SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1005-16T2

JOHN BUSELEA,

Petitioner-Appellant,

v.

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, SANDY RECOVERY DIVISION,

Respondent-Respondent,

and

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, SANDY RECOVERY DIVISION,

Petitioner-Respondent,

v.

JOHN BUSELEA,

Respondent-Appellant.

Submitted February 12, 2018 – Decided March 15, 2018

Before Judges Accurso and DeAlmeida.

On appeal from the Department of Community Affairs, Docket Nos. RRE0015318 and RSP0015294.

Community Health Law Project, attorneys for appellant (Jerome P. Keelen, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Cameryn J. Hinton, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner John Buselea appeals from a final decision by the Commissioner, Department of Community Affairs (DCA), determining him ineligible to receive funds from the agency's Resettlement Program (RSP) and the Reconstruction, Rehabilitation, Elevation, and Mitigation Program (RREM) to repair a residence damaged by Superstorm Sandy. Petitioner was ordered to return $10,000 he received from the RSP prior to the Commissioner's determination, and was denied additional funding from RREM. The basis of the Commissioner's decision is that petitioner was not the owner of the residence in question at the time the storm damage was incurred. Petitioner challenges that conclusion, arguing that title to the residence was transferred to him prior to the storm through a deed that was not recorded and later lost. We affirm.

I.

On October 29, 2012, Superstorm Sandy made landfall in New Jersey. The storm left in its wake a considerable amount of property damage. In the aftermath of the storm, the United States Department of Housing and Urban Development (HUD), through the Community Development Block Grant program, provided funds to the

DCA, which allocated those funds to programs including the RSP and the RREM to assist New Jersey residents affected by the storm. Specifically, the RSP provided $10,000 grants to encourage eligible homeowners to remain in the county in which they resided at the time of the storm. The RREM program provided grants of up to $150,000 to assist those eligible with reconstruction, rehabilitation, elevation, and mitigation of their affected homes.

HUD, through DCA, approved the eligibility criteria for both the RSP and the RREM program. Both programs require that the damaged property have been owned and occupied by the applicant as a primary residence at the time of the storm. Ownership is verified through title searches in public records.

On June 14, 2013, petitioner applied to the RREM program for funds to rehabilitate a home in Brick Township damaged by the storm. Petitioner and Linda Lowden, with whom petitioner resides at the property, were listed as co-applicants. Also on June 14, 2013, petitioner applied for the RSP grant. That application did not list Lowden as a co-applicant.

The DCA awarded petitioner a $10,000 RSP grant. The grant was accompanied by a $10,000 promissory note, which petitioner signed. Petitioner initialed a portion of the promissory note stating that the "damaged dwelling was owned by [petitioner] and was [petitioner's] primary residence at the time of the storm."

The promissory note provided that it would be forgiven if petitioner remained a resident of the county for three years.

During its review of petitioner's RREM application, the DCA found municipal tax records indicating that petitioner's mother was the owner of the property in question on October 29, 2012. In addition, public records indicated that petitioner and Lowden acquired the property from petitioner's mother in a deed executed on November 21, 2012, after the storm, and recorded on January 8, 2013.

When confronted with these findings, petitioner produced a copy of an unrecorded deed dated January 24, 2012. The deed, which was prepared by an attorney, purported to transfer the property from petitioner's mother to petitioner, as the sole grantee, for consideration of $1.00. Although the deed was accompanied by instructions from the attorney to have it recorded and returned to her, petitioner failed to record the deed. He reported that the original deed could not be found after the storm. According to petitioner, the purpose of the November 21, 2012 deed was to memorialize the transfer of title that took place in the January 24, 2012 deed.

Yet, the November 21, 2012 deed contains material substantive deviations from the January 24, 2012 deed. While transferring the same property identified in the first deed, the November 21, 2012

deed transfers title to the property from petitioner's mother to both petitioner and Lowden. In addition, the November 21, 2012 deed contains a covenant as to grantor's acts, which states that the grantor took no acts to encumber title to the property since the time that it was transferred to her.

Further, the November 21, 2012 deed was accompanied by a Seller's Residency Certification/Exemption dated December 12, 2012. On that form, petitioner's mother certified she owned a 100% interest in the property at the time she executed the November 21, 2012 deed, and that the closing date of the transfer was November 21, 2012.

Based on the November 21, 2012 deed and accompanying Certification, the DCA determined that petitioner was not the owner of the property on October 29, 2012, and was not, therefore, eligible for either the RSP grant or the RREM program. Petitioner's RREM program application was denied, and he was directed to return the $10,000 RSP grant.

After an appeal by petitioner, a three-person panel of DCA's Compliance and Monitoring Staff affirmed the finding of ineligibility for both programs.

Petitioner appealed the matter as a contested case in the Office of Administrative Law. On cross-motions for summary judgment, the ALJ determined that

> [w]hile an unrecorded deed may effectively transfer title to property, it is clear from the recorded deed that [petitioner's mother] still owned 100 percent of the Property at the time of the storm and that, in this case, the unrecorded deed did not effectively transfer title to the Property from [petitioner's mother] to petitioner.

The ALJ noted that there was

> an absence of "anything that clearly manifests the grantor's intention that the [unrecorded] deed become immediately operative and that the grantee became the owner of the estate purportedly conveyed."

The ALJ entered a judgment affirming the DCA's determinations that petitioner was not eligible for the RSP grant or the RREM program. Petitioner appealed, and the DCA Commissioner entered a final determination adopting the ALJ's initial decision. This appeal followed.

II.

Our scope of review of an administrative agency's final determination is limited. In re Herrmann, 192 N.J. 19, 27 (2007). The "final determination of an administrative agency . . . is entitled to substantial deference." In re Eastwick Coll. LPN-to-RN Bridge Program, 225 N.J. 533, 541 (2016).

> An appellate court will not reverse an agency's final decision unless the decision is "arbitrary, capricious, or unreasonable," the determination "violate[s] express or implied legislative policies," the agency's action offends the United States Constitution

> or the State Constitution, or "the findings on which [the decision] was based were not supported by substantial, credible evidence in the record."
>
> [Ibid. (alternations on original) (quoting University Cottage Club of Princeton N.J. Corp. v. Department of Envt'l Prot., 191 N.J. 38, 48 (2007)).]

On the other hand, the court is "'in no way bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue.'" Department of Children & Families v. T.B., 207 N.J. 294, 302 (2011) (alterations in original) (quoting Mayflower Sec. Co. v. Bureau of Secs., 64 N.J. 85, 93 (1973)). Since "an agency's determination on summary decision is a legal determination, [appellate] review is de novo." L.A. v. Bd. of Educ., 221 N.J. 192, 204 (2015).

Petitioner does not contest the reasonableness of DCA having established criteria limiting eligibility for RSP grants and the RREM program to applicants who owned their residences at the time that the structures were damaged by Superstorm Sandy. Petitioner contends, however, that the agency erred when it determined that he was not vested with title to the property by delivery of the January 24, 2012 deed. We disagree.

In New Jersey, ownership of real property is transferred by deed and is complete upon execution of the deed by the grantor, and acceptance of the deed by the grantee. N.J.S.A. 46:3-13; see

In re Estate of Lillis, 123 N.J. Super. 280, 285 (App. Div. 1973). The transfer of a property interest is complete "upon delivery" of the deed. Tobar Constr. Co. v. R.C.P. Assocs., 293 N.J. Super. 409, 413 (App. Div. 1996). An "unrecorded deed is void only as against subsequent purchasers, encumbrancers, and judgment creditors. It is perfectly efficacious in passing title from grantor to grantee . . . ." Siligato v. State, 268 N.J. Super. 21, 28 (App. Div. 1993).

However, physical delivery of a deed is not definitive of a transfer of title; there must also be the requisite level of intent that the deed be immediately effective. Dautel Builders v. Borough of Franklin, 11 N.J. Tax 353, 357 (Tax 1990). Delivery can be evidenced by "[a]nything that clearly manifests the grantor's intention that the deed become immediately operative and that the grantee become the owner of the estate purportedly conveyed." Ibid. "If there is physical delivery without the requisite intent that the deed be presently effective as a conveyance of the grantor's title, there is, in legal contemplation, no delivery." Ibid.

Here, the Commissioner concluded that the November 21, 2012 deed is convincing evidence that petitioner's mother did not intend for the January 24, 2012 deed to be effective upon its physical delivery to petitioner. The November 21, 2012 deed transfers the

very property that is the subject of the January 24, 2012 deed to petitioner and another grantee, Lowden. In addition, the November 21, 2012 deed contains a clause stating that the grantor had not previously encumbered title to the property, and was accompanied by a certification that petitioner's mother owned 100% of the property at the time the November 21, 2012 deed was executed. These acts and representations by the grantor are sufficient credible evidence supporting the Commissioner's determination that the grantor did not intend the January 24, 2012 deed to transfer the property to petitioner.

In support of his position, petitioner relies on a certification signed by the attorney who drafted both the January 24, 2012 deed and the November 21, 2012 deed. Although petitioner contends the certification is evidence his mother intended the January 24, 2012 deed to be effective immediately upon its delivery to petitioner, the attorney makes no representation in the certification with respect to the intention of the grantor. The attorney instead certified that petitioner's mother requested that she draft a deed to transfer title to the property to petitioner, and that in response to that request the attorney drafted the January 24, 2012 deed. She further certified that after Superstorm Sandy petitioner came to her office to request "yet another deed"

transferring the property because he had not recorded and misplaced the January 24, 2012 deed.

What the attorney did not explain is why, if petitioner's mother had intended the January 24, 2012 deed to be effective immediately upon its delivery to petitioner, the attorney drafted a new deed that transferred the property not to petitioner alone, as had been the case with the first deed, but to petitioner and Lowden. Nor does she explain why she drafted the November 21, 2012 deed to say that petitioner's mother had taken no actions to encumber title to the property prior to execution of the November 21, 2012 deed. Nor does the attorney account for the December 2012 certification in which petitioner's mother certified that she owned 100% of the property at the time she executed the November 21, 2012 deed. All of these actions by the attorney contradict the assertion that the grantor intended the January 24, 2012 deed to transfer title to petitioner upon its delivery to him.

These facts are unlike those before the court in H.K. v. State, 184 N.J. 367 (2005), a precedent on which petitioner relies. In that case, the Court was called upon to determine when, for purposes of Medicaid eligibility, a parcel was transferred. The deed was executed in July 1998, but not recorded until 25 months later in August 2000. Id. 373-74. The Court concluded that the transfer took place at the time the deed was physically delivered

to the grantee, and not when it was recorded more than two years later. Id. at 386.

The key distinction between the facts before the Court in H.K. and those presented here is that the grantor in H.K. did not, after executing the unrecorded deed, execute a new deed transferring the property to, in part, a grantee not included in the first deed. Nor did the H.K. grantor, after executing the first deed, execute a new deed stating she had undertaken no prior acts encumbering title to the property, or sign a declaration that she owned a 100% interest in the property at the time she executed the second deed. In H.K., the grantor signed a single deed, and did not subsequently act in a manner inconsistent with having transferred title to the grantee in that deed.

Nor do we view the holding in Bhagat v. Bhagat, 217 N.J. 22 (2014), to require reversal of the Commissioner's determination. In that case, the Court recognized that when a parent makes an inter vivos transfer of property to a child without consideration the transfer is presumed to be a gift and that the presumption is rebuttable by clear and convincing evidence antecedent to, contemporaneously with, or immediately following the transfer. Id. at 47. Here, the grantor's acts subsequent to the execution of the January 24, 2012 deed, done with the apparent consent of

petitioner, are clear and convincing evidence that the January 24, 2012 deed was not intended to be immediately effective.

We cannot conclude, on the record before us, that the Commissioner's determination is unsupported by substantial credible evidence or is contrary to law.[1]

Affirmed.

[1] We note that petitioner urges this court to conclude that the November 21, 2012 deed was a nullity. Such a conclusion would, presumably, extinguish Lowden's ownership interest in the property. We do not, however, view this matter as a title contest between petitioner and Lowden. Lowden did not participate in the administrative proceedings, where she was not named as a party, nor has she filed a brief in this appeal. We cannot, as petitioner urges, consider the grantor's transfer of title to Lowden in the November 21, 2012 deed to be a mere technical imperfection in an attempt to duplicate the January 24, 2012 deed transferring the property to petitioner alone.