

2015 WL 6847734

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United States Bankruptcy Appellate  
Panel of the Eighth Circuit.

In re Sandra Jo **BRUESS**, formerly  
known as Sandy B. Macho, formerly  
known as Sandra J. Roloff, Debtor.

No. 15–6019. | Submitted: Oct.  
9, 2015. | Filed: Oct. 29, 2015.

### Synopsis

**Background:** Chapter 7 trustee objected to debtor's claim of a Minnesota homestead exemption in her one-third interest in real property acquired prepetition from her father and his wife by quitclaim deed, arguing that the Bankruptcy Code's exemption limitation for recently acquired property should apply. The United States Bankruptcy Court for the District of Minnesota, [Gregory F. Kishel](#), Chief Judge, sustained the objection and limited the exemption to \$155,675.00. Debtor appealed.

**[Holding:]** The Bankruptcy Appellate Panel (BAP), [Saladino, J.](#), held that under Minnesota law, “delivery” of the deed occurred, and debtor “acquired” her interest in the subject property, when her father instructed his attorney to record the deed, that is, within the 1,215-day period preceding the filing of the petition, and not earlier, when the deed was executed.

Affirmed.

West Headnotes (17)

#### [1] Deeds



Under Minnesota law, a deed does not take effect until there is a delivery to the grantee.

[Cases that cite this headnote](#)

#### [2] Deeds



Under Minnesota law, when a deed was delivered is a question of fact.

[Cases that cite this headnote](#)

#### [3] Deeds



Under Minnesota law, the important question in determining whether there has been a delivery of a deed is the intent of the grantor that the instrument shall pass out of his control, and operate as a conveyance.

[Cases that cite this headnote](#)

#### [4] Bankruptcy



Factual finding is “clearly erroneous” if, after examining the entire record, the Bankruptcy Appellate Panel (BAP) is left with a definite and firm conviction that the bankruptcy court has made a mistake.

[Cases that cite this headnote](#)

#### [5] Bankruptcy



“Clearly erroneous” standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently.

[Cases that cite this headnote](#)

#### [6] Bankruptcy



Where there are two permissible views of the evidence, the fact finder's choice between them cannot be “clearly erroneous.”

[Cases that cite this headnote](#)

#### [7] Bankruptcy



Under the Bankruptcy Code, a debtor may exempt from property of the estate the property

delineated in the Code, or may use the exemptions available under state law and other federal laws. 11 U.S.C.A. §§ 522, 522(d).

[Cases that cite this headnote](#)

**[8] Bankruptcy**



Choice among exemption schemes is not available for debtors living in states that have opted out of the right to use the Bankruptcy Code exemptions. 11 U.S.C.A. §§ 522, 522(b)(2).

[Cases that cite this headnote](#)

**[9] Bankruptcy**



Minnesota has not opted out of the right to use the Bankruptcy Code exemptions. 11 U.S.C.A. §§ 522, 522(b)(2).

[Cases that cite this headnote](#)

**[10] Bankruptcy**



Bankruptcy Code provides a limitation on the dollar value of certain state-law exemptions for recently acquired property. 11 U.S.C.A. § 522(p).

[Cases that cite this headnote](#)

**[11] Bankruptcy**



In bankruptcy, property rights are determined by reference to state law.

[Cases that cite this headnote](#)

**[12] Deeds**



Under Minnesota law, the transfer of an interest in real property does not occur until the delivery of the deed to the intended recipient.

[Cases that cite this headnote](#)

**[13] Deeds**



Under Minnesota law, physical delivery of a deed is not necessary to convey title; rather, all that is required is to show an unconditional intention by the grantor to part with ownership.

[Cases that cite this headnote](#)

**[14] Deeds**



Under Minnesota law, the two essential elements to delivery of a deed are: (1) surrender of control by the grantor, and (2) an intent to convey the title.

[Cases that cite this headnote](#)

**[15] Deeds**



Under Minnesota law, delivery of a deed depends on the intent of the grantor as appears from the contents of the deed and all the surrounding circumstances.

[Cases that cite this headnote](#)

**[16] Bankruptcy**



Under Minnesota law, “delivery” of the deed occurred, and Chapter 7 debtor “acquired” her one-third interest in real property from her father and his wife by quitclaim deed, when debtor's father instructed his attorney to record the deed, that is, within the 1,215-day period preceding the filing of the petition, and not earlier, when the deed was executed, such that the Bankruptcy Code's exemption limitation for recently acquired property applied; upon execution, debtor's father did not surrender control of the deed with the intent to irrevocably convey the property but, instead, left it with his attorney until he determined whether to go forward with the conveyance, as he was not yet sure how he was going to handle the estate. 11 U.S.C.A. § 522(p)(1)(A); M.S.A. §§ 510.01, 510.02.

Cases that cite this headnote

## [17] Bankruptcy



Chapter 7 trustee, as the party objecting to debtor's homestead exemption, had the burden of proving that the exemption was not properly claimed. [Fed.Rules Bankr.Proc.Rule 4003\(c\)](#), 11 U.S.C.A.

Cases that cite this headnote

Appeal from United States Bankruptcy Court for the District of Minnesota—St. Paul.

### Attorneys and Law Firms

[Thomas F. Miller](#), argued, Wayzata, MN, for appellant.

[Michael Scott Dietz](#), argued, Rochester, MN, ([Michael Scott Dietz](#), [Erin Anne Collins](#), Rochester, MN, on the brief), for appellee.

Before [SCHERMER](#), [SALADINO](#) and [NAIL](#), Bankruptcy Judges.

### Opinion

[SALADINO](#), Bankruptcy Judge.

\*1 The Appellant, Sandra Jo [Bruess](#), appeals from an order of the bankruptcy court<sup>1</sup> sustaining the bankruptcy trustee's objection to her claim of an exemption in certain real property and limiting the exemption to \$155,675.00. We have jurisdiction over this appeal from entry of the bankruptcy court's final order pursuant to [28 U.S.C. § 158\(b\)](#). For the reasons set forth below, we affirm.

### *Factual Background*

This case arises out of the Chapter 7 bankruptcy proceeding filed by Ms. [Bruess](#) in the District of Minnesota on December 15, 2014. On Schedule C of her bankruptcy filing, Ms. [Bruess](#) claimed as exempt, pursuant to Minnesota law, her one-third interest in her homestead property located in Minnesota. Ms. [Bruess](#) acquired her interest in the property by quitclaim

deed from her father and his wife dated April 5, 2010, which was filed for record in Brown County, Minnesota, on January 14, 2013.<sup>2</sup> The value of her claimed exemption was \$562,760.33.

The bankruptcy trustee objected to the homestead exemption claim asserting that Ms. [Bruess](#) did not acquire her interest in the property until her father caused the quitclaim deed to be recorded on January 14, 2013, which was only 700 days prior to bankruptcy filing. As such, according to the trustee, Ms. [Bruess](#) acquired the property within the 1215-day window of [11 U.S.C. § 522\(p\)\(1\)](#), thereby limiting her state law exemption to \$155,675.00 in value. Ms. [Bruess](#), on the other hand, argued that she acquired the property when the deed was executed on April 5, 2010, which was substantially more than 1215 days prior to the bankruptcy filing. Therefore, her state law homestead exemption should not be limited pursuant to [11 U.S.C. 522\(p\)\(1\)](#).

On March 31, 2015, the bankruptcy court held a hearing on the trustee's objection and Ms. [Bruess](#) resistance. The parties submitted a Stipulation of Fact under which they agreed:

1. That the quit claim deed filed as document number 391317 of the Brown County, Minnesota Recorder was executed by the Debtor's father, Donn [Bruess](#), and his wife, Audrey [Bruess](#), on April 5, 2010.
2. Attorney Robert D. Hinnenthal of New Ulm, Minnesota, drafted said deed, and notarized it on the date that it was executed.
3. That the deed remained in the possession of Attorney Hinnenthal from April 5, 2010 to the date that it was recorded on January 14, 2013.
4. That on or about January 14, 2013, Donn [Bruess](#) directed Attorney Hinnenthal to record the deed.
5. That Donn [Bruess](#) died on April 21, 2013.
6. That Audrey [Bruess](#) died in October, 2013.

The trustee also submitted affidavits, along with a transcript of Ms. [Bruess](#) testimony at her § 341 meeting. Ms. [Bruess](#) did not submit any evidence, and the parties submitted the matter to the bankruptcy court for consideration. The bankruptcy court issued its oral ruling on the record sustaining the trustee's objection. Specifically, the bankruptcy court found that, until he instructed his attorney to record it, "Donn [Bruess](#) retained complete control over the fate of that deed."

Therefore, delivery (and transfer of interest) did not take place until January 14, 2013, when he directed his attorney to record it.

\*2 Ms. **Bruess** appealed, asserting that the bankruptcy court erred in determining that she did not acquire her interest in the property, and the deed from her father was not “delivered” under Minnesota law, until her father instructed his attorney to record it.

### Standard of Review

[1] [2] [3] We review the bankruptcy court’s conclusions of law de novo and its findings of fact for clear error. *Addison v. Seaver (In re Seaver)*, 540 F.3d 805, 809 (8th Cir.2008); *Doeling v. Nessa (In re Nessa)*, 426 B.R. 312, 314 (B.A.P. 8th Cir.2010). The parties are in agreement that the resolution of this appeal turns on when the deed was delivered under Minnesota law, which is a question of fact. Under long-standing Minnesota case law:

It is, of course, very elementary law that a deed does not take effect until there is a delivery to the grantee,.... Delivery is a question of fact,.... The important question in determining whether there has been a delivery is the intent of the grantor that the instrument shall pass out of his control, and operate as a conveyance.

*Babbitt v. Bennett*, 68 Minn. 260, 71 N.W. 22, 22–23 (Minn.1897).

[4] [5] [6] A factual finding is clearly erroneous if, after examining the entire record, we are left with a definite and firm conviction that the bankruptcy court has made a mistake. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)). This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. *Anderson*, 470 U.S. at 573. Where there are two permissible views of the evidence, the fact finder’s choice between them cannot be clearly erroneous. *Id.* at 574.

### Discussion

[7] [8] [9] Under 11 U.S.C. § 522, a debtor who files bankruptcy may exempt from property of the estate the property delineated in 11 U.S.C. § 522(d),<sup>3</sup> or may use the exemptions available under state law and other federal laws. 11 U.S.C. § 522(b)(1)(3). Here, Ms. **Bruess** elected to use the exemptions available under state and federal law other than bankruptcy law.

One of the exemptions claimed by Ms. **Bruess** is the Minnesota homestead exemption as set forth in *Minnesota Statutes* §§ 510.01 and 510.02. “The homestead may include any quantity of land not exceeding 160 acres. The exemption per homestead, whether the exemption is claimed by one or more debtors, may not exceed \$390,000 or, if the homestead is used primarily for agricultural purposes, \$975,000....” *Minnesota Statutes* § 510.02. In Schedule C, Ms. **Bruess** claimed her entire interest in her homestead property, valued at \$562,760.33, as exempt.

[10] The trustee does not dispute Ms. **Bruess**’ entitlement to a homestead exemption under Minnesota law. The trustee only argues that the limitation of 11 U.S.C. § 522(p) should apply. That section was added by the 2005 BAPCPA amendments to the Bankruptcy Code and provides a limitation on the dollar value of certain state law exemptions for recently acquired property. Specifically, for purposes of this appeal, that section limits a state law exemption in real property as follows:

\*3 [A] debtor may not exempt any amount of interest that was acquired by the debtor during the 1215–day period preceding the date of the filing of the petition that exceeds in the aggregate \$155,675 in value in—

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence[.]

11 U.S.C. § 522(p)(1)(A). The only issue in this appeal is whether Ms. **Bruess** “acquired” the property in which she claims her homestead exemption within the 1215–day period preceding the filing of the petition thus limiting her homestead exemption to \$155,675.00.

[11] [12] [13] [14] [15] In bankruptcy, property rights are determined by reference to state law. *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979).

Minnesota law is well-settled that the transfer of an interest in real property does not occur until the delivery of the deed.

Under Minnesota law, to transfer title to real property, a deed must be delivered to the intended recipient. *Slawik v. Loseth*, 207 Minn. 137, 290 N.W. 228, 229 (1940); *In re Estate of Savich*, 671 N.W.2d 746, 750 (Minn.Ct.App.2003). A physical delivery of the deed is not necessary to convey title, all that is required is to show an unconditional intention by the grantor to part with ownership. *Barnard v. Thurston*, 86 Minn. 343, 90 N.W. 574, 576 (1902). In *Barnard*, the court stated “To constitute a complete delivery thereof, the grantor must deal with it in a way evincing an intention to part presently and unconditionally with all control over it, and that it shall take effect according to its terms.” *Id.*

The two essential elements to delivery of a deed are, (1) surrender of control by the grantor, and (2) an intent to convey the title. *Exsted v. Exsted*, 202 Minn. 521, 279 N.W. 554, 557 (1938). The delivery depends on the intent of the grantor “as appears from the contents of the deed and all the surrounding circumstances.” *Vessey v. Dwyer*, 116 Minn. 245, 133 N.W. 613, 614 (1911).

*Georgen–Running v. Bidwell (In re Bidwell)*, 326 B.R. 759, 764–65 (Bankr.D.Minn.2005) (footnote omitted).

[16] [17] Thus, the fact question for the bankruptcy court was whether Donn Bruess intended to surrender control of the deed with an intent to convey title when he signed it and left it with his attorney. As the party objecting to the homestead exemption, the trustee had the burden of proving that the exemption was not properly claimed. *Fed. R. Bankr.P.* 4003(c). The trustee's evidence included the Stipulation of Fact between the parties. Under the terms of that stipulation, the parties agreed that the deed was executed by Donn Bruess and his wife on April 5, 2010; that it was notarized by his attorney; that the deed remained in the attorney's possession from April 5, 2010, until it was recorded on January 14, 2013; and that on January 14, 2013, Donn Bruess directed his attorney to record the deed.

The trustee also presented affidavits from each of Ms. Bruess' two brothers, William and Steven. Steven's affidavit stated: “I was party to discussions with my father about various considerations that influenced how he intended to finalize his estate plan. There were several factors that he was weighing. These included my brother's severe illness and my sister's poor record regarding financial matters.” The affidavit

further stated: “My understanding is that my father did not make a final decision to pass title to his real estate to his children by deed until he instructed his lawyer to record the deed in January of 2013.”<sup>4</sup> William's affidavit echoed those statements.

\*4 Finally, the trustee presented the transcript of the § 341 meeting of creditors at which Ms. Bruess testified on January 7, 2015. In part, that transcript reveals the following testimony by Ms. Bruess regarding the deed:

Q: So it had been sitting with your dad's attorney—

A: It had been sitting there—

Q:—for a while—

A:—for a while until dad made his decision to have it filed.

Q: Okay.

A: It was an issue because dad held off on things for quite some time my brother was very ill with cancer and he just wasn't sure how he was going to handle the estate. So—

Q: Okay.

A:—then he gave the go ahead, he wanted it filed, and that's what happened. So....

Q: Okay. Fair enough. Dad just—so I understand your version of it, dad had the Deed prepared—

A: Yes.

Q:—and then his attorneys held it because he was concerned about William's—

A: Uh-huh.

Q:—health issues—

A: Uh-huh.

Q:—and then at some point he was satisfied that he wanted to move forward and then he had [attorney] file the Deed?

A: Yes.

Q: Thank you. Okay. And did you ever have the Deed? Did he give it to you and you held it?

A: Never.

Q: All right. When did he tell you about it?

A: Oh, I don't know.

Q: Did you find out about it before it was recorded?

A: He had said he was going to make the decision to record it, yeah, but—no.

Q: Okay. When did he tell you he was going to make the decision to record it?

A: I don't even know when it was recorded.

Q: It was recorded January 14th of 2013. So roughly a year ago, I guess.

A: Yeah.

Q: Before then, did he tell you?

A: Shortly. Yeah.

Q: Okay.

In summary, the trustee presented evidence from three sources, including Ms. **Bruess** herself, to the effect that instead of recording the deed immediately after execution, Donn **Bruess** left it with his attorney until he determined whether to go forward with that conveyance. As Ms. **Bruess** said, prior to contacting his attorney in January 2015 to instruct him to record the deed, “he just wasn't sure how he was going to handle the estate.” Notably, Ms. **Bruess** did not present any evidence at the hearing. Upon consideration of the trustee's evidence, the bankruptcy court found that Donn **Bruess** had not surrendered control of the deed with the intent to irrevocably convey the property.

Ms. **Bruess** argues on appeal that even in the absence of an effective escrow agreement, delivery of a deed to a third party *can* be sufficient to pass title under Minnesota law. While that statement may be true in and of itself, it does not affect the outcome of this appeal. As the attorney for Ms. **Bruess** even acknowledged in her appellate brief, “the crucial question is the grantor's intent, which is a question of fact.” At oral argument, the attorney for Ms. **Bruess** suggested that another

possible interpretation of the evidence is that Donn **Bruess** intended to convey a remainder interest to his children at the time he executed the deed and delivered it to his attorney, as evidenced by the fact that he ultimately told the attorney to record it. Even if that were a plausible interpretation of the evidence, a fact finder's choice between two permissible views of the evidence cannot be clearly erroneous. *Anderson v. City of Bessemer City*, 470 U.S. 564, 574, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985).

\*5 The only evidence presented at the hearing overwhelmingly supports the bankruptcy judge's finding of fact that Donn **Bruess** did not intend to convey the property until he instructed his attorney to record the deed. There being no evidence to the contrary, the bankruptcy court's fact findings were not clearly erroneous. Therefore, we affirm.

### Conclusion

For the reasons stated above, we affirm.

- 1 The Honorable Gregory F. Kishel, Chief Judge, United States Bankruptcy Court for the District of Minnesota.
- 2 Under the terms of the quitclaim deed, Donn **Bruess** (Ms. **Bruess** father) and his wife, conveyed a life estate in the property to Donn **Bruess** and the remainder interest to Ms. **Bruess** and her brothers, Steven and William.
- 3 This choice among exemption schemes is not available for debtors living in states that have opted out of the right to use the Bankruptcy Code exemptions. 11 U.S.C. § 522(b)(2). Minnesota has not opted out.
- 4 It is not clear whether the attorney for Ms. **Bruess** objected to the use or admissibility of the affidavits, although the transcript indicates the bankruptcy judge found that a hearsay exception should apply and the affidavits were admissible. Ms. **Bruess** did not appeal that evidentiary ruling.

### All Citations

--- B.R. ----, 2015 WL 6847734