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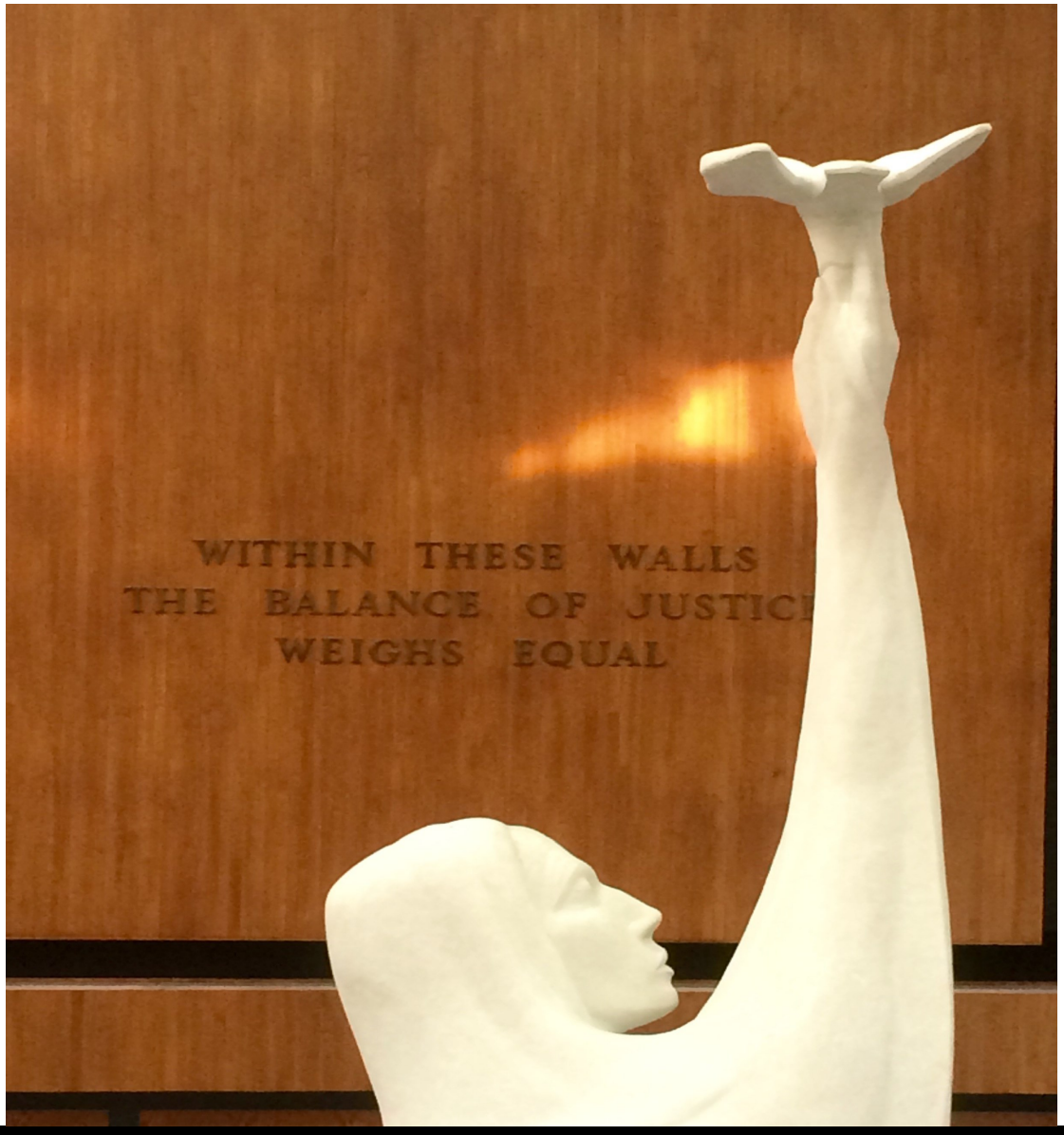

RECENT CHANGES IN KANSAS REAL ESTATE LAW 2023

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Preeminent Presence in Kansas Real Estate

Top Band in Kansas Real Estate. Chambers USA again awarded Adams Jones its highest rating as a first band of leading firms for real estate in Kansas. Chambers USA says Adams Jones has: "excellent experience in property transactions, zoning issues and finance work" and "a strong reputation in all manner of real estate litigation, including zoning and easement disputes...and possesses additional expertise in general commercial cases" and "maintains a noteworthy strength in professional liability, estates and trusts and municipal government disputes." Those attorneys selected from the firm in the area of real estate include **Mert Buckley, Brad Stout and Pat Hughes**. Selected for general commercial litigation were **Brad Stout, Monte Vines and Pat Hughes**. The rankings were compiled from interviews with clients and attorneys by a team of full-time researchers.

Overview

This summary of recent changes in Kansas Real Estate Law was prepared by the Real Estate Group at Adams Jones. Our real estate attorneys continually monitor Kansas case decisions and legislation so we remain current on developments in real estate law in Kansas. This up-to-date knowledge prepares us to address client needs more quickly and efficiently because our "research" is often already done when a question arises.

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LEGISLATION

2022 Legislation

Below is legislation from the 2022 session of the Kansas legislature which was not reported in our 2022 update. The 2023 legislature was still in session at the time of our publication deadline. All relevant laws from the 2023 session will be reported next year.

Creation of the Kansas Housing Investor Tax Credit Act, the Kansas Affordable Housing Tax Credit Act, the Historic Kansas Act, the Kansas Rural Home Loan Guarantee Act, and modifications to the Historic Structures Tax Credit and Kansas Rural Housing Incentive District Act.

2022 House Bill 2237 enacts the Kansas Housing Investor Tax Credit Act ("HITCA"), the Kansas Affordable Housing Tax Credit Act (the "AHTCA"), the Historic Kansas Act ("HKA"), the Kansas Rural Home Loan Guarantee Act ("RHLGA"), and modifies provisions of Historic Structures Tax Credit and the Kansas Rural Housing Incentive District Act (the "RHID Act").

Kansas Housing Investor Tax Credit Act

The Director of Housing of the Kansas Development Finance Authority (the "Director") may issue tax credits to qualified investors who make cash investments in qualified housing projects, and to project builders and developers. A qualified housing project includes construction of single-family residential dwellings, including manufactured housing, modular housing, and multi-family residential dwellings, but explicitly excludes a project eligible for low-income housing tax credits under state or federal law.

The Director will be allowed to issue tax credits as follows: 1) up to $35,000 per residential unit for qualified housing projects located in a county with a population of not more than 8,000; 2) up to $32,000 per residential unit for qualified housing projects located in a county with a population of more than 8,000, but not more than 25,000; and 3) up to $30,000 per residential unit for qualified housing projects located in a county with a population of more than 25,000, but not more than 75,000.

Kansas Affordable Housing Tax Credit Act

Beginning in tax year 2023, a tax credit may be claimed for each qualified development for each year of the credit period in an amount equal to the federal tax credit allocated or allowed by the Kansas Housing Resources Corporation ("KHRC") to such qualified development. A qualified development means a qualified low-income housing project, as defined in Section 42 of the Internal Revenue Code, that is located in Kansas and determined by the KHRC to be eligible for a federal tax credit.

Historic Kansas Act

For tax years 2022 and after, a taxpayer may claim a tax credit of 10% of costs and expenses incurred for the restoration and preservation of a commercial structure at least 50 years old that does not receive the continuing Historic Structures Tax Credit pursuant to K.S.A § 79-32,211.

An additional 10% tax credit of costs and expenses will be allowed for the installation of fire suppression materials or equipment by a taxpayer. The tax credit is limited to $10 million per year.

Kansas Rural Home Loan Guarantee Act

The Bill authorizes the KHRC to enter into agreements with financial institutions to provide loan guarantees for rural housing loans. Eligible financial institutions must apply all usual lending standards to determine the creditworthiness of eligible borrowers. The financial institution originating the loan will be responsible for monitoring the loan and in the case of default, working with the borrower to obtain collateral. The Bill specifies the financial institution will be in the first position, and the State in the second position, to recover on the loan.

Kansas Rural Housing Incentive District Act

The Bill amends the RHID Act, K.S.A. 12-5241, *et seq.*, to expand the use of bonds proceeds and other funds under the RHID Act to include residential renovation of second or higher floors of buildings more than 25 years old within economically distressed urban areas, regardless of population of the city or county containing the economically distressed area. The Bill defines "economically distressed urban areas" as those defined and designated by the United States Department of Housing and Urban Development. Furthermore, the Bill adds the City of Topeka, regardless of population, to the definition of "city" in the RHID Act.

Creation of the Attracting Powerful Economic Expansion Act

2022 Sen. Bill 347 enacts the Attracting Powerful Economic Expansion Act, which establishes new economic development incentives targeted at firms, and their suppliers, in specific industries to firms that agree to invest at least $1.0 billion within Kansas within a five-year period.

To receive incentives under the program, the Bill requires qualified firms to fulfill certain requirements, including committing to a qualified business investment of at least $1 billion in a qualified business facility to be completed and commercial operations commenced within five years.

A qualified firm which meets the requirements of the program will be eligible to receive the following incentives, as approved by the Secretary: 1) investment tax credits; 2) reimbursement of a percentage of total payroll; 3) reimbursement of a percentage of eligible employee training and education expenses; 4) reimbursement of a percentage of relocation incentives and expenses provided by a qualified firm to incentivize employees to relocate to Kansas; and 5) sales tax exemption for construction costs of the qualified business facilities.

Kansas Real Estate Commission Regulations — 2022

The Kansas Real Estate Commission ("KREC") adopted amendments to K.A.R. 86-1-15 regarding fees.

Effective September 16, 2022, the amendments: 1) remove the $15 fee for a reinstatement of a license that had been deactivated or cancelled pursuant to K.S.A. § 58-3047(c); 2) clarify the fees for submission of applicant fingerprints to the Kansas Bureau of Investigation; and 3) increase the fee for submitting an individual education course pursuant to K.S.A. § 58-3046a(k) from $10 to $20 per course.

CASES & ATTORNEY GENERAL OPINIONS

Eminent Domain

Eminent Domain Procedure Act does not provide tenants a cause of action for relocation benefits.

Kansas Fire and Safety Equipment v. City of Topeka, 62 Kan. App. 2d 341, 514 P.3d 387 (2022). When the City of Topeka purchased property for a public works project, the month-to-month tenants who operated businesses on the property were displaced. They sued the City for relocation benefits under K.S.A. 26-518, a provision of the Eminent Domain Procedures Act (EDPA). K.S.A. 26-518 requires a condemning authority which acquires property through negotiation in advance of condemnation to provide relocation payments and assistance to displaced persons. The question before the Kansas Court of Appeals was whether the court had subject matter jurisdiction to hear such a claim under the EDPA. The tenants argued that this provides a private right of action. The Court of Appeals disagreed, reasoning that the EDPA codifies the Fifth Amendment's Takings Clause and is merely an "administrative proceeding for determining the fair market value of private property taken for public use," and contains no mechanism for displaced persons such as the tenants obtaining judicial review if they are not provided with the relocation benefits which they are to be paid. However, the Court also noted there had been procedural avenues open to the tenants, including quo warranto, mandamus or injunction, as well as a statutory remedy under the Kansas Relocation Act, K.S.A. 58-3501, *et seq.*

Fixtures

Personal property need not be physically attached to the real estate to be a fixture.

Bank of Commerce & Trust Company v. Banc-Central National Association, No. 123,420, 2022 WL 3569316 (Kan. App. Aug. 19, 2022) (unpublished opinion). Harper, Kansas is home to The First National Bank Building, built in 1917. In 2009, the bank which owned and operated out of the building failed. The FDIC stepped in and sold the building to one party and entered into a lease agreement with another bank to operate out of the building. The new building owner received a deed to the building and "all improvements located thereon and affixed thereto."

In 2012, the tenant bank installed an ATM without the permission of the landlord, replacing an ATM that had been in the building when the

landlord acquired the building. Installing the replacement ATM had required enlarging the hole in the side of the building that had been used for the previous machine. When that first bank tenant sold its business to the next bank tenant,

BancCentral, the buyer and seller agreed that the sale included title to all of the sellers' ATMs in the building. In 2018, Bank of Commerce & Trust Company (Bank of Commerce) became the owner of the building. After a few months, BancCentral, then a month-to-month tenant, left the building. BancCentral took the ATM and an antique safe with it, together with the door to the vault and safe-deposit boxes. The safe had been too large to fit through the vault door. Bank of Commerce sued BancCentral seeking return of the items.

The district court decided that the vault door and its frame were fixtures – and therefore belonged to Bank of Commerce as owner of the building – and that the ATM, the safe-deposit boxes, and the antique safe were not fixtures because they were not sufficiently annexed to the realty, and therefore Bank of Commerce had no claim to them. Bank of Commerce appealed.

The Court of Appeals applied a three-part analysis to the determination of whether personal property had become part of the real property by being made a "fixture." This analysis required considering the degree to which the personal property had been annexed to the real estate (how permanently attached it is), whether it had "been adapted to the realty," and the intent of the parties who placed the personal property at the real estate. The Court of Appeals agreed with the district court that the ATM was not sufficiently affixed to the real estate to become part of the real estate. This was because although it left a hole, it was a discrete machine that had replaced a similar machine and was removed without damaging the building; the ATM was like other ATMs and was not specifically adapted to this building; and the evidence showed that the party installing it had viewed it as personal property by including it in the sale of the bank business.

However, the Court of Appeals disagreed with the district court's conclusion that the antique safe was not annexed to the property, even though it was on wheels. Because the vault door had to be removed to remove the safe from the vault, consequently damaging the building, the Court said the safe was built into the real estate. The case was remanded for the district court to apply the remainder of the three-part analysis.

Landlord – Tenant

The ADA is inapplicable to private residences and a private nuisance action is not available to tenants against their landlords under Kansas law.

Coe v. Cross-Lines Ret. Ctr., Inc., No. 22-2047-EFM, 2022 WL 17555300 (D. Kan. Dec. 9, 2022) (unpublished opinion). Plaintiffs Donald Coe, Linda Smith, and Edward Yost sued their landlord,

Cross-Lines, and the landlord's property manager, on nine separate claims stemming from the defendants' alleged neglect of their apartment complex. Cross-Lines is a nonprofit corporation. Its mission statement's goal is the provision of rental housing to elderly families and individuals. Because of its nonprofit status, Cross-Lines receives federal subsidies to purportedly allow it to offer lower rent. However, Cross-Lines simply provides residential apartments for rent without additional services characteristic of a nursing home or group home.

Defendants sought to dismiss two of the claims asserted by plaintiffs -- one for an alleged violation of the Americans with Disabilities Act (the "ADA"), and the second for an alleged private nuisance.

With respect to the ADA claim, defendants asserted the building at issue was merely a residential apartment complex, covered by the Fair Housing Act instead of the ADA. Plaintiffs asserted defendants operated a "senior citizen center" which serves as a "public accommodation," bringing the building within the purview of the ADA.

With respect to the private nuisance claim, defendants asserted nuisance actions are unavailable to tenants against their landlord.

The United States District Court for the District of Kansas agreed with defendants on the ADA and private nuisance claims. Regarding the ADA claim, the court noted the ADA, on its face, does not apply to private residences such as residential homes or apartments. The definition of "public accommodation" set forth in the ADA does not create a backdoor exception by which typical apartment complexes may be brought under the ADA's provisions.

As relevant to this case, a public accommodation must affect commerce and be "a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment." The plain meaning of "senior citizen center" is not an apartment complex catering to the elderly, but rather a place hosting events, activities, and services for senior citizens. Furthermore, the legislative history of the ADA clearly states that "only nonresidential facilities are covered by this title." The court noted multiple courts have found that the ADA does not apply to private residences, including apartment complexes.

As to the private nuisance claim, the court said it was a matter of first impression for courts applying Kansas law. Generally, Kansas law permits tenants to bring private nuisance actions against third parties. However, no Kansas case has addressed whether a tenant may bring a private nuisance action against his or her landlord. The vast majority of courts have held that an action for private nuisance is designed to protect neighboring landowners from conflicting uses of property. The Tenth Circuit, applying Oklahoma law, has held that private nuisance actions are unavailable to successor landowners because "an action for private nuisance is designed to protect neighboring landowners from conflicting uses of property."

The court determined that the Kansas Supreme Court would likely adopt the reasoning of most courts in determining that an action for private nuisance is unavailable to tenants against their landlords. The court noted nuisance law is historically meant to regulate conflicts between neighboring or at least separate land uses, not issues originating on one's own property.

Landlord-Tenant

Squatters not entitled to the rights of afforded tenants in the Kansas Residential Landlord Tenant Act.

Wesley Properties Management, Inc. v. Andruk, No. 124,428, 2022 WL 2761989 (Kan. App. July 15, 2022) (unpublished opinion). Wesley Properties Management, Inc. (Wesley) brought an action to evict Jennie and Zachary Andruk from the apartment where they were living, which Wesley managed but did not own. Wesley had originally signed a lease for the apartment with Jennie's stepfather, who had died. After his death, Jeanie had tendered rent, but it was not accepted because she was not a tenant on the lease. The district court found the Andruks to be squatters and entered an order evicting them.

On appeal, the Andruks argued several points. They asserted that Wesley was not the correct party to evict them because Wesley did not own the apartment building. The Court of Appeals rejected this argument because the Kansas Residential Landlord-Tenant Act (KRLTA) includes the manager of a premises within the definition of "landlord." K.S.A. 58-2543(e). The Andruks also asserted that Wesley had proceeded in violation of several rights of tenants under the KRLTA. However, the district court had determined that the Andruks were not tenants, and the Court of Appeals found that conclusion to be supported by the evidence.

Mechanic's Liens

The validity of a mechanic's lien, other than as to whether it is fraudulent set forth in K.S.A. 58-4301, cannot be litigated under that statute and its expedited procedures.

Graycon Building Group, Inc. v. Med Ridge West, LLC, No. 124,361, 2022 WL 17408855 (Kan. App. Dec. 2, 2022) (unpublished opinion). Med Ridge West, LLC (Med Ridge) contracted for the construction of a restaurant on its Wichita property with Graycon Building Group, Inc. (Graycon). A dispute arose, with each party claiming the other owed it money. Under the construction contract, the project architect had a role as an initial decision-maker in the dispute resolution process. If his determination did not resolve a dispute, binding dispute resolution was required. The architect determined that Med Ridge would owe Graycon $9,897.15, a much smaller amount than Graycon claimed it was owed.

Graycon then filed a mechanic's lien for $216,209.41, on the last available day for filing a timely lien. Med Ridge filed a motion under K.S.A. 58-4301, which provides an expedited procedure to remove fraudulent liens, asserting that Graycon was not entitled to any payment and therefore, had no basis to file the lien. Graycon argued that the expedited procedure was not a proper way to challenge its lien. The district court found that, based on its amount, the lien was invalid and allowed Graycon to choose between the lien being completely invalidated or being reduced to the amount the architect had determined would be due, subject to mediation, the last step in the dispute resolution process under the contract. Graycon appealed.

The expedited process for relief from fraudulent liens is restricted to liens that are "fraudulent" as set forth in K.S.A. 58-4301. Med Ridge argued that Graycon's lien fit within that part of the statute that makes a lien presumptively fraudulent if it is "not created with the implied or express consent of the . . . owner." K.S.A. 58-4301(e)(2). The Court of Appeals disagreed. It ruled that by virtue of the mechanic's lien statute, K.S.A. 60-1101, by contracting for improvement of its property,

Med Ridge had consented to the filing of a lien statement implicitly, and that it had done so explicitly by including terms in the contract that recognized Graycon's authority to file a lien. The Court concluded that when considering a petition challenging a mechanic's lien under K.S.A. 58-4301, the district court can do no more than determine whether the purported lien is fraudulent as set forth in the statute. It cannot adjudicate the validity of the lien on any other grounds.

Partition

Cotenants entitled to credit for transforming dryland to irrigated land even though irrigation system was personal property not subject to the partition.

Claeys v. Claeys, 62 Kan. App. 2d 196 (2022). Brothers David and Kenneth Claeys were cotenants with a third brother, Richard, in two parcels of farm ground, one in Marshall County and one in Washington County. Kenneth procured water rights and installed a pivot irrigation system on the Marshall County land, converting dryland to irrigated land. David helped with the project and paid some of the cost. Richard knew about the improvements but was not asked for either his permission or his help. Richard did not contribute to the installation or the cost. When Richard died, his interest went to a trust administered by their sister-in-law, Judith. Judith filed a partition action. Kenneth and David filed a counterclaim asking the court to adjust the division of property based on the improvements they had made.

Commissioners appointed by the court valued the property. Judith elected to buy the Washington County property and David and Kenneth elected to buy the Marshall County property, for which they paid a much higher price than Judith had paid for the Washington County property. As a result, if the proceeds were distributed in accordance with their interests, Kenneth and David would owe Judith $428,333. Kenneth and David asked for a $50,000 credit based on the irrigation system they had installed. Evidence at trial showed that converting the property to irrigated land had increased its value, even without considering the value of the pivot, which was personal property and not part of the land subject to partition. The trial court ruled for Judith because the pivot system was personal property, not an improvement to the land. The brothers appealed.

The Court of Appeals found that the evidence showed the brothers had improved the land since they converted it to irrigated property, which involved more than the above-ground pivot equipment alone. Therefore, it reversed the trial court and remanded the case for the trial court to decide whether to award Kenneth and David a credit in order to fairly divide the property. It further noted that the court had discretion about whether to make an equitable adjustment: it was not necessarily required to do so.

Partition

Party could not challenge whether the district court deviated from the procedures established by K.S.A. 60-1003 when the party had advocated that the court do so.

Seibel v. Seibel, No. 123,667, 2022 WL 2112180 (Kan. App. June 10, 2022) (unpublished opinion). Brothers Ronald and Donald Seibel were cotenants in several parcels of land in Butler County. Ronald filed a partition action. The commissioners determined that the land could be partitioned in kind into two tracts. Ronald asked the court to approve the division. Donald objected. At a hearing, Ronald's attorney told the court that

although Ronald preferred one of the tracts over the other, he would accept either one. The district court confirmed the commissioners' report and denied Donald the opportunity to present evidence. However, the court gave Donald first choice between the parcels. When Donald made his selection, Ronald was not satisfied. He wanted the same tract and asked the court for a chance to argue why he should get it. The district court refused and Ronald appealed.

Ronald argued that the district court decision to award Donald the tract he wanted without an evidentiary hearing did not follow the statutory procedures for partition. The Kansas Court of Appeals refused to provide Ronald any relief. It held that he could not lead "the court down one path" and then challenge that path later. The doctrines of judicial estoppel and invited error both prevent that. The appellate court found the appeal to be frivolous such that an award of attorney's fees to Donald was appropriate.

Restrictive Covenants

Restrictive covenants filed by the property owner during foreclosure were enforceable.

Goering v. Huestis, No. 124,293, 2022 WL 1276856 (Kan. App. Apr. 29, 2022) (unpublished opinion). The Goerings bought a house next door to the Huestises, who had previously owned the house the Goerings purchased, but had lost it in foreclosure. While the foreclosure was pending and they still owned what became the Goerings' house, the Huestises recorded restrictive covenants on the property. The Goerings sued the Huestises to challenge the enforceability of the restrictive covenants. The Huestises countersued for injunctive relief enforcing the covenants. The Huestises won and the Goerings appealed.

On appeal, the Goerings argued that the covenants were contrary to the public interest and served no good purpose because they inefficiently involved the court regarding restrictions affecting only two houses. The Kansas Court of Appeals rejected that argument, finding that judicial economy is not the focus of the inquiry about whether a restrictive covenant will be unenforceable because it is contrary to the public interest.

The Goerings also argued that the changed conditions in the neighborhood neutralized the benefit of the restrictive covenants, making them unenforceable for that reason. The Court found no evidence in the record that the character of the neighborhood had drastically changed. The covenants, the Court noted, appeared to have some tangible benefit to the properties such that the Court could not conclude there had been so radical a change that the restrictions served no purpose. The Court noted that the foreclosing bank might have had the ability to contest the covenants filed during the foreclosure, but the buyer from that bank did not.

Undue Influence in the Sale of Property

Rebutting a presumption of undue influence requires a preponderance of the evidence, not clear and convincing evidence.

Moore v. Moore, No. 122,944, 2022 WL 1511252 (Kan. App. May 13, 2022) (unpublished opinion). This is the latest decision in a family dispute over whether Steven Moore unduly influenced his mother to sell two quarters of farmland to Steven and his son for much less than it was worth. The transaction materially changed the impact of her long-standing estate plan by taking out of trust the property that the trust provided would go to her other children. The district court ruled in favor of Steven and his son.

When a contract is challenged as being the result of undue influence, if the defendant had a confidential or fiduciary relationship with the person alleged to have been influenced, it is presumed the transaction was the result of undue influence. At that point, the burden of proof shifts to the defendant, who must prove the absence of undue influence.

Steven's confidential or fiduciary relationship with his mother was not disputed on appeal. Therefore, it was his burden to prove he had not exercised undue influence – a degree of pressure sufficient to overpower his mother's free will. The first question the appellate court faced was the standard of proof Steven needed to meet. Did he need to prove the absence of undue influence by the preponderance of evidence or by clear and convincing evidence? The Court decided that the preponderance of the evidence standard controlled. The second question the appellate court considered was whether Steven's evidence had been sufficient to rebut the presumption of undue influence. The Court found that it had not been sufficient, and reversed the district court's decision.

Undue Influence in Transfer-On-Death Deed

No presumption of undue influence was triggered in the absence of clear and convincing evidence of suspicious circumstances surrounding the execution of a deed.

Woodward v. Hendrix, No. 123,900, 2022 WL 2286922 (Kan. App. June 24, 2022) (unpublished opinion). Twenty days before his death at the age of 102 in 2018, Wendell Woodard executed a transfer-on-death deed presented to him by a beneficiary of that deed, a nephew whom he trusted. The nephew and his wife drafted the deed. Wendell had no independent counsel and was having some cognitive issues. His doctor believed he had some dementia, though his nurse disagreed. After Wendell died, the beneficiary under a previous transfer-on-death deed challenged the 2018 deed as a product of undue influence. The district court held that in light of all of the evidence presented, suspicious circumstances had not been established by clear and convincing evidence and therefore, a presumption of undue influence had not been triggered.

The Kansas Court of Appeals upheld the district court's judgment because, it concluded, the district court had not arbitrarily disregarded undisputed evidence and the appellate court could delve no more deeply into the dispute than that. Judge Atcheson concurred with the result, but was critical of the standard of review applied by the majority and suggested that it would be more appropriate for an appellate court to determine whether there was substantial competent evidence supporting the district court's decision.

The case provides an interesting contrast with *Moore v. Moore*, No. 122,944, 2022 WL 1511252 (Kan. App. May 13, 2022) (unpublished opinion). In *Moore,* the test for undue influence to set aside a deed that was part of an intrafamily sale did not require suspicious circumstances in order for a presumption of undue influence to arise. In this case, involving a transfer-on-death deed, the Court required suspicious circumstances. Since the execution of the documents in both circumstances lacked testamentary formalities, it is not clear why the standard for triggering the presumption of undue influence is higher for transfer-on-death deeds than for other types of deeds.

Zoning

In challenge of denial of conditional use permit, landowner's failure to serve county clerk and post bond under K.S.A. 19-223 deprived the court of subject matter jurisdiction.

Hainline v. Board of Miami County Commissioners, No. 124,070, 2022 WL 5292190 (Kan. App. Oct., 7, 2022) (unpublished opinion). The Hainlines had applied for and been denied a conditional use permit. They attempted to challenge the denial in court by filing a notice of appeal in the district court. They attempted to serve the notice by mailing it to the Clerk of the Board of County Commissioners at the Board's address, not at the Clerk's address. The case proceeded, with the participation of the Board of County Commissioners, until the Board eventually filed a motion to dismiss since the notice of appeal had not been served on the Clerk of the Board of County Commissioners, and the Hainlines did not execute a bond for approval by the clerk as

required by K.S.A. 19-223, the statute that provides the procedure for appeals from quasi-judicial decisions of a board of county commissioners. The failure to satisfy the statute's requirements was deemed fatal to invoking the court's jurisdiction. The case is noteworthy because without discussing the question, the Kansas Court of Appeals applied K.S.A. 19-223, dealing with appeals of county commission quasi-judicial decisions generally, to a challenge to a zoning decision that would seem to be authorized by K.S.A. 12-760, which does not include the same requirements as K.S.A. 19-223.

Zoning

Protest petitions triggering the requirement of a supermajority vote of the governing body do not need to comply with the requirements for petitions under K.S.A. 25-3601 through K.S.A. 25-3608.

Pretty Prairie Wind LLC v. Reno County, 62 Kan. App.2d 429 (2022). Under K.S.A. 12-757(f)(1), a zoning change or conditional use permit cannot be approved without a supermajority vote of the county commission or city council, as the case may be, if the owners of enough of the surrounding property have filed a timely "protest petition." Pretty Prairie Wind LLC (Pretty Prairie) sought a conditional use for a wind farm. Surrounding property owners filed protest petitions. Reno County determined that the protest petitions were sufficient to trigger the supermajority voting requirement, translating the need for a 3-0 vote on the county commission to approve the conditional use permit. The vote in favor was 2-1, and the conditional use permit was deemed to be denied. Pretty Prairie challenged that denial in district court, and when unsuccessful there, appealed to the Kansas Court of Appeals. Pretty Prairie argued the protest petitions were insufficient because they did not comply with the requirements of K.S.A. 25-3602(b)(4), a statute governing petitions submitted for elections, which requires the circulator of a petition to verify before a notarial officer that the circulator witnessed each signature. The Court of Appeals ruled that the protest petitions needed to comply only with the statute that created them – K.S.A. 12-757 – and did not also have to comply with the election petition statute. Therefore, the absence of a verification before a notarial officer was not a defect in the petitions.

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Covenants & Restrictions. Create community associations, covenants and restrictions for commercial and residential properties.

Creditors' Rights. Represent commercial creditors and financial institutions in protecting and recovering assets and property in foreclosures and workouts.

Developer Incentives. Assist developers utilizing economic development incentives such as Industrial Revenue Bonds, Community Improvement Districts, Tax Increment Financing, tax abatements, and other development incentives.

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Title and Boundary Disputes. Represent landowners in disputes with adjoining neighbors over easements, fences, adverse possession, boundaries and trespass. Represent landowners, lenders and title insurers in title and lien priority disputes.

Title Insurance. Assist purchasers and lenders in securing appropriate title insurance coverage. Represent title insurance companies in claims.

Wind Energy. Represent lenders, landowners, county governments, and neighbors in proposed and completed wind farm projects across Kansas.

NOTES

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