Circuit Court for Carroll County
Case No. C-06-CV-19-000599

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1203

September Term, 2020

STEVE CUSTIS, ET AL.,

v.

SHEILA CUSTIS

Fader, C.J.,
Friedman,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: September 29, 2021

In this appeal, we must decide whether the late Marie Custis reserved to herself the power to convey a parcel of real property when, in 1989, she deeded the remainder interest in that property to her brother, Harvey Raymond Custis, while reserving a life estate to herself. Using more technical language, we must decide whether Marie Custis successfully created a "life estate with powers," pursuant to which a property owner is able "to transfer ownership of the property to another while retaining the right to hold and occupy the property and use it as if the transferor were still the sole owner." *Lady Bird deed*, *Black's Law Dictionary* 522 (11th ed. 2019).[1]

Marie and Harvey are now both deceased.[2] The parties to this appeal are (1) Sheila Custis, the appellee and a relative of Marie,[3] and (2) Steve Custis, the appellant and Harvey's son and heir. The basic dispute is over the validity of a 2000 deed by which Marie purportedly transferred ownership of the property to herself and Sheila as joint tenants. That dispute, in turn, depends on whether the 1989 deed successfully created a

[1] Black's Law Dictionary, which also uses the term "enhanced-life-estate deed," observes that the term Lady Bird deed "was accidentally coined in the 1980s by the Florida lawyer who invented this type of deed and used the names of the Lyndon Baines Johnson family in a sample deed." *Lady Bird deed*, *Black's Law Dictionary* 522 (11th ed. 2019). The life estate with powers is used primarily as an estate-planning tool because it allows the owner to dispose of property during the owner's lifetime, thus taking the property out of the owner's probate estate, while allowing the owner to maintain control over the property until the owner's death. Danya C. Wright & Stephanie L. Emrick, *Tearing Down the Wall: How Transfer on Death Real-Estate Deeds Challenge the Inter Vivos/Testamentary Divide*, 78 Md. L. Rev. 511, 561 (2019).

[2] Because all relevant parties share a common last name, we will refer to them by their first names for clarity. We intend no disrespect in doing so.

[3] The parties' briefing is inconsistent with respect to whether Sheila is Marie's daughter or niece. Which is accurate is not important to our analysis.

life estate with powers. If it did, then Marie retained the power to reconvey the property in 2000 to herself and Sheila, and Sheila owns the property. If not, then the 2000 deed was invalid and, upon Marie's death, ownership of the property should have transferred to Steve as Harvey's heir. The Circuit Court for Carroll County determined that the 1989 deed created a life estate with powers and, therefore, granted summary judgment for Sheila. We agree and, accordingly, will affirm.

BACKGROUND

In 1970, Marie's father, Raymond Custis, deeded her real property located at 2417 Snowden Creek Road, Marriottsville, Maryland (the "Property"). Marie built a residence on the lot and allowed various family members to live there, sometimes charging rent and other times not.

On October 31, 1989, Marie executed a deed providing that, in return for "NO VALUABLE CONSIDERATION":

> MARIE A. CUSTIS do [sic] grant and convey to the said Marie A. Custis for her life, reserving into herself the full power to grant, convey, mortgage or encumber the within property during her life (except by Last Will and Testament) and upon her death to the remainderman, Harvey Raymond Custis, in fee simple.
>
> . . .
>
> TO HAVE AND TO HOLD the said described lot of ground and premises to the said Marie [A.] Custis, for her life, reserving unto herself the full power to grant, convey, mortgage, encumber or transfer (except by Will) the within described property, and upon her death to the remainderman, Harvey Raymond Custis, in fee simple.

The 1989 Deed describes the property as: "ALL THAT property described in a Deed from Raymond Custis to Marie A. Custis, which was recorded in Liber 468, folio 150 of the

Land Records of Howard County. Described on the attached Schedule A." Schedule A contains a physical description of the lot.

Harvey died in 1999. In 2000, Marie executed a deed in which she transferred the Property, again for "NO VALUABLE CONSIDERATION," to "MARIE A. CUSTIS AND SHEILA CUSTIS, as joint tenants." The 2000 Deed identifies the Property by reference to the same Schedule A that was included with the 1989 Deed and as the same "property which was conveyed from Marie A. Custis to Marie A. Custis for life with full powers retained by [the 1989 Deed]." The 2000 Deed further provides that: "The intent of Grantor herein is to eliminate and cancel the remainder interest of Harvey Raymond Custis which was created in the said prior Deed recorded at Liber 1246, folio 635. The said Harvey Raymond Custis has departed this life."

Upon Marie's death in 2006, Sheila assumed sole ownership of the Property. In 2017, Sheila entered into a rental agreement with Steve and his wife, Brenda Custis. After Steve and Brenda fell behind on the rent payments, Sheila instituted eviction proceedings. While conducting a land record search, Steve uncovered the 1989 Deed and then initiated this litigation, in which he sought a declaratory judgment that the 2000 Deed is void because, based on the 1989 Deed, Marie lacked the authority to transfer anything beyond her life estate interest. Sheila filed a motion for summary judgment on the ground that the 1989 Deed created a life estate with powers, thus providing Marie with the authority to transfer the Property to herself and Sheila in 2000. The circuit court agreed with Sheila and granted her motion. Steve then brought this timely appeal.

DISCUSSION

Steve contends that the circuit court erred when it ruled that the 1989 Deed contained the authorizing language necessary to grant "Marie Custis power or authority over the remainder fee simple interest of Harvey Raymond Custis," which in turn allowed Marie to reconvey the Property to herself and Sheila as joint tenants in 2000. We agree with the circuit court's interpretation of the deed language and therefore will affirm the court's order granting summary judgment.

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). An appellate court reviews the grant of a motion for summary judgment without deference, "examining the record independently to determine whether any factual disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law." *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020) (citing *Rowhouses, Inc. v. Smith*, 446 Md. 611, 630 (2016)). "Evidentiary matters, credibility issues, and material facts which are in dispute cannot properly be disposed of by summary judgment." *Taylor v. NationsBank, N.A.*, 365 Md. 166, 174 (2001).

In determining whether a grant of summary judgment is legally correct, we ask "whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed

to trial[.]" *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 330 (2014) (quoting *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 153 (2008)).

"In construing a deed, we apply the principles of contract interpretation." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 123 (1999). "Maryland has long adhered to the law of the objective interpretation of contracts," under which "a written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning." *Calomiris v. Woods*, 353 Md. 425, 435-36 (1999). This view requires consideration of "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Id.* at 436 (quoting *Pacific Indem. v. Interstate Fire & Cas.*, 302 Md. 383, 388 (1985)). "It is a cardinal rule in the construction of deeds that 'the intention of the parties, to be ascertained from the whole contents of the instrument, must prevail unless it violates some principle of law.'" *D.C. Transit Sys. v. State Rds. Comm'n*, 259 Md. 675, 686 (1970) (quoting *Marden v. Leimbach*, 115 Md. 206, 210 (1911)).

The unambiguous language of the 1989 Deed is dispositive. In that deed, Marie granted and conveyed the Property to herself "for her life, reserving into herself the full power to grant, convey, mortgage or encumber the within property during her life (except by Last Will and Testament) and upon her death to the remainderman, Harvey Raymond Custis, in fee simple." The habendum clause is to the same effect, stating that the grant of the Property was to Marie "for her life, reserving unto herself the full power to grant, convey, mortgage, encumber or transfer (except by Will) the within described property,

and upon her death to the remainderman, Harvey Raymond Custis, in fee simple." Notably, in both clauses, Marie's power to grant or convey applies to "the within property" or "the within described property," not only to Marie's life estate interest therein, and Harvey's remainder interest is subject to that power. Thus, although Marie granted the Property to herself only "for her life," she reserved to herself "the full power" to transfer or encumber the entire Property "during her life." The plain language of the 1989 Deed establishes a life estate with powers.

Steve does not really dispute this plain language interpretation of the 1989 Deed. Instead, he argues primarily that the language in other deeds that have been found to create a life estate with powers are clearer, and he suggests that there is thus a heightened standard of clarity for such deeds that the 1989 Deed does not meet.[4] Although Steve is correct that other deeds have used language to create a life estate with powers that is even more meticulous, *see, e.g.*, *Burke v. Burke*, 204 Md. 637, 642 (1954) (finding a life estate with powers where the deed specified that the grantor's power to sell applied to "not only his life estate in the aforesaid property hereby conveyed but the interest of the remaindermen as set forth in this deed[.]"), we discern no lack of clarity in the language of the 1989 Deed.

[4] For his argument that a heightened standard of clarity applies here, Steve relies primarily on *Grimes v. Gouldmann*, in which this Court interpreted a deed that authorized the holder of the life estate to "sell, mortgage, lease or otherwise encumber not only the life estate hereby conveyed to her, but the interest of the remaindermen . . . ." 232 Md. App. 230, 232-33 (2017). The issue in *Grimes*, however, was not whether the deed created a life estate with powers—it clearly did—but whether it authorized the holder of the life estate to give the remainder interest in the property away as a gift. *Id.* at 231. Interpreting the contractual language, we held that a conveyance-by-gift was not authorized. *Grimes* is inapposite.

Indeed, we have not identified any possible interpretation of the language of that deed other than as establishing a life estate with powers, nor has Steve presented us with one.

Both parties cite to *Reeside v. Annex Building Association of Baltimore City*, 165 Md. 200 (1933), to support their claims. In *Reeside*, property was conveyed by a wife to her husband "to be held by him during the term of his natural life with full power to sell and convey absolutely or by way of mortgage or lease, any or all of [wife's] estate, real or personal[.]" *Id.* at 201. The Court of Appeals held that that language created a valid life estate with powers. *Id.* at 204. In attempting to distinguish the grant language in the deed in *Reeside* from that in the 1989 Deed, Steve focuses on the word "absolutely" in the former. But although that is a difference in the language, it is not a material one, as its role in the *Reeside* deed was to distinguish between an absolute conveyance and a mortgage, not, as Steve argues, between a conveyance of the entire property or only the husband's life estate. Nothing in the *Reeside* opinion suggests that the Court viewed that word as meaningful to whether husband retained the right to convey (or mortgage) the property itself during his lifetime. *See generally id.* at 204-12. More notable in *Reeside* is that: (1) the relevant language in the *Reeside* deed essentially mirrors that of the 1989 Deed; (2) the *Reeside* deed does not contain any language expressly stating that the power to sell extended beyond the husband's life estate interest, which Steve otherwise suggests is necessary to create a life estate with powers; and (3) the Court nonetheless concluded that the deed created a life estate with powers. *Id.* at 211-12.

Based on its plain, unambiguous language, the 1989 Deed provided Marie with the power to transfer the Property by any of the enumerated methods during her lifetime. The 2000 Deed was thus valid, and the circuit court correctly granted summary judgment in favor of Sheila. Accordingly, we will affirm.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.