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devoid of legal merit that the district court abused its discretion in concluding that the action was not frivolous. Thus, we find the NRD's assignment of error to be without merit.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

CINDY WILSON, A WIDOWED, UNREMARRIED PERSON, AND CINDY WILSON AS SUCCESSOR IN INTEREST TO THE ESTATE OF HER LATE HUSBAND, KENNY WILSON, APPELLEE, V. ALLAN FIELDGROVE, APPELLANT.

787 N.W.2d 707

Filed September 3, 2010. No. S-09-1053.

1. **Judgments: Appeal and Error.** When reviewing questions of law, an appellate court reaches its conclusion independent of the trial court's conclusion.
2. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
3. **Libel and Slander: Real Estate: Title.** An action for slander of title is based upon a false and malicious statement, oral or written, which disparages a person's title to real or personal property and results in special damage.
4. **Contracts.** Where the existence of a particular person is necessary for the performance of a contractual duty, the death of that person, or his or her loss of capacity to perform the duty, discharges the obligor's duty to perform.
5. **Landlord and Tenant: Leases.** Outside of contracts for personal services and tenancies at will (or when the common-law rule for sharecrop agreements has been abrogated), the death of the landlord or tenant in a year-to-year lease does not terminate the lease.
6. ____: ____. A leasehold interest in a tenancy for a term of years or a year-to-year tenancy is considered personal property.
7. **Decedents' Estates: Real Estate: Title.** In Nebraska, title to both real and personal property passes immediately upon death to a decedent's devisees or heirs, subject to administration, allowances, and a surviving spouse's elective share.
8. **Decedents' Estates: Leases.** Apart from tenancies at will or leases requiring the tenant's personal services, a tenant's rights and obligations in a leasehold interest survive the tenant's death and pass to his or her heirs, subject to the personal representative's right of possession.

9. **Landlord and Tenant: Notice: Time.** Under Nebraska law, a year-to-year tenancy can only be terminated by an agreement of the parties, express or implied, or by notice given, 6 months before the end of the current year in the year-to-year tenancy.
10. **Leases: Landlord and Tenant: Notice: Time.** In the absence of a different agreement, a yearly lease of farmland begins on March 1 and ends on February 28 of the following year, and the rent becomes due at the expiration of the term. In such a case, a landlord must give notice to terminate by September 1.
11. **Decedents' Estates: Landlord and Tenant: Leases: Notice.** When a year-to-year farm lease does not terminate upon the tenant's death, the landlord can only terminate the lease by giving notice to quit to the tenant's heirs or personal representative.
12. **Contracts: Notice: Time.** Absent a contract provision or statute to the contrary, a lease for a term of years terminates on the last day of the term without notice.
13. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence.

Appeal from the District Court for Howard County: KARIN L. NOAKES, Judge. Affirmed.

Mark Porto and Ronald S. Depue, of Shamberg, Wolf, McDermott & Depue, for appellant.

Rodney M. Wetovick, of Wetovick Law Office, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

The appellee, Cindy Wilson (Wilson), filed a declaratory judgment action against the appellant, Allan Fieldgrove. Wilson's deceased husband, Kenny Wilson (Kenny), had an oral year-to-year lease to farm Fieldgrove's land. Kenny died during the term of the lease. To unilaterally terminate a year-to-year lease, Nebraska law requires a landlord to give the tenant notice to quit 6 months before the end of the current year of the lease. Fieldgrove failed to give such notice.

Wilson sought a declaratory judgment to allow her to farm the land the following year. Fieldgrove counterclaimed to remove Wilson from the property and requested damages for slander of title.

This appeal presents an issue of first impression: Under a year-to-year lease, is a landlord required to give notice to a tenant's heirs if the tenant dies during the term of the lease? We conclude that because the tenant's death does not terminate the lease, notice to the tenant's heirs or personal representative is required. Because Fieldgrove failed to give Wilson notice to terminate, Wilson had a valid leasehold interest and thus could not have slandered Fieldgrove's title. We affirm.

BACKGROUND

Beginning about 1998, Fieldgrove leased farmland to Kenny under an oral year-to-year lease agreement, with an annual term from March 1 through the end of February each year. Rent was paid in cash. The most recent lease between Fieldgrove and Kenny ran from March 1, 2007, through February 29, 2008. Kenny died on August 4, 2007. Wilson was the sole beneficiary of Kenny's estate. Wilson and her sons continued farming the land after Kenny's death. On at least four occasions following Kenny's death, Wilson or her sons communicated to Fieldgrove their intention to continue farming the land in 2008. Both parties agree that Fieldgrove never gave written notice to any member of the Wilson family of his intention to terminate the farm lease before September 1, 2007.

Some time after Kenny's death, Fieldgrove prepared to sell the farm at public auction. Upon learning of the upcoming sale, Wilson again notified Fieldgrove that she intended to continue to farm the land in 2008. On January 16, 2008, Wilson recorded a document entitled "Notice of 2008 Leasehold Interest" with the county register of deeds, in which she claimed an interest in Fieldgrove's property. On January 18, Fieldgrove sold the property. On February 20, Fieldgrove notified Wilson that she and her family were prohibited from entering the property and would be treated as trespassers as of March 1. Wilson refused to vacate the property and filed a complaint against Fieldgrove on February 29 seeking a declaration that she was entitled to the leasehold interest. Fieldgrove counterclaimed, alleging slander of title, and he sought to have Wilson removed from the property through a forcible entry and detainer claim.

After a hearing on Fieldgrove's forcible entry and detainer claim, the court ruled for Wilson. It found that because

Fieldgrove failed to provide the required 6-month notice of his intention to terminate the lease, Wilson was entitled to possession of the farm until February 28, 2009. After the court dismissed Fieldgrove's claim for forcible entry and detainer, Fieldgrove amended the claimed damages under his slander of title claim. Wilson then sought summary judgment on Fieldgrove's slander of title claim. The court granted Wilson's motion for summary judgment. Fieldgrove appeals.

ASSIGNMENTS OF ERROR

Fieldgrove assigns that the district court erred in failing to find that the farm lease terminated on February 29, 2008, and in granting Wilson's motion for summary judgment on his slander of title claim.

STANDARD OF REVIEW

[1] The parties do not dispute the terms of the oral lease. The sole issue regarding the lease is whether a landlord is required to give notice of termination to the farm tenant's surviving heirs when the tenant dies before the deadline for notice. This issue presents a question of law. When reviewing questions of law, an appellate court reaches its conclusion independent of the trial court's conclusion.[1]

[2] An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.[2]

ANALYSIS

[3] Because the 2008 farming season has already passed, the court's ruling that Wilson had a valid leasehold interest for that year would be moot except that it is relevant to Fieldgrove's claimed damages under his slander of title claim. Neb. Rev. Stat. § 76-296 (Reissue 2009) provides in part that no person

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[1] See *Stonacek v. City of Lincoln*, 279 Neb. 869, 782 N.W.2d 900 (2010).

[2] See *Community Dev. Agency v. PRP Holdings*, 277 Neb. 1015, 767 N.W.2d 68 (2009).

shall use the privilege of filing notices for the purpose of slandering the title to real estate. An action for slander of title is based upon a false and malicious statement, oral or written, which disparages a person's title to real or personal property and results in special damage.[3] For slander of title claims, other jurisdictions have interpreted malice to require (1) knowledge that the statement is false or (2) reckless disregard for its truth or falsity.[4] So, to determine whether Fieldgrove had a valid slander of title claim, we first consider whether Wilson had a valid leasehold interest on the property. A valid interest would obviously defeat the slander of title claim because filing notice of a valid claim could not be considered either false or malicious.

Kenny's Leasehold Interest Survived His Death

Whether Wilson had a valid leasehold interest depends upon whether Fieldgrove was required to give her notice to quit after Kenny died but before the lease expired. The court found that Fieldgrove did not give Wilson notice to quit. Whether a landlord is required to give notice to quit to a tenant's surviving heir presents an issue of first impression.

[4] Fieldgrove argues that after Kenny died, the lease terminated at the end of the crop year without notice. It is true that "where the existence of a particular person is necessary for the performance of a contractual duty, the death of that person, or his or her loss of capacity to perform the duty, discharges the obligor's duty to perform."[5] Courts generally hold that sharecrop farm leases, under which the tenant pays the landlord a share of the crops raised, implicitly include an agreement for the tenant's particular farming skills in which the owner has confidence.[6] In a sharecrop lease agreement, the landlord's receipts directly depend upon the tenant's skills and industry.[7]

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[3] See *Norton v. Kanouff*, 165 Neb. 435, 86 N.W.2d 72 (1957).

[4] See 50 Am. Jur. 2d *Libel and Slander* § 531 (2006).

[5] *In re Estate of Sauder*, 283 Kan. 694, 704, 156 P.3d 1204, 1212 (2007), citing Restatement (Second) of Contracts § 262 (1981).

[6] See *id.* (citing cases).

[7] See *Crump v. Tolbert*, 210 Ark. 920, 198 S.W.2d 518 (1946).

So, under the common law, a sharecrop agreement is usually considered a personal services contract that does not survive the tenant's death and is not inheritable.[8]

But some courts have found this rule to be abrogated by their state statutes. For example, courts do not agree whether a statutory notice to quit requirement applicable to sharecrop agreements abrogates the common-law rule regarding termination of the lease upon a farm tenant's death.[9] Further, the Kansas Supreme Court has reasoned that the terminate-at-death rule for sharecrop agreements is abrogated under a state statute that subjects the administrator of a tenant's estate to the tenant's liabilities under a lease. Under this statute, the court held that "a lease, including an agricultural sharecrop lease, continues in effect upon the death of the tenant unless the parties have contracted otherwise, and the executor or administrator of the lessee's estate has the fiduciary obligation to see that the lessee's obligations are met."[10]

Nebraska does not have a statutory notice requirement, but we have judicially required a 6-month notice to quit for year-to-year farm tenancies.[11] And we have applied this rule to sharecrop lease agreements.[12] But we need not decide whether the common-law rule regarding termination upon the tenant's death of a sharecrop agreement is abrogated. The lease here is a cash lease agreement. Because Fieldgrove did not share in the fruits of Kenny's labor, we do not construe the lease as a contract for Kenny's personal services.

[5,6] Outside of contracts for personal services and tenancies at will (or when the common-law rule for sharecrop agreements has been abrogated), the death of the landlord or tenant

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[8] See, *Ames v. Sayler*, 267 Ill. App. 3d 672, 642 N.E.2d 1340, 205 Ill. Dec. 223 (1994); *Read v. Estate of Mincks*, 176 N.W.2d 192 (Iowa 1970); *In re Estate of Sauder, supra* note 5; 21A Am. Jur. 2d *Crops* § 48 (2008).

[9] Compare *Ames, supra* note 8, with *Read, supra* note 8.

[10] *In re Estate of Sauder, supra* note 5, 283 Kan. at 708, 156 P.3d at 1214.

[11] See, e.g., *Fisher v. Stuckey*, 201 Neb. 439, 267 N.W.2d 768 (1978), citing *Critchfield v. Remaley*, 21 Neb. 178, 31 N.W. 687 (1887).

[12] See *Fisher, supra* note 11.

in a year-to-year lease does not terminate the lease.[13] Instead, a leasehold interest in a tenancy for a term of years or a year-to-year tenancy is considered personal property.[14] And unless the contract provides otherwise, courts have held that a leasehold interest transfers by operation of law to the tenant's personal representative or heir.[15]

[7,8] A main reason for classifying a leasehold interest as personal property was that earlier laws of succession treated the devolution of personal property differently than real property.[16] But this distinction is less relevant today. Since 1974, in Nebraska,[17] title to both real and personal property passes immediately upon death to the decedent's devisees or heirs, subject to administration, allowances, and a surviving spouse's elective share.[18] But the point of these earlier cases is still relevant: Apart from tenancies at will or leases requiring the tenant's personal services, a tenant's rights and obligations in a leasehold interest survive the tenant's death and pass to his or her heirs, subject to the personal representative's right of possession.

For example, courts have held that the administrator or heir of a tenant's estate can (1) be liable for the tenant's obligation

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[13] *Read, supra* note 8; *In re Estate of Sauder, supra* note 5; *State Bank of Loretto v. Dixon*, 214 Minn. 39, 7 N.W.2d 351 (1943). See, also, *Von Seggern v. Freeland*, 200 Neb. 570, 264 N.W.2d 436 (1978); Robert S. Schoshinski, American Law of Landlord and Tenant § 10:3 (1980 & Cum. Supp. 2010); Annot. 42 A.L.R.4th 963 (1985).

[14] See *Hartman v. Drake*, 166 Neb. 87, 87 N.W.2d 895 (1958). See, also, *Pergament Norwalk Corp. v. Kaimowitz*, 4 Conn. App. 633, 496 A.2d 217 (1985).

[15] See, *Olson v. Frazer*, 154 Kan. 310, 118 P.2d 505 (1941); *Fowler v. Loughlin*, 183 Md. 48, 36 A.2d 671 (1944); *Orchard v. Wright-Dalton-Bell-Anchor Store Co.*, 197 S.W. 42 (Mo. 1917); *Montana Consol. Mines Corp. v. O'Connell*, 107 Mont. 273, 85 P.2d 345 (1938); *Swan v. Bill*, 95 N.H. 158, 59 A.2d 346 (1948). See, also, *In re Estate of Logan*, 71 Ohio Law Abs. 391, 131 N.E.2d 454 (Ohio Prob. 1955).

[16] Schoshinski, *supra* note 13, § 1:2.

[17] See *In re Estate of Chrisp*, 276 Neb. 966, 759 N.W.2d 87 (2009).

[18] See, Neb. Rev. Stat. § 30-2401 (Reissue 2008); *Ruzicka v. Ruzicka*, 262 Neb. 824, 635 N.W.2d 528 (2001).

under the lease,[19] (2) seek a renewal of the lease,[20] (3) extend a lease by holding over,[21] (4) fulfill the tenant's farming obligations under a lease to trigger a landlord's duties,[22] and (5) rely on the landlord's obligation to give notice to quit under a year-to-year lease.[23] This court has similarly held that a special administrator could exercise the tenant's purchase option under a 5-year lease when the tenant died during the term.[24] And we have recognized the right of a tenant's administrator to convey the leasehold interest to a third party.[25]

Because the farm lease did not require Kenny's personal services, it did not terminate upon his death but passed immediately to his heirs. And the parties stipulated that Wilson was Kenny's sole heir. We conclude that the leasehold interest passed to Wilson upon Kenny's death.

Fieldgrove Was Required to Give Notice to Quit

[9,10] Under Nebraska law, a year-to-year tenancy can only be terminated by an agreement of the parties, express or implied, or by notice given, 6 months before the end of the current year in the year-to-year tenancy.[26] Generally, in the absence of a different agreement, a yearly lease of farmland begins on March 1 and ends on February 28 of the following year, and the rent becomes due at the expiration of the term.[27] In such a case, a landlord must give notice to terminate by

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[19] See, e.g., *Olson, supra* note 15; 49 Am. Jur. 2d *Landlord and Tenant* § 114 (2006).

[20] See, *Montana Consol. Mines Corp., supra* note 15; *Swan, supra* note 15.

[21] See *In re Estate of Logan, supra* note 15.

[22] *In re Estate of Sauder, supra* note 5.

[23] *Read, supra* note 8.

[24] See *Von Seggern, supra* note 13.

[25] See *Goetz Brewing Co. v. Robinson Outdoor Advertising Co.*, 156 Neb. 604, 57 N.W.2d 169 (1953).

[26] See, *Moudry v. Parkos*, 217 Neb. 521, 349 N.W.2d 387 (1984); *Fisher, supra* note 11; *Sempek v. Minarik*, 200 Neb. 532, 264 N.W.2d 426 (1978).

[27] *Stuthman v. Stuthman*, 245 Neb. 846, 515 N.W.2d 781 (1994); *Moudry, supra* note 26.

September 1.[28] Here, it is uncontested that neither Fieldgrove nor Wilson gave notice to quit.

In discussing notice requirements under year-to-year tenancies, the Minnesota Supreme Court held that the deceased landlord's estate was required to give the tenant the required notice of its intent to terminate the lease.[29] Absent such notice, the lease continued for the next year. Similarly, the Iowa Supreme Court found that the tenant's death did not terminate the lease agreement. Rather, "[a]bsent receipt of statutory termination of tenancy notice . . . the widow, as sole surviving beneficiary and executor of her deceased husband's estate, claimed a continuing right to possession and occupancy of the premises for the [next] crop year."[30]

[11] We believe that the reasoning of these cases applies here. We conclude that when a year-to-year farm lease does not terminate upon the tenant's death, the landlord can only terminate the lease by giving notice to quit to the tenant's heirs or personal representative. Fieldgrove failed to comply with this requirement. Wilson, who possessed Kenny's leasehold interest in the property and continued to farm it, was entitled to rely on that lack of notice.

But Fieldgrove relies on *Dobyns v. S.C. Dept. of Parks & Rec*.[31] In *Dobyns*, the tenant died during the term of a 10-year lease. The issue was whether his heirs could exercise his right to renew the lease. The South Carolina Supreme Court stated, "[A]lthough the lease does not terminate on a lessee's death, the lease passes to the estate or heirs only until the expiration of the current lease period."[32] The court in *Dobyns* also specifically found that because the lease was personal to the tenant, the right to renew the lease could not be assigned or transferred without consent of the landlord.

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[28] *Mathiesen v. Bloomfield*, 184 Neb. 873, 173 N.W.2d 29 (1969).

[29] *State Bank of Loretto, supra* note 13.

[30] *Read, supra* note 8, 176 N.W.2d at 192.

[31] *Dobyns v. S.C. Dept. of Parks & Rec.*, 325 S.C. 97, 480 S.E.2d 81 (1997).

[32] *Id.* at 101, 480 S.E.2d at 84.

[12] Neither of these rationales applies here. As stated, the lease was not personal to Kenny—i.e., it did not require his personal services. And absent a contract provision or statute to the contrary, a lease for a term of years terminates on the last day of the term without notice.[33] So even assuming that the holding in *Dobyns* is correct under a lease for a term of years—an issue we do not consider—here, we are concerned with a year-to-year tenancy which follows the notice rule stated above. As such, *Dobyns* provides little guidance.

Fieldgrove also relies on *Estate of Kiefer v. Gegg*.[34] He argues that under this Missouri case, Fieldgrove was not required to provide notice of his intent to terminate the lease after Kenny's death. In *Estate of Kiefer*, the tenant farmed property under a year-to-year tenancy and a statute required 60 days' notice to quit. The landlord did not give notice, and the tenant continued to farm the property the next year. After the landlord died during that year, his administrator leased the land to another tenant. The court determined that because no landlord-tenant relationship was established between the administrator and the first tenant after the landlord's death, the administrator could lease the property to another tenant. But this conclusion is contrary to the general rule that the death of the landlord or tenant does not terminate a year-to-year lease. We decline to follow *Estate of Kiefer*.

The district court did not err in finding that Wilson had a valid interest in the 2008 farming season.

Fieldgrove's Slander of Title Claim Fails Because Wilson Had Leasehold Interest

[13] Summary judgment is proper if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to

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[33] See, Schoshinski, *supra* note 13, § 2:9; 49 Am. Jur. 2d, *supra* note 19. Compare *Johnson Lakes Dev. v. Central Neb. Pub. Power*, 254 Neb. 418, 576 N.W.2d 806 (1998).

[34] *Estate of Kiefer v. Gegg*, 622 S.W.2d 733 (Mo. App. 1981).

judgment as a matter of law.[35] In reviewing a summary judgment, we view the evidence in the light most favorable to the party against whom the judgment was granted, and give that party the benefit of all reasonable inferences deducible from the evidence.[36]

Here, the district court correctly found that Wilson had a valid leasehold interest. Thus, the claim Wilson filed against the property was not false or malicious. And the record lacks any evidence to suggest Wilson filed the claim to slander the title to the property. She believed, rightfully so, that she had a valid interest in the property. The district court did not err in granting Wilson's motion for summary judgment, as no genuine issue of material fact could be drawn from the facts presented.

CONCLUSION

The district court correctly determined that Wilson had a valid legal interest in the leased property. Fieldgrove was required to give at least 6 months' notice of his intention to terminate the lease and failed to do so. Therefore, the lease was renewed for an additional year commencing March 1, 2008. The district court did not err in granting Wilson's motion for summary judgment on Fieldgrove's slander of title claim.

AFFIRMED.

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[35] See, *Ashby v. State*, 279 Neb. 509, 779 N.W.2d 343 (2010); *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

[36] *Bamford, supra* note 35; *Conley v. Brazer*, 278 Neb. 508, 772 N.W.2d 545 (2009).

STATE OF NEBRASKA, APPELLEE, V.
ERIC T. MCGHEE, APPELLANT.
787 N.W.2d 700

Filed September 3, 2010. No. S-10-337.

1. **Effectiveness of Counsel.** A claim that defense counsel provided ineffective assistance presents a mixed question of law and fact.