of Titles concluded that a person's real property devolves to his or her heirs upon death, immediately vesting title in the heirs. (ADD-14.) The trial court reached the same conclusion and adopted the Examiner's report. (ADD 8.)

Apposite authorities:

Willis v. Jelick, 6 N.W. 373 (1880)

Lightbody v. Lammers, 98 Minn. 203, 108 N.W. 846 (1906)

In re Butler's Estate, 284 N.W. 889 (Minn. 1939)

Bemboom v. Nat'l Sur. Corp., 31 N.W.2d 1 (Minn. 1947)

Minn. Stat. § 524.3-101

STATEMENT OF THE CASE

On December 13, 2010, The Honorable Susan M. Burke, Hennepin County District Court, Fourth Judicial District, ordered judgment in favor of Palladium. (ADD 1-9.) Judgment was entered on December 15, 2010, granting NRV and Palladium's motion to adopt the Examiner of Title's Report and directing the Examiner of Titles to cancel the Certificate of Title for the property and enter a new Certificate of Title for the property in favor of Palladium. (ADD 1-17.) Beachside timely appealed from the judgment on January 26, 2011. (APP 191.)

Beachside is a homeowner's association that governs the community where the property at issue is located. Beachside foreclosed on a lien for homeowner's association assessments. (ADD 2; APP 51.) Beachside purchased the property at the sheriff's foreclosure sale on January 7, 2009 for \$5,413.17. *Id.* Junior creditors, Palladium and Evans Contractors, Inc. ("**Evans**"), both redeemed pursuant to Minnesota Statute § 580.24. Evans tendered \$10,395.98 to the sheriff for its redemption from Beachside and was issued a sheriff's certificate of redemption. (APP 51, 86-87.) Palladium redeemed from Evans, paying it \$13,650.98 and was issued a certificate of redemption from Evans. (APP 51, 90-92.)

On July 31, 2009, Beachside petitioned the trial court to enter a new Certificate of Title for the property in the name of Beachside. (ADD 2; APP 1-6.) Palladium and Northern Realty Ventures, LLC ("**NRV**") filed an objection and answer to the petition. (APP 11-13.) Upon agreement of the parties, the trial court ordered that parties' cross motions for summary judgment be heard before the Examiner of Titles Office. (ADD 3.)

On September 21, 2010, the Examiner of Titles issued a Report of the Examiner Including Statement of Uncontested Facts, Conclusions of Law, Recommended Order and Memorandum. (ADD 3, 10-17.) In its cross motion for summary judgment, Beachside presented the same argument as it presents in this appeal. The Examiner stated:

[Beachside] alleges that Thomas is not an heir until he has been adjudicated as such by the probate court and that his deed to NRV conveyed nothing. This position is not correct. A person's real property devolves to his or her heirs upon death, Minn. Stat. § 524.3-101.

(ADD 14.) The Examiner then concluded that title to the property vested in Palladium. (ADD 12.)

Palladium moved the trial court to adopt the Examiner's Report. (APP 174.)

Beachside objected, again arguing that Thomas Schafer had no interest in the property. (APP 175-183.) The trial court rejected Beachside's argument stating:

Notably, Beachside fails to cite any affirmative case law or statutory law which would establish that an individual is not an heir of a decedent until a probate court has determined that individual is an heir. After conducting extensive additional legal research, the Court has also found no case law or statute to support that position...the Court nevertheless finds that the legal principle for which the examiner cited those cases is both clear and well-established. Namely, a decedent's estate passes immediately to the decedent's heirs upon the death of the decedent by operation of law.

(ADD 8.) Accordingly, the trial court adopted the Examiner's Report and referred the matter back to the Examiner for further proceedings consistent with the order.

(ADD 9.) Beachside's appeal followed.

STATEMENT OF FACTS

On May 28, 1991, the Registrar of Titles entered Certificate of Title No. 761839 for Lot 49, Block 3, Beachside, the property at issue in this matter. (ADD 1; APP 50-51.) The Certificate of Title listed Florence Shafer as the owner of the property. *Id.*

In 1999, Florence's nephew, Thomas Schafer moved into the property to help Florence as her health was declining. (APP 152.) On December 9, 2001, Florence Schafer died intestate and her estate was not probated. (ADD 1; APP 152.)

Florence Schafer never married and did not have any children. (ADD 2; APP 152-153.) Florence's parents predeceased her. (ADD 2.) Florence had three brothers and one sister: Michael, William, Leonard, and Rose. (ADD 2; APP 152-153.) Rose, Leonard, and Michael all died prior to Florence. *Id.* Only Michael and William had children. *Id.* Florence's only living relatives at the time of this action were Michael's two children, Michael Jr. and Thomas, and William's two children, Richard and Peggy. *Id.*

After Florence's death, Thomas continued to live at the property, residing in the property as his home through the commencement of this action. (ADD 2; APP 152.) From 2001 until 2007, Thomas paid the expenses related to the upkeep and occupation of the premises, including the homeowner's association assessments to Beachside. (ADD 2; APP 153.)

In May 2007, Thomas stopped paying the association assessments for the property to Beachside as he had lost his job. *Id.* As a result, Beachside filed an association's assessment lien against the property on October 22, 2008. (ADD 2; APP 50.) The amount of the lien was for \$2,069.50. (APP 50.) Beachside foreclosed upon its assessment lien by advertisement pursuant to Minnesota Statutes Chapter 580. (ADD 2; APP 51.) On January 7, 2009, Beachside

purchased the property at its sheriff's sale for \$5,413.17 and received a sheriff's certificate of sale. (ADD 2; APP 51, 52-65.)

On June 1, 2009, during the owner's six-month to redeem from foreclosure, Thomas conveyed his interest in the property to NRV. (ADD 2; APP 66-70.) At that time, Thomas Shafer and NRV also entered into a transaction agreement. (ADD 2; APP 96-97.) Under the transaction agreement, NRV was to pay \$40,000 for a quit claim deed to the property, with \$500.00 being paid immediately upon the execution of the quit claim deed and the balance paid upon delivery of possession of the property.¹ (ADD 2; APP 97.) The transaction agreement provided that Thomas could live in the property until September 1, 2009. *Id.* It also provided that NRV would pay the real estate taxes for the property. *Id.*

Subsequently, NRV failed to pay the real estate taxes for the property as provided in the transaction agreement. (ADD 2.) On June 29, 2009, Thomas paid the unpaid real estate taxes for the property in the amount of \$2,438.03. (ADD 2; APP 78-80.) On June 30, 2009, Thomas' lien for payment of real property taxes pursuant to Minn. Stat. § 272.45 was recorded against the property as Doc. No. T4657011. *Id.* On June 30, 2009, Thomas assigned his tax lien on the property to Palladium, which assignment was recorded as Doc. No. 4657012. (ADD 2, APP 81-82.)

¹ In fact, on June 1, 2009, NRV paid Thomas \$6,000.00 upon his execution of a quit claim deed to NRV. (APP 94.)

In June 2009, NRV also contracted with Evans to perform work on the property including installing new flooring, new doors, and other minor repairs. (ADD 3; APP 94, 98.) Although Evans performed the work, NRV failed to pay Evans. *Id.* As a result, on June 25, 2009, Evans filed a mechanic's lien against the property for \$3,255.00, recorded as Doc. No. 45655058. (ADD 3; APP 51, 71-74.)

On July 14, 2009, Evans redeemed from Beachside pursuant to Minn. Stat. § 580.24 based upon its mechanic's lien, paying Beachside \$10,395.98, the amount Beachside claimed it was due and owing. (ADD 3; APP 51, 86-87.) The Hennepin County Sheriff issued a sheriff's certificate of redemption to Evans, which was recorded on July 21, 2009 as Doc. No. T4664732. *Id.*

On July 17, 2009, Palladium redeemed from Evans pursuant to Minn. Stat. § 580.24 based upon the tax lien assigned to it by Thomas. (ADD 3; APP 51, 90-92.) Palladium paid Evans \$13,650.98 to redeem and was given a certificate of redemption, which was recorded on September 30, 2009, as Doc. No. T4691228. *Id.*

On July 22, 2009, Evans also gave Palladium a quit claim deed for all of its interest to the property, which was recorded on July 23, 2009, as Doc. No. T4665584. (ADD 3; APP 51, 88-89.)

STANDARD OF REVIEW

Beachside does not contend that there are any genuine issues of material fact. Therefore, the only question before this Court is whether the district court

erred in its application of law, which is reviewed de novo. *See State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990); *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002); *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. Ct. App. 2002) (“But whether the findings of fact support a district court’s conclusions of law and judgment is a question of law, which we review de novo.”)

ARGUMENT

Palladium and NRV’s interest in the subject property were derived through Thomas Schafer as an heir of Florence Schafer. Beachside does not challenge that Thomas Schafer was an heir of Florence, but rather contends that since no probate court had formally determined the interest of Florence’s heirs in the property, Thomas had no interest in the property. (Appellant’s Br. at 8.) Therefore, Beachside argues, none of the work contracted for by NRV could create a valid mechanic’s lien and Thomas Schafer could not have obtained a valid lien for non-payment of real estate taxes. (Appellant’s Br. at 10-11.) All of Beachside’s arguments hinge upon the single legal question of whether the property of Florence Schafer devolved to her heirs at the time of her death.

Minnesota Statute § 524.3-101 directly addresses this issue by providing that: “[u]pon death, a person’s real and personal property devolves . . . in the absence of testamentary disposition, to the decedent’s heirs.” Minn. Stat. § 524.3-101. The term “heirs” is defined in Minnesota Statute § 524.1-201(27) as meaning those “persons, including the surviving spouse, who are entitled

under the statutes of intestate succession to the property of a decedent.” Minn. Stat. § 524.1-201(27). Minnesota Statutes § 524.2-103 provides that, if there is no surviving descendant or parent, an intestate estate passes to “the descendants of the decedent’s parents or either of them by representation.” Minn. Stat. § 524.2-103. Minnesota Statute § 524.1-201(11) defines “descendant” as meaning “all of the individual’s descendants of all generations, with the relationship of parent and child at each generation”. Minn. Stat. § 524.1-201(11).

In an affidavit of Thomas Schafer, he provides evidence that Florence Schafer, his aunt, was without living parents, a husband, children, or grandchildren at the time of her death. (ADD 152-153.) His affidavit identifies that the living descendants of Florence Schafer’s parents include Florence Schafer’s nephews and a niece: namely, Thomas Schafer, Michael Schafer, Jr., Richard Schafer, and Peggy. *Id.* There is no dispute as to who the heirs of Florence Schafer were at the time of her death or during the period of redemption from Beachside’s foreclosure. Thomas Schafer’s affidavit is not disputed or controverted by Beachside in any manner. His affidavit is sufficient to establish Florence Schafer’s death and kinship. *See e.g. Hoyt v. Lightbody*, 98 Minn. 189, 198, 108 N.W. 843, 846 (1906) (“The evidence of a witness whose knowledge with reference to the subject was derived from an intimate acquaintance with the family is admissible as to such facts of family history as marriage, kinship, name, and

death”); *Willis v. Jelick*, 6 N.W. 373, 374 (1880) (“A person claiming the right to redeem land ... may show by parol that the mortgagor died intestate, leaving her surviving, as her sole heirs at law, her husband and five children; that her estate had never been administered on, and that she left no debts; and that the husband and four of the children conveyed their interest in the mortgaged premises to the judgment debtor”).

At her death, then, under Minnesota Statute § 524.3-101, Florence Schafer’s property devolved to those heirs identified as descendants in Thomas Schafer’s affidavit. This is the conclusion properly reached by the Examiner of Titles and adopted by the district court in this matter.

While Beachside argues that a transfer cannot occur absent a determination of descent by a probate court, Minnesota Statute § 524.3-101 makes no mention of the necessity of a probate proceeding. *See* Minn. Stat. § 524.3-101. Rather, the language of this statute makes the transfer of a decedent’s property automatic and effective “[u]pon death”. *Id.* Beachside fails to analyze or even mention this statute in its brief.

That property is transferred upon death of a decedent and by operation of law without a probate proceeding is consistent with Minnesota case law. *See e.g. Bemboom v. Nat’l Sur. Corp.*, 31 N.W.2d 1, 4 (Minn. 1947) (“title to real estate passes to the heir at law ... upon the death of the owner, subject only to the right to possession of the administrator when appointed by the probate court for

purposes of administration”); *In re Butler’s Estate*, 284 N.W. 889, 890 (Minn. 1939) (“A decree of distribution is not the source of title. It merely declares what the law has ordained. It determines merely to whom, and upon what conditions, the property passes, and does not recognize or affect transfers or conveyances of the property made by heirs or devisees.”); *Justen v. Oxboro*, 296 N.W. 169, 170 (Minn. 1941) (mother inherited lease from decedent son immediately upon his death, even though no probate proceeding occurred).

The case of *Lightbody v. Lammers*, 98 Minn. 203, 108 N.W. 846 (1906), is especially instructive as it specifically addresses the rights of heirs to redeem from a foreclosure. In *Lightbody*, the defendant contended that since the estate of the decedent had not been fully probated, the plaintiffs did not adequately establish themselves as heirs so as to be entitled to redeem. *Id.* at 203. The Supreme Court rejected defendant’s arguments stating:

Upon the death of Lightbody and his wife ... the estate descended to the plaintiffs as his heirs at law. No act or decree of court was essential to vest the title in them. It was vested by operation of law.

Lightbody, 108 N.W. at 847.

Similarly, in *Willis v. Jelick*, the court determined that:

Under the law regulating the descent of real property, the equity of redemption which remained in the mortgagor at the time of her death immediately passed to her husband and children, subject only to the payment of her debts, if any, and it was competent for the latter to convey whatever estate or interest they thus acquired without waiting for administration upon her estate.”

Willis, 6 N.W. at 374.

Beachside attempts to distinguish *Lightbody* and *Willis*, noting that the redemption statute under which these earlier cases were decided expressly provided that the “mortgagor, *his heirs*, executors, administrators or assigns” were entitled to redeem, while Minnesota Statute § 582.23(a) [sic]², the current redemption statute, permits only the “mortgagor, the mortgagor’s *personal representatives* or assigns to redeem”. (Appellant’s Br. at 19.) (emphasis in original.) Beachside infers that the omission of “heirs” as an identified class in Minnesota Statute § 580.23, Subd. 1(a) prevents Thomas Schafer, as an heir of Florence, from having had any equity of redemption that could have been conveyed to NRV. *See Id.* Beachside’s argument, however, is flawed in that it ignores the meaning of “assigns”. The term “assigns” is defined in Black’s Law Dictionary to include “[a]ll those who take immediately or remotely from or under the assignor, whether by conveyance, devise, descent or act of law”. BLACK’S LAW DICTIONARY 154 (4th ed. 1968). Thus, Thomas Schafer, as an heir by operation of law, as well as NRV and Palladium, which took from and through Thomas Schafer, are all “assigns” within the meaning of Minnesota Statutes § 580.23. Furthermore, Minnesota Statute § 580.27, discussed below, expressly contemplates that heirs may redeem. *See* Minn. Stat. § 580.27. Beachside’s

² Beachside appears to have made a typographical error in its citation as Minnesota Statute § 582.23 does not exist. The proper citation is to Minn. Stat. § 580.23, Subd. 1(a).

attempt to distinguish *Lightbody* and *Willis* is, therefore, wholly misdirected and without substance.

Beachside next argues that since it foreclosed first, the property had already been involuntarily transferred before Thomas Schafer conveyed to NRV. Therefore, Beachside contends, no person or entity held a valid right to redeem and Thomas Schafer had no interest to convey to NRV. (Appellant's Br. at 15-16, 22.) Beachside's argument, however, neglects to recognize that all that Beachside acquired at the foreclosure sale was a sheriff's certificate, which was subject to rights of redemption by the "mortgagor, the mortgagor's personal representatives or assigns" and junior creditors. Minn. Stat. §§ 580.23, Subd. 1(a); 580.24. Under Minnesota Statute §580.27:

If redemption is made by the owner of the property sold, *the owner's heirs, personal representatives or assigns*, such redemption annuls the sale; if by a creditor holding a lien on the property, or some part thereof, the certificate of redemption, executed, acknowledged, and recorded as provided in section 580.26, operates as an assignment to the creditor of the right acquired under such sale, subject to such right of any other person to redeem as provided by law.

Minnesota Stat. §580.27. (emphasis added.) The sheriff's certificate of sale acquired by Beachside, therefore, evidenced only a conditional interest in the property which would operate as an absolute conveyance upon recording only if there had been no redemption. *See* Minn. Stats. §§ 580.27, 580.12, 580.19.

Beachside's further argues that the rights of any of Florence Schafer's heirs were lost because her heirs were required to commence a probate proceeding

within three years of her death, citing Minn. Stat. § 524.3-108. (Appellant's Br. at 16.) Minnesota Statute § 524.3-108, however, does not apply. It specifically provides that "[t]hese limitations do not apply to proceedings to ... determine heirs of an intestate or proceedings to determine descent." Minn. Stat. § 524.3-108. Furthermore, any interested person, including Beachside, could have petitioned the court to determine descent of the property after three years:³

Whenever any person has been dead for more than three years and has left real or personal property, or any interest therein, and no will or authenticated copy of a will probated outside this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state, any interested person or assignee or successor of an interested person may petition the court of the county of the decedent's residence or of the county wherein such real or personal property, or any part thereof, is situated to determine the descent of such property and to assign such property to the persons entitled thereto.

Minn. Stat. § 525.31.

The ability to petition the court under Minn. Stat. § 525.31 to determine descent after three years from a decedent's death, does not abrogate that descent occurs automatically upon the death of the decedent under Minn. Stat. § 524.3-101.⁴ See *In re Butler's Estate*, 284 N.W. at 890 ("A

³ Beachside, as a creditor, could have petitioned the court itself if it questioned who Florence Schafer's heirs were as "interested person" includes creditors. See Minn. Stat. § 524.1-201(32).

⁴ If descent did not occur automatically at death under Minn. Stat. § 524.3-101, heirs would likely lose any right to redeem where a decedent died during the

decree of distribution is not the source of title. It merely declares what the law has ordained”). Rather, Minnesota Statute § 525.31 sets forth a procedure to resolve a dispute where heirship may be in question. Beachside does not dispute that Thomas Schafer was an heir in this case. Thomas Schafer sufficiently established heirship by his affidavit which remains uncontrovered. *See Hoyt*, 108 N.W. at 846; *Willis*, 6 N.W. at 374.

Nor was Schafer or his assignees required to establish descent under Minn. Stat. § 524.3-101 in order to redeem. In *Lightbody*, the defendant argued that plaintiffs could not produce any evidence of their heirship or any reason entitling them to redeem, and that therefore, they did not, as a matter of fact, redeem the premises. *Lightbody*, 108 N.W. at 847. The *Lightbody* court rejected this argument and stated:

The plaintiffs’ right to redeem was not based on (1) a judgment; nor (2) of a deed of conveyance or mortgage; nor (3) any other lien. No final decree had been entered in the probate court. It does not appear that there was any document or record in existence by the production of which the right to redeem could have been proven. The [statutes] which confer the right to redeem and regulate its exercise are like the rest of the statutes to foreclose crude and imperfect. Being of a remedial character, they should receive such liberal construction as would advance the remedy rather than restrict the right of redemption. The purpose of the production of the instruments required as evidence of right to redeem is a temporary one of satisfying the sheriff of the existence of that right. They need not be recorded and are not muniments of title. *Todd v. Johnson*, 50 Minn. 310, 314, 52 N. W. 864. It was not, therefore, essential to the right of

period of redemption from foreclosure and before the heirs could commence a proceeding to determine descent.

plaintiffs to redeem that under the circumstances of this case any instrument or record should be produced by them to the sheriff or that any proceedings in the probate court should have been taken. Proof of heirship was sufficient proof of the right to redeem.

Id. (Citations omitted.)

Beachside next contends that the lien filed by Thomas Schafer for non-payment of real estate taxes under Minnesota Statute § 272.45 was invalid again, because Thomas Schafer had not been adjudicated an heir of Florence Schafer. (Appellant's Br. at 11-13.) Thomas' standing to pay the property taxes under Minnesota Statute § 272.45, however, arose from his interest as an occupant under a transaction agreement with NRV. (APP 96-97.) As part of the transaction agreement, Thomas was permitted to remain an occupant of the property after quit-claiming to NRV. *Id.* Under the terms of that transaction agreement, NRV was to pay the taxes. *Id.* When NRV failed to pay the taxes, Thomas did and thereby acquired a valid lien interest under Minn. Statute § 272.45. That lien interest was assigned to Palladium. (APP 78-82, 94-95.) Accordingly, as Palladium had a valid lien interest in the property, its redemption was valid. (ADD 9.)

Finally, Beachside argues that the mechanic's lien arising for work done under the authority of NRV and Thomas Schafer could not be the basis for any redemption by Evans because a mechanic's lien under Minnesota Statute § 514.01 arises only from a contract "with the owner... or at the instance of any agent, trustee, contractor or subcontractor of such owner". Minn. Stat. § 514.01.

For the same reasons discussed above, under Minnesota Statutes § 524.3-101 and case law, NRV, by the deed from Thomas Schafer, was an “owner”.⁵ By contracting with Evans, NRV’s interest in the property became subject to a mechanic’s lien. Accordingly, Evans redemption based upon its mechanic’s lien, and its subsequent deed to Palladium were valid, making Palladium the fee owner of the property. (ADD 9.)

CONCLUSION

Beachside’s arguments fail to discuss or account for the effect of Minnesota Statute § 524.3-101, which provides that in the absence of testamentary disposition, a person’s real and personal property devolves to the decedent’s heirs, “[u]pon death”. Pursuant to Minnesota Statute § 524.3-101, Florence Schafer’s property, upon her death, passed to her heirs. Based upon his uncontroverted affidavit and under the Minnesota Uniform Probate Code Thomas Schafer is an heir of Florence Schafer. He, therefore, had an interest in the property upon her death, which he validly conveyed to NRV. Accordingly, the subsequent liens and conveyances upon which Evan’s redemption and

⁵ For the purposes of Minn. Stat. § 514.011, pertaining to prelien notices, “owner” is defined in Subd. 5 to mean the owner of any legal or equitable interest in real property whose interest in the property (1) is known to one who contributes to the improvement of the real property, or (2) has been recorded or filed for record if registered land, and who enters into a contract for the improvement of the real property. Minn. Stat. § 514.011 Subd. 5.

Palladium's redemption rested were valid. The trial court's judgment adopting the report of the Examiner of Titles should be affirmed.

Respectfully Submitted:

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