

SUPREME COURT OF NORTH DAKOTA

The Next Step v. Redmon

2016 ND 85 (N.D. 2016) · No. 20150333 · Decided May 26, 2016

SUMMARY

The North Dakota Supreme Court affirmed dismissal of The Next Step’s quiet title action. The Court held that unincorporated associations generally cannot hold title to real property because they are not legal entities, and it declined to apply exceptions based on ascertainable membership or charitable trusts to the quitclaim deed at issue. The Court concluded that the district court properly dismissed the action.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Carol Ronning Kapsner, Justice; Carol Ronning Kapsner; Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	May 26, 2016
DOCKET	20150333
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Next Step appealed from a judgment dismissing its quiet title action after the district court determined that an unincorporated association could not hold title to real property in North Dakota.
STANDARD OF REVIEW	Whether the district court properly granted summary judgment is a question of law reviewed de novo on the entire record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The Next Step v. Jamie Redmon

TOPICS

- title disputes
- quiet title
- real estate
- summary judgment
- appellate procedure

PRACTICE AREAS

- real estate
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether an unincorporated association is capable of holding title to real property in North Dakota.
2. Whether North Dakota should recognize an exception allowing title to property conveyed to an unincorporated association to vest in ascertainable members or be held in trust for the association.
3. Whether *Askew v. Joachim Memorial Home* abrogated the common-law prohibition against unincorporated associations holding title to real property.

HOLDINGS

1. An unincorporated association is incapable of holding title to real property in North Dakota because it is not a legal entity, unless a recognized exception applies.
2. *Askew* did not abrogate the prohibition against unincorporated associations holding title to real property; it created an equitable estoppel exception concerning whether an association may be sued when it holds itself out as a legal entity.
3. The court declined to adopt or apply an ascertainable-beneficiary exception because *The Next Step* did not identify its members, trustees, membership requirements, or the individuals authorized to bind the association.
4. The *cy pres* exception for charitable transfers to unincorporated associations does not apply to this *inter vivos* quitclaim deed, which did not express a charitable purpose.

KEY QUOTATIONS

“Absent the exceptions discussed below, unincorporated associations are incapable of holding title to real property because they are not legal entities.” (§ 4)

“Askew did not abrogate the common law’s prohibition on unincorporated associations holding title to real property.” (§ 6)

“Unincorporated associations are not legal entities; unless an association can establish an exception applies, it is incapable of holding title to real property.” (§ 12)

FACTUAL BACKGROUND

The Next Step, an unincorporated association, and Jamie Redmon each claimed title to residential property in Minot through competing quitclaim deeds allegedly executed by the prior owner. The Next Step received a deed dated in 2009 and recorded in 2014, while Redmon received a deed dated and recorded in 2013. Redmon alleged that the deed to The Next Step was forged, but the district court dismissed the quiet title action after concluding that The Next Step could not hold title to real property because it was an unincorporated association.

PROCEDURAL HISTORY

The Next Step moved for summary judgment in a dispute involving competing quitclaim deeds to residential property. The district court requested supplemental briefing on whether an unincorporated association could hold title to real property and then dismissed the action, ruling that such associations are incapable of holding title. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hamilton v. Woll, 2012 ND 238, ¶ 9, 823 N.W.2d 754
- Winchell v. Montana Department of State Lands, 865 P.2d 249, 252-53 (Mont. 1993)
- Rock Creek Gardens Tenants Ass'n v. Ferguson, 404 A.2d 972, 973 (D.C. 1979)
- Askew v. Joachim Mem. Home, 234 N.W.2d 226, 230-36 (N.D. 1975)
- Edwards v. Burke, 102 P.3d 1271, 1275 (Mont. 2004)
- Motta v. Samuel Weiser, Inc., 768 F.2d 481, 486 (1st Cir. 1985)
- Byam v. Bickford, 140 Mass. 31, 2 N.E. 687 (1885)
- State v. Sunbeam Rebekah Lodge No. 180, 169 Or. 253, 127 P.2d 726 (1942)
- Estate of Anderson, 571 P.2d 880, 882-83 (Okla. Civ. App. 1977)
- Piper v. Taylor, 48 N.D. 967, 188 N.W. 171 (1922)
- In re Andrejevich's Estate, 57 N.Y.S.2d 86, 87 (1945)

OPINION

The Next Step v. Redmon 2016 ND 85

KAPSNER, J.

Filed 5/26/16 by Clerk of Supreme Court

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2016 ND 85 The Next Step, Plaintiff and Appellant v. Jamie Redmon, Defendant and Appellee No. 20150333 Appeal from the District Court of Ward County, North Central Judicial District, the Honorable Gary H. Lee, Judge. AFFIRMED. Opinion of the Court by Kapsner, Justice. Benjamin C. Pulkrabek, 402 First St. N.W., Mandan, ND 58554-3118, for plaintiff and appellant. Tom P. Slorby, 600 22nd Ave. N.W., Suite 1, P.O. Box 3118, Minot, ND 58702-3118, for defendant and appellee. The Next Step v. Redmon No. 20150333 Kapsner, Justice. [¶1] The Next Step appeals from a judgment entered after the district court dismissed its quiet title action. We affirm, concluding unincorporated associations are incapable of holding title to real property. I [¶2] The Next Step, an unincorporated association, and Jamie Redmon, an individual, both claim title to residential real property located in Minot. Both parties claim ownership through different quitclaim deeds they allege were executed by the prior owner of the property. The relevant conveyances follow: Quitclaim deed by Orlin Swensrud to Holly Gates. Recorded in 1999. Quitclaim deed by Holly Gates to Daniel Foster. Recorded in 2008. Quitclaim deed by Daniel Foster to The Next Step. Dated 2009. Recorded in 2014. Quitclaim deed by Daniel Foster to Jamie Redmon. Dated and recorded in 2013. Redmon alleged the quitclaim deed to The Next Step was

forged. Holly Gates, a co- founder of The Next Step, asserted it was not. The Next Step moved for summary judgment, and Redmon filed a response. The district court did not immediately rule on the motion; it instructed the parties to provide supplemental briefing on the issue of whether unincorporated associations are capable of holding title to real property in North Dakota. After the parties provided their supplemental briefs, the court entered an order dismissing the case. The court held unincorporated associations are incapable of holding title to real property in North Dakota. The Next Step appeals. II [¶3] The Next Step argues the common-law rule prohibiting unincorporated associations from holding title to real property has been eroded. Redmon concedes courts have created exceptions to the common-law rule, but she asserts none are applicable in this case. “Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record.” *Hamilton v. Woll* , 2012 ND 238, ¶ 9, 823 N.W.2d 754. [¶4] An unincorporated association is: “An unincorporated organization that is not a legal entity separate from the persons who compose it.” *Black’s Law Dictionary* 141 (9th ed. 2009). Absent the exceptions discussed below, unincorporated associations are incapable of holding title to real property because they are not legal entities. “The reasoning behind this common-law rule is sound: there must be some legal, identifiable party holding the interest who is responsible for liability arising out of that ownership interest.” *Winchell v. Montana Dep’t of State Lands* , 865 P.2d 249, 252-53 (Mont. 1993). A voluntary unincorporated association may be nothing more than individuals joining together based merely on common purpose or interest. Thus, it is a maxim of the common law that, in the absence of statutory authority, such an association has no legal existence independent of those members who comprise the organization. Such being the case, the association at common law cannot, in its own name, (1) enter into contracts, (2) take, hold, or transfer property, or (3) sue or be sued. *Rock Creek Gardens Tenants Ass’n v. Ferguson* , 404 A.2d 972, 973 (D.C. 1979) (citations omitted). See also *North Dakota Title Standards* (2012), Standard 2-19 (“A conveyance to an unincorporated association does not vest title in such association.”); 2 *Patton and Palomar on Land Titles* § 416 (3d. ed. 2015). [¶5] The Next Step argues: “Since *Askew* [v. *Joachim Mem. Home* , 234 N.W.2d 226 (N.D. 1975)] the common law no longer applies to unincorporated associations and their ability to enter into contracts, to sue and be sued, to deny their existence.” In *Askew* , we modified the common law to allow unincorporated associations to be sued when they have held themselves out to be legal entities; we based our holding on the principle of estoppel. An architect sued *Joachim Memorial Home*, an unincorporated nursing home, for damages the architect incurred after the nursing home abandoned a construction project. *Askew* , at 230-31. The nursing home argued it was immune from suit because it was an unincorporated association. *Id.* at 233. We recognized unincorporated associations could not be sued at common law. *Id.* at 234. But we determined the doctrine of estoppel precluded the nursing home from avoiding the lawsuit because the nursing home had held itself out as a legal entity conducting business. *Id.* at 235-36. We concluded “that an association doing business as a legal entity may, if the facts and circumstances warrant, be estopped to deny its own existence.” *Id.* at

236. [¶6] Askew did not abrogate the common law’s prohibition on unincorporated associations holding title to real property. Askew simply created an equitable exception to the common-law rule to be applied when “the facts and circumstances warrant.” Askew , 234 N.W.2d at 236. The logic behind the common law’s prohibition of unincorporated associations’ ownership of real property is still persuasive after Askew . “[T]here must be some legal, identifiable party holding the interest who is responsible for liability arising out of that ownership interest.” Winchell , 865 P.2d at 253. Otherwise, individuals would be able to conceal their identity and escape liability flowing from property ownership by simply holding property in the name of an unincorporated association.

III

[¶7] The Next Step asserts that, even if the common-law rule has not been abrogated, this case warrants an exception. It argues we should either (1) adopt an exception that allows courts to construe a conveyance to an unincorporated association to vest ownership in the association’s members, or (2) adopt an exception that allows courts to construe such conveyances to be held in trust for the association. We conclude these exceptions are inappropriate for this case, and we adopt neither. A [¶8] The first exception allows a court to construe a grant to an unincorporated association to vest ownership in the association’s members when those members are ascertainable. The Montana Supreme Court has described the exception: [W]hen an unincorporated association purportedly owns property, the presence of “identifiable trustees” of the association makes for a group that can take responsibility for the duties of ownership, and that therefore possess the land in lieu of the association. *Edwards v. Burke* , 102 P.3d 1271, 1275 (Mont. 2004). The United States Court of Appeals for the First Circuit has explained this exception only applies when the association’s membership is ascertainable: [The common-law rule] is not absolute. Courts may determine that ownership vests in the individuals who comprise the organization. . . . In *Byam v. Bickford* , [140 Mass. 31, 2 N.E. 687 (1885)], real property was permitted to vest in an unincorporated association’s members because all of the members could be ascertained. In contrast, where membership is not fixed and new members are continually being added and lost, such vesting has not been allowed. *State v. Sunbeam Rebekah Lodge No. 180* , 169 Or. 253, 127 P.2d 726 (1942). Without this limitation of an ascertainable membership, the public, or even the members of the association, would not have notice or be cognizant of who claimed ownership in a particular property. *Motta v. Samuel Weiser, Inc.* , 768 F.2d 481, 486 (1st Cir. 1985). [¶9] In this case, The Next Step has not proffered any bylaws or membership requirements. The district court was unable to ascertain which individuals comprise the association or what individual member’s roles were: “Who are the trustees? Who are the members? Which trustees and which members have the right to speak for the association, and to contractually bind it?” We conclude the ascertainable beneficiary exception does not apply to this case, and we decline to adopt it. B [¶10] Under another exception to the general rule, courts have construed bequests to charitable unincorporated associations to be held in trust when the bequest is for a charitable purpose. In other words, they have applied the doctrine of cy pres: “The equitable doctrine under which a

court reforms a written instrument with a gift to charity as closely to the donor's intention as possible, so that the gift does not fail." Black's Law Dictionary 444 (9th ed. 2009). By the great weight of authority, a devise or bequest to an unincorporated charitable association does not fail, rather the court will appoint a trustee to administer the bequest or devise. . . . The implication of a trust when property is bequeathed or devised to an unincorporated charitable association best effectuates the intent of the testator and is in accord with the general philosophy of the cy pres doctrine. *Estate of Anderson* , 571 P.2d 880, 882-83 (Okla. Civ. App. 1977) (citations omitted). An early North Dakota case has recognized a lease executed in the name of an individual to be held in trust for an unincorporated association was valid. See *Piper v. Taylor* , 48 ND 967, 188 N.W. 171 (1922). [¶11] There are cases in which courts have relied on cy pres to reform charitable bequests to unincorporated associations. See *Sunbeam* , 127 P.2d at 731; *In re Andrejevich's Estate* , 57 N.Y.S.2d 86, 87 (1945). However, we have not found any cases, and *The Next Step* has cited to none, in which a court has used cy pres to reform an inter vivos transfer to an unincorporated association. We conclude the cy pres exception is inapplicable here. The conveyance is a quitclaim deed—not a post-mortem bequest—and it does not express a charitable purpose. IV [¶12] Unincorporated associations are not legal entities; unless an association can establish an exception applies, it is incapable of holding title to real property. The district court properly dismissed *The Next Step's* quiet title action. We affirm. [¶13] Carol Ronning Kapsner Lisa Fair McEvers Daniel J. Crothers Dale V. Sandstrom Gerald W. VandeWalle, C.J.