

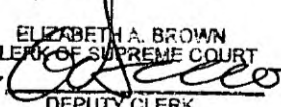
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERI MOORE, AN INDIVIDUAL,
ERRONEOUSLY NAMED AS TERRI
MOORE,
Appellant,
vs.
JEANETTE F. MOORE, AN
INDIVIDUAL,
Respondent.

No. 83505-COA

FILED

DEC 27 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Teri Moore appeals from a final judgment in a real property and contract action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Following the death of her husband in 2012, respondent Jeanette F. Moore became the sole owner of the subject property. It is undisputed that the property's street address is 4620 Cinderella Lane, Las Vegas, Nevada 89102; that its assessor's parcel number is 162-07-210-030;¹ and that it is depicted in a plat map² on record with the Clark County Recorder—specifically, as Lot 48 in Block 8 of Enchanted Village Unit 3 on Page 83 of Plat Book 8.

Shortly after Jeanette became the sole owner of the property, her stepdaughter, Teri, moved into the home on the property, and Jeanette moved out. Later, in 2018, Jeanette executed a quitclaim deed, which

¹An assessor's parcel number describes real property based on the parceling system prescribed by the Nevada Department of Taxation. NRS 361.189(1)(a).

²A plat map is "a map depicting the legal divisions of land, usu[ally] by lot, street, and block number." *Plat Map, Black's Law Dictionary* (11th ed. 2019).

described the subject of the conveyance by listing the street address and assessor's parcel number set forth above, and by providing a reference to Page 83 of Plat Book 8 that was substantially similar to the one set forth above, with the exception that the reference omitted the block number.³ The quitclaim deed was subsequently recorded, however, shortly thereafter, Jeanette received a letter from the Clark County Assessor's office, indicating that it "encountered difficulty in processing" the quitclaim deed because the "legal description"⁴ of the property that was the subject of the conveyance was "either incorrect, incomplete or missing." The letter further explained that corrective documents and an appropriate recording fee should be submitted to the Clark County Recorder's office. Neither party subsequently took any such action.

Eventually, Jeanette commenced the underlying proceeding against Teri, seeking to, among other things, quiet title. Toward that end, Jeanette alleged that the quitclaim deed was invalid because its description of the property to be conveyed was deficient and that it was void for lack of consideration because the parties reached an agreement in 2018 for Teri to purchase the property, which Teri failed to satisfy. During discovery, Teri submitted responses to Jeanette's requests for admission in which she denied having offered or agreed to purchase the property, and instead,

³Specifically, the quitclaim deed referred to "Lot Forty-Eight (48) of Enchanted Village Unit No. 3, as shown by map thereof on file in Book 8 of Plats, Page 83 in the Office of the County Recorder of Clark County, Nevada."

⁴No Nevada legal authority specifically defines the term "legal description." However, "legal description" is commonly understood to mean "[a] formal description of real property . . . complete enough that a particular piece of land can be located and identified," which "can be made by reference to a government survey, metes and bounds, or lot numbers of a recorded plat." *Legal Description, Black's Law Dictionary* (11th ed. 2019).

asserted that the property was a gift to her from Jeanette. Given this response, Jeanette moved for summary judgment, arguing that Teri could not establish an ownership interest in the property because the alleged donative transfer failed since the Clark County Recorder's office purportedly rejected the quitclaim deed. Teri opposed that motion, arguing that she received the property as a gift, which did not fail since any defect in the quitclaim deed's property description was a scrivener's error that could be corrected through reformation. The district court granted Jeanette's motion and quieted title in her favor. In doing so, the district court found that there was no dispute that the quitclaim deed was executed in connection with an attempted gift transaction, accepted Jeanette's argument concerning the effect of the recorder's office's purported decision to reject the quitclaim deed, and concluded that the court lacked authority to reform the quitclaim deed or otherwise require Jeanette to perfect the gift.

Teri later moved for reconsideration, asserting that the omission of a block number from the plat map reference in the quitclaim deed's property description was not an appropriate basis for the recorder's office to unrecord the deed and that, regardless, the quitclaim deed was valid and binding against Jeanette under NRS 111.315 even if it could not operate as notice to third parties without being recorded. Alternatively, Teri argued that she acquired the property in 2017 by way of adverse possession after having lived in it and claimed ownership for five years. Jeanette opposed that motion, arguing, among other things, that the quitclaim deed was invalid since its property description omitted the block number from the plat map reference, that NRS 111.315 does not validate a defective deed, and that the district court could not consider Teri's adverse possession argument since she failed to plead the theory as a counterclaim. The district court denied Teri's motion, rejecting her argument concerning

a donative transfer of the property for the reasons set forth in Jeanette's opposition, and concluding that the question of adverse possession was not properly before the court since Teri did not plead the theory as a counterclaim or affirmative defense. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. Additionally, the legal sufficiency of a writing required by the statute of frauds is a question of law, which we review de novo. *See Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1033, 923 P.2d 569, 574 (1996) (classifying the question of whether a writing satisfied the statute of frauds as a legal question); *see also Nev. Classified Sch. Emps. Ass'n v. Quaglia*, 124 Nev. 60, 63, 177 P.3d 509, 511 (2008) (stating that questions of law are subject to de novo review).

On appeal, the parties dispute whether there was a valid gift of the property from Jeanette to Terry. "In Nevada, a valid inter vivos gift or donative transfer requires a donor's intent to voluntarily make a present transfer of property to a donee without consideration, the donor's actual or constructive delivery of the gift to the donee, and the donee's acceptance of the gift." *In re Irrevocable Tr. Agreement of 1979*, 130 Nev. 597, 603, 331 P.3d 881, 885 (2014). As below, the parties' specific dispute before this court focuses on whether the quitclaim deed effectively transferred the property from Jeanette to Teri, such that the delivery requirement was satisfied,

notwithstanding its incomplete plat map reference and the purported decision by the recorder's office to reject/unrecord the deed.

The transfer of an interest in real property is subject to Nevada's statute of frauds, which generally requires a conveyance of real property to be set forth in a properly executed written instrument. *See* NRS 111.205(1) (generally providing that “[n]o estate or interest in lands . . . shall be created, granted, assigned, surrendered or declared . . . unless by act or operation of law, or by deed or conveyance, in writing”); *Occhiuto v. Occhiuto*, 97 Nev. 143, 147, 625 P.2d 568, 570 (1981) (stating the same).⁵ One way that this requirement may be satisfied is with a deed that is “signed by the person from whom the estate or interest is intended to pass . . . , acknowledged or proved, and recorded, as directed in [NRS Chapter 111].” NRS 111.105. However, as explained in the portion of NRS Chapter 111 governing the recording of written instruments, recordation is not a prerequisite to a properly executed deed for purposes of the statute of frauds, as unrecorded deeds are “valid and binding between the parties thereto.” NRS 111.315 (providing that the recording of a conveyance such as a deed serves to impart notice of a transfer of real property to third parties).

⁵Consequently, insofar as Teri argues that the donative transfer actually occurred in 2012 when she moved into the property and that Jeanette merely memorialized the transfer when she later executed the quitclaim deed in 2018, her argument is unavailing. *See* NRS 111.205(1); *Occhiuto*, 97 Nev. at 147, 625 P.2d at 570; *see also Estate of Boone v. Hans*, No. 2010-CA-000727-MR, 2011 WL 6004375, at *4 (Ky. Ct. App. Dec. 2, 2011) (explaining that a valid gift of real property requires the conveyance of title rather than the relinquishment of physical possession of the real property).

Thus, although the parties both represent that the quitclaim deed in the present case, which was signed by Jeanette and acknowledged by a notary, is not presently on record with the recorder's office,⁶ this is not dispositive of whether it was binding as between Jeanette and Teri. See NRS 111.105; NRS 111.315. Consequently, the district court erred insofar as it granted summary judgment to Jeanette based on the purported status of the quitclaim deed as unrecorded. See *Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Edwards Indus.*, 112 Nev. at 1033, 923 P.2d at 574; *Quaglia*, 124 Nev. at 63, 177 P.3d at 511.

Nevertheless, to be valid, the quitclaim deed also needed to include terms sufficient to meet the statute of frauds' minimum requirements. In particular, the quitclaim deed was required to, with reasonable certainty, (1) identify the donor and donee, (2) describe the real property that was the subject of the deed, and (3) specify the nature of the interest in the real property that was being transferred. See *Wiley v. Cook*, 94 Nev. 558, 563-64, 583 P.2d 1076, 1079 (1978) (involving a contract

⁶The parties agree on this point insofar as Jeanette asserts that the recorder's office rejected the quitclaim deed while Teri maintains that the recorder's office recorded and subsequently unrecorded the quitclaim deed. However, in making these representations, both parties cite to the letter from the assessor's office referenced above, which simply stated that the assessor's office, as opposed to the recorder's office, encountered difficulty in processing the quitclaim deed due to an issue with the legal description set forth therein and that corrective documents should therefore be submitted to the recorder's office. And because the only other documents relating to the quitclaim deed that appear in the record before this court are copies of the quitclaim deed itself, which bear the recorder's stamp, the parties' assertion that the quitclaim deed is not presently on record with the recorder's office is not supported by the record. But since the question of whether the quitclaim deed was recorded is not dispositive of its validity for the reason discussed above, we need not definitively resolve this issue or otherwise address Teri's contention that the recorder's office improperly unrecorded the quitclaim deed.

dispute and relying on Restatement of Contracts § 207 (Am. Law Inst. 1932) to set forth the minimum requirements of all writings encompassed by the statute of frauds); *see also* Restatement (Third) of Prop.: Wills & Donative Transfers § 6.3 cmt. c (Am. Law Inst. 2003) (identifying minimum requirements that are substantively similar to those set forth in Restatement of Contracts § 207 and *Wiley*, but phrasing them in terms of a donative transfer rather than a contract). And in this respect, the parties' only dispute concerns whether the quitclaim deed sufficiently described the property that was its subject.

A description of real property in a deed is sufficiently certain if it renders the intended subject of the conveyance capable of identification, either by way of the terms of the deed itself or with the aid of extrinsic evidence. *See Hewitt v. Glaser Land & Livestock Co.*, 97 Nev. 207, 209, 626 P.2d 268, 269 (1981) (“A description of property is adequate if the property referred to can be identified with certainty by the aid of extrinsic evidence.”); *Brown v. Warren*, 16 Nev. 228, 237 (1881) (explaining that, although it is “essential to the validity of a conveyance that the thing conveyed must be described so as to be capable of identification,” it is not essential that the description “enable the identification to be made without the aid of extrinsic evidence” (internal quotation marks omitted)). But extrinsic evidence may only be introduced to resolve latent, as opposed to patent, ambiguities in a deed. *See De Remer v. Anderson*, 41 Nev. 287, 295, 169 P. 737, 739 (1918) (stating the same); *see also M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913-14, 193 P.3d 536, 544-45 (2008) (providing that, although extrinsic evidence is admissible to resolve latent ambiguities, it may not be used “to add to, subtract from, vary, or contradict . . . written instruments which dispose of property” (internal quotation marks omitted)). In the context of land descriptions, a patent ambiguity is one appearing on the face of an instrument, whereas a

latent ambiguity arises when the deed is “clear and unambiguous on its face,” but an uncertainty “is shown to exist for the first time by matter outside the writing, when an attempt is made to apply the language to the ground.” *McLallen v. Tillman*, 386 S.W.3d 837, 840-41 (Mo. Ct. App. 2012) (internal quotation marks omitted); *see also Williams v. J.W. Black Lumber Co.*, 628 S.W.2d 13, 15 (Ark. 1982) (explaining that extrinsic evidence may reveal a latent ambiguity when it shows that a clear land description applies to more than one property or that a land description applies to no particular property with precision because it is imperfect or erroneous); *Butler v. Lovoll*, 96 Nev. 931, 935, 620 P.2d 1251, 1253 (1980) (explaining that the ambiguity of a writing may be established through extrinsic evidence).

As discussed above, the district court in the present case determined that the quitclaim deed was ineffective not only because it was purportedly unrecorded, which was erroneous for the reason discussed above, but also because the block number was omitted from the reference to the plat map in the description that was used to identify the intended subject of the conveyance. Essentially, the district court treated the omission of the block number as a patent ambiguity that rendered the deed void. *See Refaie v. Bayview Loan Servicing, LLC*, 331 So. 3d 749, 753 (Fla. Dist. Ct. App. 2021) (explaining that a patently ambiguous deed is void with respect to the attempted conveyance). However, in doing so, the district court overlooked that the quitclaim deed’s description was not limited to the reference to the plat map, but instead, included a street address for the property to be conveyed, as Teri correctly observes.⁷ And in Nevada, a street

⁷We recognize that Teri did not suggest that the quitclaim deed was valid based on its inclusion of a street address until she moved for reconsideration in the underlying proceeding. However, that issue is

address alone has been deemed a sufficient description of real property for purposes of the statute of frauds. *See Johnson v. Watson*, 70 Nev. 443, 445-46, 272 P.2d 580, 581 (1954) (concluding that a written memorandum of agreement sufficiently described the real property that was its subject for purposes of the statute of frauds by simply listing the property's common street address, including the town and state where the property was located).

Given the inclusion of the street address in the quitclaim deed's description of the property to be conveyed, we conclude that the district court erred insofar as it treated the omission of a block number in the description's plat map reference as a patent ambiguity that rendered the property incapable of identification. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Edwards Indus.*, 112 Nev. at 1033, 923 P.2d at 574; *Quaglia*, 124 Nev. at 63, 177 P.3d at 511; *see also Hewitt*, 97 Nev. at 209, 626 P.2d at 269; *Brown*, 16 Nev. at 237. Instead, the omission of the block number created, at worst, a potential latent ambiguity that extrinsic evidence could have potentially resolved if necessary. *See, e.g., Williams*, 628 S.W.2d at 15, *McLallen*, 386 S.W.3d at 840-41; *see also Butler*, 96 Nev. at 935, 620 P.2d at 1253.

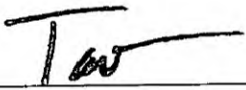
However, Jeanette has never presented any evidence to demonstrate the existence of any latent ambiguity that caused confusion in the description of the property that was the subject of the quitclaim deed, and as a result, she did not meet her burden as the party moving for summary judgment. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (explaining that the party moving for

properly before this court in the context of this appeal since "the reconsideration motion and order are part of the record on appeal" and "the district court . . . entertained the motion on its merits." *See Cohen v. Padda*, 138 Nev., Adv. Op. 18, 507 P.3d 187, 190 (2022).

summary judgment bears the initial burden of demonstrating that there is no genuine dispute of material fact); *see also Forslund v. Cookman*, 211 A.2d 190, 192 (Vt. 1965) (explaining that, in the context of latent ambiguities, the party asserting the ambiguity bears the burden of proof). Consequently, summary judgment in Jeanette's favor cannot be supported. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we order the judgment of the district court reversed and remand this matter to the district court for proceedings consistent with this order.

It is so ORDERED.⁸


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Stephen E. Haberfeld, Settlement Judge
Law Offices of Libo Agwara, Ltd.
Relief Lawyers LLC
Eighth District Court Clerk

⁸Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.