

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESIREE LUCIDO,

Appellant,

vs.

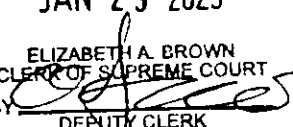
LORRI NICKERL, GUARDIAN OF THE
PERSON AND ESTATE OF JENNETTE
LADENE TIMPSON-LUCIDO,

Respondent.

No. 86889

FILED

JAN 29 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a property dispute. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

In 2012, Jenette Ladene Timpson-Lucido executed and recorded a Deed Upon Death for her property in Las Vegas. The deed conveyed 60% of Jenette's property to her daughter Lorri Nickerl and 40% to her other daughter Desiree Lucido. In August 2019, a physician made a medical conclusion that Jenette had dementia and was therefore incapable of conducting her own affairs. Several months later, in January 2020, Jenette re-recorded the Deed Upon Death (2020 Deed Upon Death) and adjusted the distribution of the property, conveying 50% to Desiree and 50% to Lorri (compared to the original 40% and 60%, respectively). On the same day, Jenette quitclaimed her property to Desiree and herself (January 2020 Quitclaim Deed). Then, in early March, Jenette re-recorded the previous quitclaim deed, this time identifying herself and Desiree as joint tenants (March 2020 Quitclaim Deed).

In February 2021, Lorri successfully petitioned to be appointed guardian over Jenette based on Jenette's mental capacity. Lorri also successfully petitioned for authority to pursue legal action to recover

Jennette's property. In March 2021, Lorri filed the instant action against Desiree. Lorri challenged Desiree's ownership interest in the property, alleging Jenette lacked the capacity to legally transfer any interest to Desiree through the 2020 Deed Upon Death, January 2020 Quitclaim Deed, and March 2020 Quitclaim Deed (collectively, Deeds), thereby making them void. Lorri also argued Desiree was unjustly enriched by the transfer and use of the property and sought to quiet title to the property and declaratory relief. Lorri produced medical records demonstrating Jenette had been incapable of managing her own affairs as early as August 1, 2019.

Lorri moved for summary judgment. Desiree opposed and moved for summary judgment herself, arguing Lorri lacked evidence of Jenette's alleged incompetency. Desiree argued that Jenette's competency is a "heavily disputed issue of fact because the Doctor's report of the evaluation is full of ambiguities and inconsistencies." Desiree provided exhibits that included numerous unauthenticated webpages in an effort to challenge the validity of the medical examinations conducted on Jenette. The district court later excluded these as inadmissible because they were not produced in discovery.

The district court determined the Deeds were void ab initio due to Jenette's incapacity and Desiree therefore never had a valid ownership interest in the property pursuant to the new Deeds. The district court granted Lorri's motion on all causes of action and concluded Desiree was precluded from further relitigating Jenette's incapacity. The district court awarded Jenette and her estate \$89,920.59. Desiree appeals.

The district court properly granted Lorri's motion for summary judgment

Desiree argues the district court erred in granting summary judgment to Lorri. In her opposition, Desiree aimed at discrediting the

physician's assessment of Jenette, his methods, and asserted her own account of her mother's mental capacity, stating there was no proof Jenette was incapacitated.

A district court's decision to grant summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). All evidence must be viewed in a light most favorable to the nonmoving party. *Wood*, 121 Nev. at 724, 121 P.3d at 1029. To prevail, "the non-moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue." *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993).

Quiet title and declaratory relief

Desiree argues that the district court should not have granted summary judgment as to Lorri's quiet title and declaratory relief actions because there are contested material facts as to Jenette's capacity when signing the Deeds.

"An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." NRS 40.010. "A plea to quiet title does not require any particular elements, but each party must plead and prove his or her own claim to the property in question and a plaintiff's right to relief therefore depends on superiority of title." *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. 314, 318-19, 302 P.3d 1103, 1106 (2013) (internal quotation marks omitted).

Pursuant to NRS 30.040, “[a]ny person interested under a deed . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights.” “Declaratory relief is available only if: (1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination.” *Cnty. of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998).

Contractual capacity is required for one to execute a deed transferring interest in real property. *See Adams v. Wagoner*, 43 Nev. 266, 273-74, 184 P. 814, 816 (1919). “A person whose mental condition is weak, to the extent of being incapable of managing his or her own affairs and understanding the nature and character of his or her acts, may obtain relief against the improvident contracts into which he or she may have been misled to his or her injury.” 17A C.J.S. *Contracts* § 189 (2024). “Capacity relates to the status of the person[, not] to the circumstances surrounding the transaction.” *Gen. Motors v. Jackson*, 111 Nev. 1026, 1031, 900 P.2d 345, 349 (1995). Thus, a party may quiet title by demonstrating that the deed granting title is void when due to the grantor’s inability to understand the terms of the agreement.

Lorri asked the district court to quiet title to the property and declare Desiree’s claim to Jenette’s property invalid due to Jenette’s incapacity at the time the Deeds were signed and filed. Desiree challenges the physician’s previous conclusions regarding Jenette’s incapacity. For example, she argues the exam used is a screening tool, not a diagnostic tool, and cannot diagnose dementia. She also contends that mild cognitive impairment is not the same as dementia or Alzheimer’s. Desiree also

provided her perceptions as to Jenette's intent, behavior, and demeanor around the time the Deeds were executed. Lorri counters that Desiree "only provided unsupported narrative explanations regarding the reasons why [Jenette] wanted to execute the deeds at issue in this Action." Desiree did not show a genuine dispute as to any material fact to refute Lorri's claim to quiet title. The record indicates Jenette lacked capacity to understand the terms of the Deeds, and Desiree did not present admissible evidence that showed otherwise. In 2019, Jenette was diagnosed with dementia and the evaluating physician determined Jenette was unable to make financial decisions or conduct her own affairs due to her incapacity, thus contributing to her inability to form the Deeds with the needed capacity. Desiree has not identified any evidence demonstrating Jenette's condition improved after the 2019 diagnosis, so it remains that Jenette lacked the capacity the following year when she executed the Deeds and was incapable of understanding them, thereby making them void. Moreover, Desiree provided unauthenticated webpages and her own medical opinions to contest the physician's evaluation. Desiree's medical opinions are inadmissible because she is not an expert and thus the district court did not err in disregarding such evidence. *See* NRS 50.265; NRS 50.275. Because Desiree did not substantiate her claim with admissible evidence, the district court did not err when it granted summary judgment as to Lorri's quiet title and declaratory relief claims.

Desiree alternatively argues the district court erred in not recognizing that she is entitled to a share of Jenette's property because she "invested" \$50,000 in the property decades ago. Desiree treats this as if the conveyance was granted to her by Jenette in exchange for the previous "investment." There is no evidence of such an agreement beyond Desiree's

own averment. Further, discovery closed on February 1, 2023, and the district court did not reopen discovery. A party is not allowed to use information to supply evidence on a motion that it did not disclose during discovery. NRCP 37(c). Accordingly, Desiree failed to show a material question of fact in this regard because her opposition consisted primarily of information not introduced during discovery. *See Posadas*, 109 Nev. at 452, 851 P.2d at 442 (“The non-moving party’s documentation must be admissible evidence, and he or she is not entitled to build a case on the gossamer threads of whimsy, speculation, or conjecture.” (internal quotation marks omitted)).

We conclude there is no genuine dispute of material fact regarding Jenette’s lack of capacity to execute any of the Deeds and therefore, quiet title and declaratory relief for Lorri was appropriate. The district court did not err in granting summary judgment to Lorri in this regard.¹

Unjust enrichment

Desiree argues the district court should not have found unjust enrichment because the Deeds granted Desiree legal access to the property and there was no basis for the court’s determination as to the monies owed.

“Unjust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.” *Nev.*

¹Desiree also argues issue preclusion was improperly applied to the issue of Jenette’s mental capacity at the time she executed the Deeds. Because we conclude Desiree failed to contest the motion for summary judgment by putting forth admissible evidence, and we affirm the district court ruling on that ground, we need not reach her arguments against issue preclusion.

Indus. Dev., Inc. v. Benedetti, 103 Nev. 360, 363 n.2, 741 P.2d 802, 804 n.2 (1987). “Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another.” *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981).

Lorri argued Jenette was entitled to recovery of \$38,000 of rent for the period Desiree occupied the property, \$38,125 of rents and deposits collected by Desiree from tenants, and \$13,795.59 for an insurance claim collected on the property by Desiree. In total, Lorri sought recovery in Jenette’s favor in the amount of \$89,920.59. Lorri provided financial reports to support her calculations, which were uncontested.

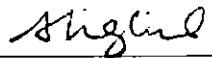
Desiree relies entirely on the Deeds themselves, arguing “there is still no proof that [Jenette] was legally incapacitated in January[] 2020 when she executed the deed. It was a perfectly reasonable conveyance for her to do at the time.” As analyzed above, the purported conveyance, giving Desiree the right to possess the property in the manner she did, was void.

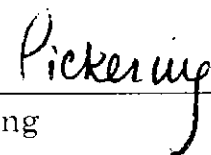
Furthermore, Desiree did not deny occupying the property or collecting rents from other tenants. She also did not deny that she did not distribute those collected rents to Jenette. Desiree benefitted from Jenette’s property by residing there without paying rent. No evidence rebutted Lorri’s allegations that Desiree used and possessed the property without authorization from Jenette, who had become incapacitated and unable to conduct her affairs. And the record indicates that Desiree collected an insurance claim related to the property. The record supports the relief awarded in the amount of \$89,920.59 and Desiree did not provide evidence to controvert these calculations. Therefore, Desiree was unjustly enriched,


and the district court did not err when it granted summary judgment on Lorri's claim for unjust enrichment.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Nadia Krall, District Judge
Stephen E. Haberfeld, Settlement Judge
Liberators Criminal Defense
Hutchison & Steffen, LLC/Las Vegas
Eighth District Court Clerk