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Case No. 01-CV-0295

Dept. No. II

FILED
NO. _____ RECEIVED

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MAR 18 2002

DOUGLAS COUNTY
DISTRICT COURT CLERK

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

RUTH SWEETLAND ans MARK
SWEETLAND, as Co-Trustees of
THE TESTAMENTARY TRUST OF
JACK SWEETLAND,

Plaintiffs,

vs.

O R D E R

PETER DAVIS SWEETLAND,

Defendant.

THIS MATTER comes before the court upon Defendant Peter
Davis Sweetland's (Peter) Motion to Dismiss pursuant to NRCPC
12(b)(5). The court, having examined all relevant pleadings
and papers on file herein, and good cause appearing, hereby
GRANTS Peter's Motion to Dismiss for the reasons set forth
below.

Plaintiffs, Ruth and Mark Sweetland, (Ruth and Mark),
Peter's siblings, filed a Verified Complaint for Declaratory
Relief, to Quiet Title and to Remove a Cloud on Title, seeking
to declare Peter's deeded interest in a four-acre lakefront
estate at Lake Tahoe invalid. The basis for their claim is
that Peter did not record his deed until ten years after it was

1 given to him as a gift by the parties' now deceased father.
2 Peter's deed conveyed to him a 1/90 interest in the property.
3 In the interim, the property passed to Ruth and Mark as
4 trustees of a testamentary trust approved by a California
5 Probate Court. Peter did not raise the issue of his prior
6 conveyance at these probate proceedings. Nonetheless, there
7 appear to be no allegations that Peter's deed is fraudulent.
8

9 Ruth and Mark do not profess to be bonafide purchasers for
10 value, as trustees and beneficiaries of the trust, they are
11 simply successors in interest of their father. As such, they
12 stand in the shoes of their deceased father. Ruth and Mark
13 suggest that they recorded their deed before Peter recorded
14 his, although the court finds no evidence submitted to support
15 that contention.¹

16 Peter may not invoke the protections of that status
17 provided by NRS 111.325 either: he is a co-beneficiary with
18 Ruth and Mark under the trust, as well as a grantee/donee of
19 the 1/90 interest in the property.
20

21 The protection provided by NRS 111.325 extends only to "a
22 subsequent purchaser for a valuable consideration. A purchaser
23 under similar recording acts has been defined as:
24

25 _____
26 1 NJDCR 7 requires submission of proof to support factual allegations
27 by affidavits, depositions, etc. Nothing has been provided to confirm
28 the inference to be drawn from plaintiffs' assertion in the Opposition
to Motion to Dismiss that "[a]s the last to record, it would appear to
us that any burden to prove BFP status would be on Defendant. NRS
111.325." Nevertheless the court accepts as true for purposes of this
motion that the conveyance of title of the land in question to the
testamentary trust was recorded.

1 "one who, in exchange for a present consideration,
2 acquires his interest from the record owner.... A
3 subsequent grantee receiving property as a gift is, of
4 course, precluded from claiming the benefits of such a
5 statute. 4 A.J. Casner, *American Law of Property* Section
17.6 at 546 (1952); 6 Powell, *supra*, at 284; 8 G.W.
Thompson, *Real Property* section 4319, at 398 (Grimes ed.
1963).

6 *Berge v. Fredericks*, 95 Nev. 183, 187 (1979).

7 Peter's lack of status as a bonafide purchaser for value
8 notwithstanding, he still held title to his alleged interest
9 first, even if he did not record first. The court finds it
10 difficult to envision that his two siblings were not actually
11 aware of the conveyance, and court chooses to impute such
12 knowledge to them as the grantee's successor in interest. See,
13 *Brophy Mining Company v. Brophy and Dale Gold*, 15 Nev. 101
14 (1880):

16 "The well-settled rule applies to this case, that a party
17 is estopped from impeaching or contradicting his own deed, or
18 denying that he granted the premises which his deed purports to
convey." (38 N.J.L. 165.)

19 *Id.* at 113. See *Severn v. Ruhde*, 137 P.2d 466 (Ct. App. CA,
20 1943). In *Severn*, Mrs. Ruhde's mother, Pheba Ann Cassey, gave
21 her a deed dated August 12, 1938, to a parcel of real property.
22 Mrs. Ruhde did not record it. Subsequently, Pheba Ann Cassey
23 gave a deed in the same property to her son, Mr. Cassey, naming
24 him and herself joint tenants. The son recorded the deed. On
25 April 11, 1941, Pheba Ann died, devising all her property in
26 equal shares to her four children in a will dated March 31,
27 1941. The court stated:

28

1 Since decedent conveyed all of her interest in the
2 property to Mrs. Ruhde, it is apparent that nothing was
3 conveyed by the alleged delivery of the joint tenancy
4 deed to defendant Cassey at a later date. Defendant
5 Cassey was not a purchaser for a valuable consideration
6 and the prior grant to his sister is conclusive as to
7 him.

8 *Id.* at 468.

9 The court believes the *Severn* case is directly on point.
10 Although it hales from a sister jurisdiction, California, it
11 is clear that California had a similar statute in effect to
12 protect bonafide purchasers for value without knowledge.²
13 Ruth and Mark did not purchase the property for valuable
14 consideration and did not record first without notice of a
15 prior conveyance-if they recorded at all. Hence, the court
16 can conceive of no set of facts, absent fraud in the original
17 creation of the deed to Peter-which allegation has not been
18 alleged, under which Ruth and Mark would be entitled to
19 relief. A father, or his devisees, cannot convey title to
20 property and then record it for their own benefit to defeat
21 conveyance of the property. Recordation statutes like NRS
22 111.325 exist for the benefit of innocent third parties.

23 A motion to dismiss pursuant to NRCP 12(b)(5) may be
24 properly granted where the allegations in the complaint, taken

25 ² The California statute cited in the case, namely, §§ 1107. Grant,
26 how far conclusive on purchasers, declares::

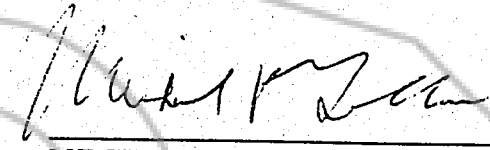
27 Every grant of an estate in real property is conclusive against the
28 grantor, also against every one subsequently claiming under him,
except a purchaser or incumbrancer who in good faith and for a
valuable consideration acquires a title or lien by an instrument that
is first duly recorded.

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at face value and construed in a light most favorable to the
opposing party, fail to state a cognizable claim for relief.
Morris v. Bank of America, 110 Nev. 1274 1276 (1994).
Therefore defendant's Motion to Dismiss is hereby GRANTED with
prejudice.

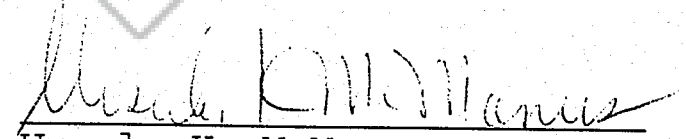
IT IS SO ORDERED.

Dated this 18 day of March, 2002.



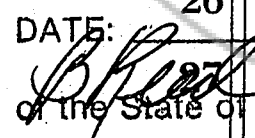
MICHAEL P. GIBBONS
District Judge

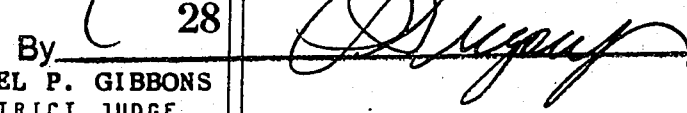
Copies served by mail and faxed this 18th day of March, 2002,
to: Joan C. Wright, Esq., P.O. Box 646, Carson City, NV 89702;
Bradley Paul Elley, Esq., 120 Country Club Drive, #25, Incline
Village, NV 89451.


Ursula K. McManus

CERTIFIED COPY

The document to which this certificate is attached is a
full, true and correct copy of the original on file and of
record in my office.

DATE: 7/23/02
 Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas,

By:  Deputy

MICHAEL P. GIBBONS
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

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REQUESTED BY
Stewart Title of Douglas County

IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

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LINDA SLATER
RECORDER

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