

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

The Next Step,	)	Supreme Court No.: 20150333
)	
Plaintiff/Appellant,)	
)	
vs.)	
	)	District Court No.: 51-2014-CV-00948
Jamie Redmon,)	
)	
Defendant/Appellee.)	

APPEAL FROM THE DISTRICT COURT OF WARD COUNTY
NORTH CENTRAL JUDICIAL DISTRICT
DISTRICT COURT NO.: 51-2014-CV-00948
THE HONORABLE GARY LEE

APPELLEE’S BRIEF

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TABLE OF CONTENTS

Table of Contents.	2
Table of Cases.	3, 4
Nature of the Case.	¶1
Statement of Facts.	.	.	.	.	.	.	.	.	.	¶2
Issue Presented.	.	.	.	.	.	.	.	.	.	¶6
Argument.	.	.	.	.	.	.	.	.	.	¶7
Conclusion.	.	.	.	.	.	.	.	.	.	¶29
Certificate of Service.	.	.	.	.	.	.	.	.	.	18

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

<u>Andrejevich’s Estate</u> , 57 N.Y.S.2d 86, 87-88 (N.Y. Surrogates Court 1945).	. . . . .	¶21
<u>Askew v. Joachim Memorial Home</u> , 234 N.W.2d 226,236 (N.D. 1975).	. . . . .	¶7, ¶27
<u>ATIFA v. Shairzad</u> , 2004 WL 1586848 (N.Y. App. Div. 2004).	. . . . .	¶11, ¶16
<u>Cherokee Home Demonstration Club v. Oxendine</u> , 397 S.E.2d 643,647 (N.C. App. 1990).		¶15
<u>Crane v. Crane</u> , 683 P.2d 1062, 1067-68 (Utah 1984).	. . . . .	¶10
<u>Edwards v. Burke</u> , 102 P Jd 1271, 1274-75 (Mont. 2004).	. . . . .	¶14, ¶16
<u>Flanagan v. Benvie</u> , 273 P.2d 381,384 (N.M. 1954).	. . . . .	¶10
<u>Furhmall v. Doll</u> , 451 A.2d 530, 531-32 (Pa. 1982).	. . . . .	¶19
<u>Future Fed. Sav. & Loan Ass’n v. Daunhauer</u> , 687 S.W.2d 871, 873-74 (K-y. 1985).		¶10
<u>German Land Ass’n v. Scholler</u> , 10 Minn. 331,338 (Minn. 1865).	. . . . .	¶10
<u>In re Estate of Anderson</u> , 571 P. 2d 880, 882 (Okla. App. 1977).	. . . . .	¶21
<u>Johnson v. S. Blue Hill Cemetery Ass’n</u> , 221 A.2d 280,282-83,285 (Me. 1966).	. . . . .	¶16, ¶26
<u>Jones v. Alpine Invs., Inc.</u> , 764 P.2d. 513, 514-15 (Okla. 1987).	. . . . .	¶10
<u>Koehler v. Cntv. of Grand Forks</u> , 2003 ND 44, 658 N.W.2d 741, 745.	. . . . .	¶22
<u>Krumbine v. Lebrolon Cnty. Tax Claim Bureau</u> , 541 Pa. 384, 388-90 (Pa. 1995).	. . . . .	¶10, ¶19
<u>Medd v. Fonder</u> , 543 N.W.2d 483 (N.D. 1996).	. . . . .	¶24
<u>Motta v. Samuel Weiser, Inc.</u> , 768 F.2d 481 (1st Cir, 1985).	. . . . .	¶16, ¶17, ¶26
<u>O.K.C. Corp. v. Allen</u> , 574 S.W.2d 809,812-13 (Tex. App. 1978).	. . . . .	¶19
<u>Piper v. Taylor</u> , 4 & N.D. 967 (1922).	. . . . .	¶19
<u>Rock Creek Gardens Tenants Ass’n v. Ferguson</u> , 404 A.2d 972, 973 (D.C. 1979).	. . . . .	¶10, ¶21
<u>Save-A-Patriot Fellowship v. United States</u> , 962 F. Supp. 695, 699 (D. Md. 1996)..		¶14

State v. Sunbeam Rebekah Lodge No. 180 of Hermiston, 127 P o2d 726, 731 (Or. 1942). . ¶21

Winchell v. Mont. Dep't of State Lands, 865 P .2d 249, 252-53 (Mont. 1993). . . ¶10

STATUTES AND OTHER AUTHORITIES

N.D.C.C. ch. 10-15. ¶15

2 Patton and Palomar on Land Titles § 416 (3d ed.). ¶10, ¶14

Appendix References made herein are found in the Appellee's Appendix.

STATEMENT OF THE CASE

[¶1] This, or at least was, a quiet title action commenced by the Plaintiff/Appellant, The Next Step, against Defendant/Appellee, Jamie Redmon. Ultimately, both parties brought motions for summary judgment, which the Trial Court, the Honorable Gary Lee presiding, granted in favor of the Defendant.

STATEMENT OF FACTS

[¶2] On October 31, 2008, Holli Gates, hereinafter referred to as “Gates”, the record owner of the property at the time, legally described as: Lot 90 Belmont Addition (commonly known as 1227 7th Ave N.E.), in the City of Minot, County of Ward, State of North Dakota, quit claimed the property to Daniel Foster, hereinafter referred to as “Foster”; Foster recorded that deed on November 14, 2008 (App. 1).

[¶3] On June 13, 2013 the property was conveyed by quit claim deed from Foster to Jamie Redmon, hereinafter referred to as “Redmon”; the deed was recorded with the Ward County Recorder by Redmon on the same day (App. 2).

[¶4] Gates subsequently recorded a quit claim deed on January 24, 2014, conveying the property to “The Next Step” from Foster. That deed was dated February 13, 2009. (App. 3). Redmon submitted substantial evidence showing that the signature of Foster and the notary, Carl Flagstad, were forgeries (App. 11). Gates made no reply to that allegation, by affidavit or otherwise, in her pleading. The Trial Court, however, did not base its decision on that issue.

[¶5] On September 28, 2015, the Trial Court, the Honorable Gary Lee, granted Redmon summary judgment solely on the ground that an unincorporated association cannot hold title to

real property in North Dakota and therefore that will be the only issue addressed in this brief. (App. 4).

ISSUE

[¶6] IS THE QUIT CLAIM DEED, DATED FEBRUARY 13, 2009 AND RECORDED ON JANUARY 24, 2014, VOID BECAUSE IT TRANSFERS PROPERTY TO AN UNINCORPORATED ASSOCIATION?

LAW AND ARGUMENT

THE QUIT CLAIM DEED, DATED FEBRUARY 13, 2009 AND RECORDED ON JANUARY 24, 2014, IS VOID BECAUSE IT TRANSFERS PROPERTY TO AN UNINCORPORATED ASSOCIATION.

[¶7] Under the North Dakota Title Standards (2012), Standard 2-19, "[a] conveyance to an unincorporated association does not vest title in such association." See also Askew v. Joachim Memorial Home, 234 N.W.2d 226,236 (N.D. 1975) (recognizing that unincorporated associations are not legal entities). The Plaintiff admits in its Complaint, that the February 13, 2009 quitclaim deed transfers the property to "The Next Step," an unincorporated non-profit. (App. 5). The Next Step was not registered in North Dakota until August 24, 2011 (App. 6). Plaintiff has provided no evidence of any bylaws or any other documents showing that The Next Step was actually transacting business as a legal entity. Consequently, the Next Step could not take title the property and the February 13, 2009 quitclaim deed is void. (In addition, the status of The Next Step as an unincorporated nonprofit and the lack of any evidence showing that The Next Step was actually transacting or doing business as a legal entity also raises an issue as to whether The Next Step has capacity to bring suit. See Askew, 234 N.W.2d at 236.

[¶8] In sum, the evidence in this action consists mostly of conflicting affidavits regarding the February 2009 quit claim deed and its validity and there is little evidence supporting a claim that The Next Step was a legal entity able to take title to the property or able to bring this action.

[¶9] This Court should conclude that the general common-law rule is that an unincorporated association cannot hold title to real property and therefore a conveyance of real property to an unincorporated entity is void. In reviewing the exceptions to the general rule, this Court should determine that none of the exceptions apply to this case because (A) there is no North Dakota statute authorizing unincorporated associations to own real property; (B) The Next Step's membership is not ascertainable; and (C) there are no facts showing that Daniel Foster allegedly conveyed the property to the Next Step for charitable purposes. Accordingly, this Court should determine that unincorporated associations cannot take title to property under North Dakota law and affirm the Trial Court's decision.

I. An Unincorporated Association Cannot Hold Title to Real Property in North Dakota.

[¶10] The general common-law rule is that an unincorporated association cannot take title to real property and a conveyance to an unincorporated association "will not pass title." 2 Patton and Palomar on Land Titles § 416 (3d ed.); see also, e.g., Rock Creek Gardens Tenants Ass'n v. Ferguson, 404 A.2d 972, 973 (D.C. 1979) (At common law, an unincorporated association "cannot, in its own name, ... enter into contracts" or "take, hold, or transfer property."); Future Fed. Sav. & Loan Ass'n v. Daunhauer, 687 S.W.2d 871, 873-74 (K-y. 1985) (An unincorporated association cannot hold title to real property "in the absence of some statute providing for such title."); German Land Ass'n v. Scholler, 10 Minn. 331,338 (Minn. 1865) (A "voluntary

association of persons unincorporated, had no legal capacity to take or hold real property."); Winchell v. Mont. Dep't of State Lands, 865 P.2d 249, 252-53 (Mont. 1993) ("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."); Flanagan v. Benvie, 273 P.2d 381,384 (N.M. 1954) (Unincorporated associations are "incapable in their associate name of taking and holding either real or personal property."); Jones v. Alpine Invs., Inc., 764 P.2d. 513, 514-15 (Okla. 1987) (recognizing that unincorporated association cannot hold title to real property but applying the "charitable trust" exception); Krumbine v. Lebrolon Cnty. Tax Claim Bureau, 541 Pa. 384, 388-90 (Pa. 1995) (holding that an unincorporated association could not be the owner of property, but stating that an unincorporated associations' trustees may take title to real property); Crane v. Crane, 683 P.2d 1062, 1067-68 (Utah 1984) ("As a general rule, an unincorporated association cannot hold or transfer title to property.").

[¶11] Consequently, because title to real property cannot pass to an unincorporated association under the common-law, the conveyance of real property to an unincorporated association is void and any deed purporting to convey property to an unincorporated. association is invalid. See ATIFA v. Shairzad, 2004 WL 1586848, at *3 (N.Y. App. Div. 2004) (unreported decision) ("[An unincorporated association] lacks capacity to take or hold title to real property in its own name as grantee and deed to such unincorporated associations are void."). As discussed below, none of the exceptions to the common-law rule apply to this case and therefore the alleged conveyance of the property to The Next Step in 2009 is void because title cannot pass to The Next Step.

A. None of the Exceptions to the Common-Law Rule Are Applicable to this Case.

[¶12] The exceptions to the common-law rule, which have been applied in other jurisdictions, are not applicable to the facts of this case. A review of other jurisdictions' case law shows that there are three exceptions to the general rule that unincorporated associations cannot hold title to real property. Those exceptions are:

- 1) A state may authorize an unincorporated association authority to own property by statute;
- 2) Some jurisdictions have held that title passes to the ascertainable members of an unincorporated association; and
- 3) Some jurisdictions will imply a charitable trust and appoint a trustee to hold title to the property for the benefit of the unincorporated association.

[¶13] None of the above exceptions should be applied to this case because (A) there is no North Dakota statute authorizing unincorporated associations to own property; (B) The Next Step's membership is not ascertainable; and (C) there are no facts showing that Daniel Foster allegedly conveyed the property to the Next Step for charitable purposes.

B. North Dakota Statutes Do Not Authorize Unincorporated Associations to Take Title to Real Property.

[¶14] Some jurisdictions have "modified the preceding common law rules by statutorily authorizing unincorporated associations to take title to property in their own name." 2 Patton and Palomar on Land Titles § 416 (3d ed.); see also e.g., Edwards v. Burke, 102 P Jd 1271, 1274-75 (Mont. 2004) ("Under common law an unincorporated association cannot own land unless a statute empowers it to do so."); Save-A-Patriot Fellowship v. United States, 962 F. Supp. 695, 699 (D. Md. 1996) (citing to Maryland's statute authorizing unincorporated

associations to take title to real property).

[¶15] From Appellee's review of North Dakota statutes, the North Dakota legislature has not enacted any statutes that would authorize an unincorporated association to take title to real property. See N.D.C.C. ch. 10-15 (North Dakota has authorized "cooperative associations" to hold and convey real property, but no statute authorize unincorporated associations to do so.). Therefore, the common-law rule should control, and this Court should conclude that an unincorporated association cannot take title to real property in North Dakota. See Cherokee Home Demonstration Club v. Oxendine, 397 S.E.2d 643,647 (N.C. App. 1990) ("[I]t is the responsibility of the legislature to clarify the rights and obligations of these associations to sue and hold real property."),

C. Title to the Property Could Not Vest in The Next Step's Members Because They Are Not Ascertainable and There Are No Standards to Identify Them.

[¶16] Some jurisdictions have also modified the common-law rule by holding that title to real property will vest in the ascertainable members of the unincorporated association as individuals. Edwards, 102 P.3d at 1275. The members of the association would then hold title to the property as tenants in common. Id. However, this exception should only be applied when the members are "easily ascertainable" rather than when the members are "diffuse and no standards are available to identify them." See Motta v. Samuel Weiser, Inc., 768 F.2d 481, 485-86 (1st Cir, 1985) ("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."); Johnson v. S. Blue Hill Cemetery Ass'n, 221 A.2d 280,282-83,285 (Me. 1966) (Concluding that because membership in the association "was not sufficiently definite and determinate," title to property devised to the unincorporated

association could not vest in its members.). Only when "an unincorporated association has a definite membership to wit: a defined and identifiable group, and the deed to the association refers to an individual grantee who has capacity to take and hold title, the conveyance by deed would be held valid." ATIFA, 2004 WL 1586848, at *3 (internal citations omitted).

[¶17] Here, the only evidence submitted regarding the Next Step and its members is Holly Gates' affidavit (App. 7). In her affidavit, Gates states that she and three other individuals formed the Next Step in 2003. Id.

Otherwise, there are no allegations or evidence showing that the Next Step has a definite and identifiable membership: The Next Step has produced no bylaws, no records of meetings, no standards to identify members, and the other individuals identified in Gates' affidavit have made no appearance in this matter. And, other individuals are already claiming to hold various positions at the Next Step and to have a say or interest in the property at issue, showing the lack of standards The Next Step has to identify its members. (App. 8). Because the membership of The Next Step is not identifiable, the public and even members of the alleged association will not have notice or be cognizant of who claimed ownership" in the property. See Motta, 768 F.2d at 486. Therefore, title to the property at issue should not vest in any alleged members of The Next Step.

[¶18] Additionally, the only evidence showing that The Next Step actually existed in 2009 is, again, Gates' affidavit. (App. 7). However, contrary to Gates affidavit, The Next Step was not registered with the State of North Dakota until 2011 and there is no other evidence showing that The Next Step was formed prior to 2011. In fact, other than Gates' affidavit, there is no evidence showing that The Next Step is actually an association. Surely, Gates could have produced affidavits from the other founding members' or records of meeting and activities. To

the contrary, she has submitted only a brief affidavit and no supporting documentation.

[¶19] Lastly, in addition to allowing real property to vest in ascertainable members of an association, some jurisdictions have allowed trustees of an unincorporated association to acquire property by adverse possession through the actions of the trustees or take title to property for the benefit of the association, if the trustees are named on the conveying instrument. See Krumbine, 541 Pa. at 389 (Trustees "may be considered the 'owners' of property under [Pennsylvania statute] when the trustees' names appear on the conveyance document."); Furhmall v. Doll, 451 A.2d 530, 531-32 (Pa. 1982) (determining that from the bylaws and the taking of the property as "Trustees" it was "apparent that the property was held by the named grantees for the benefit" of the unincorporated association); Piper v. Taylor, 4 & N.D. 967 (1922) ("Although unincorporated, it was proper for this association to receive and to possess such lease for its purposes, running to its trustees.") O.K.C. Corp. v. Allen, 574 S.W.2d 809,812-13 (Tex. App. 1978) (An unincorporated association may hold title to real property "through elected trustees and their successor," but cannot hold title to real property in its name.).

[¶20] Here, there is no claim of adverse possession and there are no facts to support such a claim. No trustees are named in the alleged conveying document, there are no identifiable trustees for The Next Step, and there are no facts, other than Gates contradicted affidavit, that the property was used for the purposes of The Next Step. (App. 3). As explained above, The Next Step has no standards for membership, no bylaws, and no named trustees. Thus, this Court should recognize that, not only is the membership of The Next Step unascertainable, but the activities and the existence of The Next Step as an association have not been established, and conclude that title to the property could not vest in any alleged trustees or members of The

Next Step.

D. A Charitable Trust Cannot Be Implied Because There Are No Facts Showing that Daniel Foster Allegedly Conveyed the Property for Charitable Purposes.

[¶21] Some jurisdictions have further modified the common-law rule by implying a charitable trust and appointing a trustee to hold title to the property for the benefit of the association. See In re Estate of Anderson, 571 P. 2d 880, 882 (Okla. App. 1977) (“By the great weight of authority, a [gift] to an unincorporated charitable association does not fail, rather the court will appoint a trustee to administer the [gift].”); In re Andrejevich’s Estate, 57 N.Y.S.2d 86,87-88 (N.Y Surrogates Court 1945) (A trust should be implied when a gift for charitable uses is made to an unincorporated association); State v. Sunbeam Rebekah Lodge No. 180 of Hermiston, 127 P o2d 726, 731 (Or. 1942) (“[I]f the objects and purposes of the donee or devisee are wholly charitable, a gift or devise to it will be treated as one for charity. ”). This approach requires the court to “ascertain the intent of the donee and appoint a trustee to hold legal title for the use and benefit of the association.” Rock Creek Gardens Tenants Ass’n v. Ferguson, 404 A.2d 972, 973 (D.C. 1979).

[¶22] Here, a charitable trust could not be implied because there are no facts showing that Daniel Foster allegedly gifted the property to The Next Step for a charitable purpose. See Koehler v. Cntv. of Grand Forks, 2003 ND 44, ¶9, 658 N.W.2d 741, 745. (“When no pertinent evidence on an essential element is presented to the trial court in resistance to a motion for summary judgment, it is presumed no such evidence exists.”). There are no allegations in the Complaint or any evidence submitted by The Next Step which creates an issue of fact as to Foster's intent in allegedly conveying the property at issue to The Next Step. See generally Pl.'s Complaint; Pl's

Motion for Summary Judgment. To the contrary, Foster submitted an affidavit stating that he did not convey the property to The Next Step, and the property was not gifted, but allegedly conveyed for one dollar to The Next Step. (App. 9) (App. 3).

[¶23] Further, Gates' assertions that the property was even used for charitable purposes is contradicted by her actions and her statements. In her affidavit, Gates claims to have used the property as her personal residence from 1999 until June of 2013. (App. 7). Gates then states that she used the property as a place of business and to house clients of The Next Step from 2005 until June 2013. Id. Therefore, Gates is claiming that the property was used as her personal residence, her place of business, and as housing for clients from 1999 to 2013. (App. 10). However, Gates, in her individual capacity, conveyed the property to Foster in October of 2008. (App. 5). Thus, neither Gates nor The Next Step even owned the property for the duration of the time that Gates claims to have used it for her personal residence and as a place of business for the Next Step (Gates has still not provided an explanation for the conveyance of the property to Foster in October of 2008, but stated under oath that Foster was using it for collateral, which would render it a fraudulent transfer. (App. 10). Therefore, there are no facts showing that Foster allegedly conveyed the property to The Next Step for charitable purposes or any facts that the property was even used for charitable purposes.

E. No exception to the common-law rule prohibiting unincorporated associations from taking title to real property is applicable to the facts of this case.

[¶24] Plaintiff, The Next Step's, supplemental brief contains numerous statements about The Next Step, its members, and this case. None of these statements are supported by affidavits. Consequently, none of these statements could be considered as evidence by the Trial Court and

they cannot create genuine issues of material fact. See Medd v. Fonder, 543 N.W.2d 483, 487 (N.D. 1996) ("Statements in a motion brief are not evidence," and "[f]actual assertions in briefs do not raise genuine issues of material fact.").

[¶25] Even so, Plaintiff's statement of facts in its supplemental brief is inconsistent with Holly Gates' affidavit. In her affidavit, Gates states that the founders of The Next Step were Walt Lindsey, Alice Yeager, Wonnie Schafer, and herself. (App. 7). In its supplemental trial court brief, The Next Step lists several additional individuals as current members that Gates neglected to mention in her affidavit (Leo Gleason, Dick W. Grabar, Dennis Timmons, Sharon Meunch, and Elijah Scott). (App. 12). The Next Step has provided no other information from these alleged individuals, no affidavits from these individuals, and no other documentation showing that these individuals are members of The Next Step or were members of The Next Step in February 2009. Further, Gates also stated that The Next Step was formed in 2003 in her affidavit. (App. 7). Plaintiff now claims that The Next Step was formed in 2005. The inconsistencies in Plaintiff's alleged facts throughout this action demonstrate a lack of any organization or formalities within The Next Step and undermines The Next Step's legitimacy as an unincorporated association. Thus, the facts of this case do not warrant applying any exception to the common-law rule prohibiting unincorporated associations from taking title to property.

[¶26] In addition, Plaintiffs mere listing of several names as members of The Next Step demonstrates that its members are not easily ascertainable and the Next Step has no standards to identify its members. The common-law does not require that The Next Step simply declare who its members are, but it must provide standards to identify those members and the members must be easily ascertainable. See Motta v. Samuel Weiser, Inc., 768 F.2d 481, 485-86 (1st Cir, 1985)

("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."); Johnson v. S. Blue Hill Cemetery Ass'n, 221 A.2d 280, 282-83, 285 (Me. 1966) (Concluding that because membership in the association "was not sufficiently definite and determinate," title to property devised to the unincorporated association could not vest in its members.). Because Plaintiff has not provided any standards to identify its members and no way for the public to determine who The Next Step's members are, no exception to the common-law rule prohibiting unincorporated associations from taking title to real property are applicable.

F. Defendant Jamie Redmon has not conceded that Plaintiff, The Next Step, has capacity to bring suit.

[¶27] Defendant has not conceded that Plaintiff The Next Step has the capacity to bring this action, Under North Dakota law, unincorporated associations are "amendable to suit" when they have transacted or are transacting business in the state of North Dakota. Askew v. Joachim Memorial Home, 234 N.W.2d 226, 234-36 (N.D. 1975). Plaintiff The Next Step still has not provided any evidence that it actually transacted any business or actually serves a charitable purpose in North Dakota, has provided no bylaws, and has not provided any evidence showing that The Next Step is actually an unincorporated association rather than just a registered trade name.

[¶28] Because the common-law rule prohibits unincorporated associations from taking title to real property and there are no facts to support the application of any of the exceptions to the common-law rule, this Court should affirm the Trial Court's decision.

CONCLUSION

[¶29] The Trial Court found the arguments of the Plaintiff to be unpersuasive and determined, for reasons stated in its opinion, that an unincorporated association cannot hold title to real property and that the deed from Foster to The Next Step is VOID. The basis for the Trial Court's decision is clearly and concisely set forth in its decision and should be adopted by this court. The alternative would create chaos in the area of property transfers. The Trial Court's decision in dismissing the Plaintiff's complaint and quieting title in favor of the Defendant is correct and should be affirmed by this court.

Dated this 8th day of March, 2016

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APPEAL FROM THE DISTRICT COURT OF WARD COUNTY
NORTH CENTRAL JUDICIAL DISTRICT
DISTRICT COURT NO.: 51-2014-CV-00948
THE HONORABLE GARY LEE

CERTIFICATE OF SERVICE

¶1. I certify that a true and correct copy of the foregoing Appellee’s Brief was served electronically via email on this 8th day of March, 2016 on:

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