VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-03824

In re: Lisa Jelley

DECISION ON APPEAL

Following the death of Clarence Jelley, his surviving spouse, Beverly, asserted a homestead election with respect to their marital home. The Executors of Mr. Jelley's estate moved to disallow the election. The Probate Division concluded that deeds that the Jelleys executed, first to each other as tenants in common and then to their respective children, were ineffective to extinguish the homestead interest. The court reverses that determination.

The parties have agreed that the court may decide this appeal on the papers submitted below. Those papers contain a number of factual assertions that are nowhere supported in the record. Most of those assertions are, in any event, immaterial; hence, they form no part of the factual narrative below.

The record establishes the following narrative. Until April 13, 2020, the Jelleys owned property located at 3007 Simmonsville Road in Andover as tenants by the entirety. On that date, they executed a quitclaim deed, conveying undivided one-half interests to each of themselves as tenants in common. Each then executed an enhanced life estate deed conveying her or his interest as a tenant in common to their respective children. *See* 27 V.S.A. ch. 6. While Ms. Jelley asserts that she did not understand the legal ramifications of the deeds and did not have the opportunity to seek legal advice, this assertion finds no support in the record. Moreover, there is no suggestion that she was in any way incapacitated or that her will was somehow overborne, such as to negate her acknowledgement, when signing the deeds, that it was her free act and deed.

Mr. Jelley died in a fire on May 1, 2020. His passing extinguished his enhanced life estate, leaving fee title to his undivided one-half interest in the property vested in his children. Ms. Jelley, who continued to own an enhanced life estate in the other undivided one-half interest, then asserted a homestead interest in Mr. Jelley's portion of the property. The Executors' challenge followed.

27 V.S.A. § 141(a) provides:

> A homestead or an interest therein shall not be conveyed by the owner thereof, if married, except by way of mortgage for the purchase money thereof given at the

> time of such purchase, unless the wife or husband joins in the execution and acknowledgment of such conveyance. A conveyance thereof, or of an interest therein, not so made and acknowledged, shall be inoperative so far only as relates to the homestead provided for in this chapter.

Ms. Jelley asserts that this provision renders the deed from Mr. Jelley to his children inoperative to the extent that it purports to convey Ms. Jelley's homestead interest. This assertion, however, ignores the plain operation of subsection (d) of the same statute:

> (d) Notwithstanding anything to the contrary in this section, a spouse or civil union partner may convey his or her respective homestead interest to the other spouse or civil union partner prior to the time the homestead right vests, thereby divesting the grantor of any homestead interest in the property. A conveyance of homestead property between spouses or civil union partners shall be deemed to include a conveyance of any homestead interest.

That provision anticipates and authorizes exactly what happened here: spouses may convey homestead property to each other free and clear of any homestead interest; each would then be free to convey to any other person, unencumbered by any homestead interest.

Ms. Jelley next asserts that this interpretation runs afoul of another provision of Title 14. Section 323 sets forth the manner in which a spouse may waive the right to a homestead allowance. Ms. Jelley asserts that the deeds here did not meet the requirements of this statute. This assertion has a simple answer. By its express terms, Section 323 applies to waivers; it does not speak either expressly or implicitly to conveyances. Indeed, a prior section of the same subchapter, Section 321(d), makes clear that the waiver requirement does not apply to deeds conveying enhanced life interests. Section 141(d), in contrast, speaks directly to, and allows, conveyances of homestead interests. Section 141(d) anyway was already on the books when the legislature added Section 323. Had the legislature intended in any way to modify or abrogate Section 141(d), it could have done so. *Cf. Vt. Tenants, Inc. v. Vt. Hous. Fin. Agency*, 170 Vt. 77, 83 (1999) (The Vermont Supreme Court will find implied repeal "only if (a) the acts are so far repugnant that they cannot stand together, or (b) are not so repugnant, but the later act covers the whole subject of the former and plainly shows it was intended as a substitute therefore"). The plain language of the statute refutes any such suggestion.

In its Revised Decision, the Probate Decision posited an alternative interpretation of section 141(d). That interpretation was founded in part on its conjecture as to the legislature's intent in enacting the provision and in part on textual analysis. This court concludes that the former is uninformative, while the latter actually supports the Executors' interpretation of the statute.

The Probate Division, citing a decision from the federal Bankruptcy Court, observed that "§141(d) was enacted by the Vermont Legislature in 2007 'in what appears to be a direct response to'

the Vermont Supreme Court's decision in *In re Estate of Sara Mainolfi*, 178 Vt. 588 (2005)." In *Mainolfi*, the Court had concluded that because a homestead interest vested only upon death of one spouse, there was no way for that spouse to have conveyed it prior to death. Thus, suggested the Probate Court, "[p]resented with the facts of *Mainolfi*, the Vermont Legislature created a mechanism by which one spouse may relinquish their individual homestead interest prior to the death of the other spouse." Whether or not this is accurate as a matter of legislative history, it does not inform interpretation of that mechanism.

Rather, "[w]hen interpreting statutory provisions, we begin with the plain language of the statute, and, if possible, resolve any questions on this basis alone." *Clark v. DiStefano*, 2018 VT 82, ¶ 8, 208 Vt. 139. If the language is clear and unambiguous, the court need not look to legislative history or any other interpretive tools. *See Billewicz v. Town of Fair Haven,* 2021 VT 20, ¶ 14, 214 Vt. 511. To be sure, the court does not interpret statutory language in a vacuum; it "must examine and consider fairly, not just isolated sentences or phrases, but the whole and every part of the statute, together with other statutes standing in pari materia with it, as parts of a unified statutory system." *Brown v. W.T. Martin Plumbing & Heating, Inc.*, 2013 VT 38, ¶ 20, 194 Vt. 12 (quotation omitted).

The Probate Court's interpretation of section 141(d) hinges on its interpretation of the word, "between": in its view, for a conveyance to be "between" spouses, it must run exclusively from one spouse to the other. This interpretation fails as a matter of both plain language and logic. As a matter of plain language, Merriam-Webster's On-Line Dictionary gives the primary dictionary definition of "between" as "a: by the common action of: jointly engaging" or "b: in common to: shared by." https://www.merriam-webster.com/dictionary/between. Similarly, the Oxford Learner's Dictionary defines "between" as "shared by two or more people or things." https://www.oxfordlearnersdictionaries.com/us/definition/english/between. To be sure, one can find dictionary definitions that imply a singularity of participants on either side of the preposition. The court has not found a single dictionary, however, in which that definition is listed ahead of the one that encompasses joint or shared action. In short, there is no basis in common usage to select the definition employed by the Probate Division to the exclusion of others.

Logic leads to the same conclusion. Section 141(d) allows one spouse to convey a homestead interest to the other. Pursuant to section 141(a), however, any conveyance of a homestead interest must be made in a deed signed by both spouses. Thus, the only way one spouse could convey a homestead interest to the other would be in a deed signed by both. If that was not a deed "between spouses," then the statutory purpose—to allow a deed "between spouses" to convey a homestead interest—would be

defeated. The legislature cannot have intended to create an impossibility. The only logical interpretation of the "between spouses" requirement, therefore, is one that includes the type of conveyance that occurred here, where Mr. and Ms. Jelley, as tenants by the entirety, conveyed to each other, as tenants in common, undivided one-half interests in the marital home.

The Jelleys' simultaneous execution of deeds to their respective children, retaining life estates for themselves, confirms their intent to relinquish their homestead interests. Had they intended only to convey undivided remainder interests that would pass to each of their children on their respective deaths, they could have accomplished this purpose in a single deed, conveying undivided interests as tenants in common while reserving life estates to themselves. Such a conveyance, not being "between spouses," would not be effective to extinguish homestead interests under Section 141(d). Equally, without an express waiver of homestead interest, it would be ineffective under Section 321. The only purpose, then, in choosing the form of transaction they chose was to extinguish their respective homestead interests and allow undivided one-half interests in their home to pass free and clear to their respective children on each of their deaths.

The court concludes, therefore, that pursuant to 27 V.S.A. § 141(d), the deed that the Jelleys executed and acknowledged between themselves was effective in conveying to each other undivided interests in their homestead property, free and clear of any homestead interest. Each was then free to convey her or his interest to anyone else—here, their respective children—again, still free and clear of any homestead interest. When Mr. Jelley died, his life estate died with him, leaving his children as the owners of an undivided one-half interest in the property. Accordingly, the court reverses the decision of the Probate Division.

ORDER

The decision of the Probate Division denying the Executors' motion to disallow the homestead objection is REVERSED. The court remands the matter to the Probate Division for further proceedings consistent with this decision.

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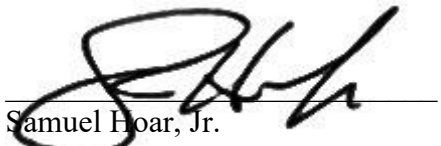

Samuel Hoar, Jr.
Superior Court Judge