

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY**

ESTATE OF:

ELEANOR M. HOVANICK,
DECEASED

CASE NO. 2026-A-0014

Civil Appeal from the
Court of Common Pleas,
Probate Division

Trial Court No. 2022 ES 00126

OPINION AND JUDGMENT ENTRY

Decided: October 5, 2026
Judgment: Affirmed

Casey P. O'Brien and David A. Urbancic, Ibold & O'Brien, 401 South Street, Chardon, OH 44024 (For Appellants, Carol Mohr and Michele Boiarski).

Michael P. Geary, P.O. Box 31, Jefferson, OH 44047 (For Appellee, Lucinda A. Hovanick).

EUGENE A. LUCCI, J.

{¶1} Appellants, Carol Mohr, et al. (“exceptors”), appeal the judgment of the Ashtabula County Court of Common Pleas, Probate Division, concluding that a statutorily authorized “transfer on death designation” (“TODD”) affidavit, pertaining to real property subject to the instrument, does not survive a decedent’s decision to sell the same property prior to her death. At issue is whether the doctrine of equitable conversion operates to negate the TODD affidavit thereby rendering the sale proceeds of the real property testamentary and thus part of the decedent’s estate. This is apparently an issue of first

impression in Ohio's appellate districts as well as the Supreme Court of Ohio. We affirm the trial court's decision.

{¶2} On November 10, 2010, Eleanor M. Hovanick ("decendent"), signed a TODD affidavit concerning nearly 62 acres of real estate that she owned in Orwell, Ohio. The TODD affidavit designated Ann M. Zimmer, Carol Mohr, Michael Hovanick, and Peggy Rodriguez as beneficiaries to receive title to the real estate upon her death as sole owners. The TODD affidavit was recorded on November 10, 2010, with the Ashtabula County Recorder's Office. The TODD affidavit was not replaced or revoked by a new or separate TODD affidavit prior to decedent's death.

{¶3} On July 18, 2021, decedent executed a last will and testament that devised all of her property in equal shares to Michael Hovanick and Lucinda Hovanick and specifically left nothing to Carol Mohr. Ann M. Zimmer and Peggy Rodriguez predeceased decedent.

{¶4} On December 19, 2021, decedent, as seller, signed a purchase and sale agreement with Western Reserve Land Conservancy ("WRLC"), as buyer, to sell the Orwell, Ohio, real estate for the sum of \$350,000. On December 19, 2021, decedent signed a charitable pledge agreement to donate \$50,000 to WRLC out of her gross sales proceeds from the sale of the underlying real estate to offset the costs associated with its acquisition of the property. The purchase and sale agreement became effective on December 27, 2021, when Robert Owen, in his capacity as Assistant Secretary of WRLC, signed the agreement that was previously executed by decedent.

{¶5} Decedent died on December 28, 2021. Decedent was the owner-of-record of the real estate at issue (which is subject of the TODD affidavit) at the time of her death.

Decedent's last will and testament, dated July 18, 2021, was admitted to probate on March 18, 2022, and no proceedings were instituted to contest the will.

{¶6} On June 16, 2022, Lucinda Hovanick, the executor of decedent's estate ("executor"), submitted an inventory and appraisal. A memorandum in support of the inventory was filed on July 20, 2022. An objection to the inventory was filed on July 29, 2022, on behalf of Carol Mohr (joined later by appellant, Ms. Boiarski, granddaughter of the deceased); a brief in support of the objection to inventory was filed on September 14, 2022. The executor replied to the objection on September 29, 2022.

{¶7} The matter was heard before the trial court's magistrate. In these proceedings, the executor generally argued that, by virtue of the doctrine of equitable conversion, the real estate at issue was converted from real property to personal property upon entry of the purchase and sales agreement between the decedent and WRLC which was finalized on December 27, 2021, one day prior to the decedent's death. As a result, there was no real estate interest that would transfer to exceptors upon decedent's death. Rather, once the purchase and sales agreement was signed by WRLC's agent (which had been previously executed by decedent), the real property converted into personal property and the sales proceeds should be distributed as probate assets pursuant to decedent's will.

{¶8} Exceptors argued that, by operation of the TODD affidavit statutes, see R.C. 5302.22 through R.C. 5302.24, the real estate was a non-probate asset once the affidavit was legitimately recorded in 2010. Exceptors asserted that the estate had no claim to the real property or the proceeds from sale. Instead, exceptors claimed that the real property transferred, via the valid TODD affidavit, on decedent's death and no equitable principle

could supersede the statutory rights of the beneficiaries of the 2010 TODD affidavit. As such, exceptors concluded that they and Michael Hovanick are the sole owners of the sale proceeds under the purchase and sales agreement between the decedent and WRLC.

{¶9} Neither party contested whether the subject real property can, should, or must be sold pursuant to the purchase and sales agreement. They appear to concede that the property may (or should) be sold but disagree as to which individual(s) or entity should receive the proceeds.

{¶10} On November 18, 2022, the magistrate issued a decision sustaining the exceptors' objection to the inventory and concluded that no interest in, or sales proceeds from, the real property at issue were assets of the decedent's estate. The magistrate determined that, despite the executor's argument relating to the operation of the doctrine of equitable conversion, "[e]quity must follow the law and cannot be invoked to destroy or supplant a legal right." Citing *Civil Service Personnel Assn., Inc. v. Akron*, 48 Ohio St.2d 25, 27 (1976). The magistrate determined that when the parties' rights are clearly defined pursuant to law, the maxim "equity follows the law" is typically applied strictly. Citing *Civil Service Personnel Assn., Inc.* at 27.

{¶11} The magistrate concluded that, under the circumstances, the TODD affidavit, which is a creature of statutory law, governed the matter. The magistrate determined that the TODD affidavit was properly executed, was effective, and was not revoked. See R.C. 5302.23(B)(5). Because the TODD affidavit successfully transferred the real property and was not specifically revoked, the magistrate determined it was a non-testamentary transfer and effective in favor of exceptors. See R.C. 5302.23(B)(7)(a).

{¶12} The magistrate also determined that,

to the extent equitable conversion would be applied in this case, the vested transfer on death designation affidavit beneficiaries hold legal title for the benefit of the buyer of the real estate. A buyer of real estate subject to a transfer on death designation affidavit may sue the vested beneficiaries for the performance of the contract after the affiant's death and the vested beneficiaries also have the right to sue the buyer for remedies under the purchase contract, which may include specific performance, and have a right to the sale proceeds.

{¶13} The magistrate set forth a legal path for the purchaser and the purported TODD beneficiaries to pursue. Considering these points, the magistrate concluded the exceptors' objections to the inventory were well taken.

{¶14} The executor filed objections to the magistrate's decision. Exceptors filed a brief in response in support of the objection to the inventory addressed by the magistrate's decision.

{¶15} The trial court, in its judgment entry, noted that "[e]xceptors and [e]xecutrix each agree, *or must necessarily agree*, the real property is/was subject to the *Purchase and Sales Agreement* at all times relevant herein." (Emphasis in original.) The trial court accordingly pointed out that both parties are claiming the right to an equal share in the sale *proceeds*. The primary issue, then, was whether the proceeds from the agreement belong to the estate or, pursuant to the TODD affidavit, to exceptors and Michael Hovanick.

{¶16} The trial court accepted the magistrate's factual findings, as no party took issue with the same. The trial court, however, declined to adopt the magistrate's conclusions of law. The trial court principally cited *Cleveland Trust Co. v. Armstrong*, 4

Ohio Supp. 216 (1935), a Lake County Probate case that was apparently not appealed.¹ The trial court determined that heirs or devisees have no election to affirm or not affirm a contract where a decedent sold land owned by the decedent prior to his or her death and therefore cannot recover possession of the land. *Id.* at 217-218. In this respect, the trial court observed that a TODD affidavit beneficiary, which contemplates the transfer only of real estate, gives the beneficiary no special rights in the real property until the decedent's death.

{¶17} The trial court also determined “that the status of the real property at issue herein is considered fixed and determined as of the date of the decedent's death.” See *id.* at 218. Specifically, if a sale of real property was entered prior to the date of death, the doctrine of equitable conversion requires the former real property interest to convert to a personal property interest that is controlled by the decedent's will.

{¶18} The trial court observed that, in enacting the TODD statutory scheme, the General Assembly did not specifically state the doctrine of equitable conversion was abrogated or negated by an otherwise valid TODD affidavit. The trial court noted the law has always favored the rights of real-property owners to alienate or sell their real property; the trial court stated that notwithstanding the existing TODD affidavit, the decedent, as a real-property owner, was entitled to sell the property prior to her death and the sale transmogrified the real property (i.e., its proceeds of sale) into personal property subject to probate.

1. Although the trial court utilized *Cleveland Trust Co.* as a foundation for its formal ruling, we emphasize it has no precedential value. The analysis in that matter, while sound, is derived from a probate court's ruling and this court is not bound by a trial court's ruling. See, e.g., *State v. Shepherd*, 1995 WL 650157, *2 (4th Dist. Nov. 2, 1995) (“Suffice it to say that no appellate court in this state is bound to follow precedent or pronouncements of law emanating from trial court decisions.”).

{¶19} The trial court determined that the “doctrine of equitable conversion is fully consonant with the literal language of the [TODD-affidavit] statute.” The trial court accordingly concluded that the contract of sale was valid and the proceeds of the sale of the property at issue are personal property as a matter of law.

{¶20} Exceptors now appeal and assign the following as error:

{¶21} “The trial court erred in finding the sale proceeds under a land purchase agreement are an asset of the estate where a Transfer on Death Designation Affidavit had previously been recorded and the deed has not yet been transferred under the land purchase agreement.”

{¶22} Under their assignment of error, exceptors assert that the doctrine of equitable conversion cannot override the plain language of the TODD statutory scheme where the decedent held legal title to real property at the time of her death because no deed was executed or delivered under an executory purchase agreement and the TODD affidavit was never revoked through the statutory mechanisms set forth under R.C. 5302.23(B)(5).

{¶23} The parties agree that this is a question of first impression for an appellate court in Ohio. While the trial court cited *Cleveland Trust Co.* as a foundation for its determination, as noted above, the analysis of that matter derived from probate court proceedings. And, while the analysis of the *Cleveland Trust Co.* case is informative, we maintain this matter can be resolved, as a matter of law, by recourse to the interplay of various statutory sections as well as the common law doctrine of equitable conversion.

{¶24} We start by emphasizing that this matter presents a question of law. Ordinarily, an appellate court reviews a probate court’s decision regarding exceptions to

an inventory filing for an abuse of discretion. See *In re Estate of Clonch*, 2021-Ohio-2815, ¶ 6 (11th Dist.). This case, however, presents an issue requiring an analysis of statutory law and the impact of common law doctrine on this analysis. We must therefore proceed to consider the trial court’s judgment under a de novo standard of review. See, e.g., *Aubry v. Univ. of Toledo Med. Ctr.*, 2012-Ohio-1313, ¶ 10 (10th Dist.) (“Statutory interpretation is a question of law, subject to de novo appellate review.”). “A de novo review requires the appellate court to conduct an independent review of the evidence before the trial court without deference to the trial court’s decision.” (Citation omitted.) *Peer v. Sayers*, 2011-Ohio-5439, ¶ 27 (11th Dist.). We note that our conclusion is the same under either standard. Because no court has discretion to misapply the law, a legal question of this kind is reviewed for legal correctness regardless of the label, and, as explained below, the trial court applied the law correctly. See *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 38 (“‘No court—not a trial court, not an appellate court, nor even a supreme court—has the authority, within its discretion, to commit an error of law.’ This should be axiomatic: a court does not have discretion to misapply the law.”), quoting *State v. Boles*, 2010-Ohio-278, ¶ 26 (2d Dist.).

{¶25} R.C. 5302.22(B) provides, in relevant part, that “[a]ny individual who . . . owns real property or any interest in real property as a sole owner . . . may designate the entire interest, or any specified part that is less than the entire interest, in that real property as transferable on death to a designated beneficiary or beneficiaries by executing . . . a transfer on death designation affidavit as provided in this section.” Moreover, pursuant to R.C. 5302.23(B)(4), “[t]he designation of a transfer on death beneficiary *has no effect on the present ownership of real property*, and a person designated as a transfer on death

beneficiary has no interest in the *real property* until the death of the owner of the interest.” (Emphasis added.) Additionally, “[t]he designation in a transfer on death designation affidavit of any transfer on death beneficiary may be revoked or *changed* at any time, without the consent of that transfer on death beneficiary, by the owner of the interest” (Emphasis added.) R.C. 5302.23(B)(5). Also, “[a] transfer on death beneficiary takes only the interest that the deceased owner or owners of the interest held on the date of death, subject to all encumbrances, reservations, and exceptions.” R.C. 5302.23(B)(7)(a). Finally, “[a]ny transfer on death of real property or of an interest in real property that results from a transfer on death designation affidavit designating a transfer on death beneficiary is not testamentary. That transfer on death shall supersede any attempted testate or intestate transfer of that real property or interest in real property.” R.C. 5302.23(B)(9).

{¶26} Accordingly, a transfer on death designation affidavit must be recorded before the affiant’s death to be effective, see R.C. 5302.22(F), but the transfer of title it directs does not occur until that death. The designation has no effect on the affiant’s present ownership of the real property, and the designated TODD beneficiary acquires no interest in the real property until the owner of the interest dies. See R.C. 5302.23(B)(4). Upon the owner’s death, title to the real-property interest described in the affidavit vests in the surviving designated beneficiaries. See R.C. 5302.22(C)(1); R.C. 5302.23(B)(1). That transfer, being non-testamentary, supersedes any attempted testate or intestate transfer of that real property or interest in real property. See R.C. 5302.23(B)(9). A fundamental, salient, and conspicuous feature of the statutory scheme is that it pertains to the ownership and transfer of only *real property*.

{¶27} Considering these statutory points, the issue in this case is whether an otherwise valid transfer on death affidavit entitles the designated beneficiaries to the proceeds of a sale of the subject real property where the owner, prior to her death, entered into a contract to sell that property to a third party—or whether, instead, those proceeds are personal property subject to administration under the decedent’s will. We conclude that, by operation of the doctrine of equitable conversion, the proceeds of a sale of real estate subject to a transfer on death affidavit, where the contract of sale was entered prior to the decedent’s death, become personal property and are assets of the decedent’s estate.

{¶28} The doctrine of equitable conversion of real property into personal property has long been a recognized principle of the law in Ohio. *Berndt v. Lusher*, 40 Ohio App. 174 (6th Dist. 1931).

{¶29} In *Berndt*, the Sixth Appellate District observed that:

“Money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted; and this in whatever manner the direction is given: whether by will, by way of contract, marriage articles, settlement, or otherwise; and whether the money is actually deposited or only covenanted to be paid, whether the land is actually conveyed or only agreed to be conveyed, the owner of the fund, or the contracting parties, may make land money, or money land.”

Id. at 175-176, quoting 9 Ohio Jurisprudence, 719, citing Lord Thurlow.

{¶30} The court in *Berndt* continued that, “[t]he editor of that work[, i.e., Ohio Jurisprudence,] follows the quotation just given with this pertinent statement: ‘Thus where there is an absolute contract to sell land, though the contract is executory, the exchange is treated as having actually taken place, so that the vendor is considered the owner of

the purchase money, and the purchaser is considered the owner of the land.” *Berndt* at 176.

{¶31} Importantly, the Sixth District noted that

[t]he doctrine is restated in 14 Ohio Jurisprudence, 240, that where land is contracted to be sold, equity considers it as converted into personalty, that *the vendor is the trustee for the purchaser*, and that the purchase money would go to the personal representative of the vendor *and the interest of the vendee descend to his heirs*. The authorities, both English and American, seem to have uniformly treated as real estate the equity of the vendee in real estate held under a contract of purchase, and the character of the estate of each is held to have been converted. *Hill v. Heard*, 104 Ark. 23, 148 S. W. 254, 42 L. R. A. (N. S.) 446, Ann. Cas. 1914C, 403; *Bowen, Adm’r, v. Lansing*, 129 Mich. 117, 88 N. W. 384, 57 L. R. A. 643, 646, 95 Am. St. Rep. 427.

(Emphasis added.) *Berndt*, 40 Ohio App. at 176.

{¶32} Accordingly, from these points, we can conclude that equitable conversion is a principle under which a contract for the sale of lands vests equitable title in the buyer, with the seller functioning as trustee of the legal title for the purchaser until the sale is completed. The seller’s own interest, correlatively, is no longer regarded as an interest in the land; it becomes the right to receive the unpaid purchase money, and equity treats that right as personal property. As *Berndt* explains, upon the vendor’s death the purchase money passes to the personal representative of the vendor, while it is the interest of the buyer, not the seller, that would descend to heirs as realty. *Berndt* at 176. The vendor’s converted interest is thus administered as personalty and passes as an asset of the estate—not by descent with the land.

{¶33} Pursuant to the doctrine of equitable conversion, the purchaser of real property, under an executory contract (i.e., a contract which requires future performance

from either party, see, e.g., *Indep. Phlebotomy & Health Servs., LLC v. Croston*, 2024-Ohio-2349, ¶ 19-21 (5th Dist.)), is regarded as the owner, subject to the seller's interest or "lien" for the unpaid purchase price. Given the explication in *Berndt*, the seller holds the legal title of the real property "in trust" for the purchaser. In this regard, although the purchaser's interest in the real estate is treated as realty, the seller's interest in equity is in the unpaid purchase price on the executory contract, and that money is treated as personal property.

{¶34} The doctrine of equitable conversion is not a twentieth-century innovation. This court's predecessors recognized it as early as 1858, when the Supreme Court of Ohio applied Lord Thurlow's formulation in *Fletcher v. Ashburner*, 1 Bro. C.C. 497 (1779), to hold that money directed to be invested in land, and land directed to be sold and turned into money, are each to be treated as the species of property into which they are to be converted. *Gray v. Hawkins*, 8 Ohio St. 449, 453 (1858). Eighteen years later, the Court restated the rule as settled Ohio law: "[e]quity looks upon things *agreed* to be done as actually done, consequently when a contract is made for the *sale of an estate*[,] equity considers the vendor as a trustee for the purchaser of the *estate sold*, and the purchaser as a trustee of the purchase-money for the vendor." (Emphasis in original.) *Gilbert v. Port*, 28 Ohio St. 276, 296 (1876). See also *id.* at 297 ("Equity only regards that done which was contracted to be done.").

{¶35} Further, in 1930, the Court applied the doctrine of equitable conversion again, holding that once a contract for the sale of land has effect, equitable conversion reaches even the proceeds of an intervening, involuntary taking of part of that land: "The doctrine of equitable conversion applies[,] It no longer being possible to convey the entire

property, the fund which represents the part conveyed belongs to the lessee, as purchaser.” *Cullen & Vaughn Co. v. Bender Co.*, 122 Ohio St. 82, 95 (1930).

{¶36} This unbroken line of authority, carried forward at the appellate level in *Berndt*, 40 Ohio App. 174, as well as its progeny, confirms that the rule we apply today is neither novel nor doubtful; it has been the settled law of Ohio for over a century and a half.

{¶37} This is not merely a matter of academic pedigree; Ohio courts have applied the doctrine on facts closely resembling those before us. In *Miller v. Matzinger*, 2000 WL 20559 (6th Dist. Jan. 14, 2000), the property owner’s attorney-in-fact signed a binding purchase agreement for the owner’s home; the owner died two days later, before the transaction’s closing; and the estate’s fiduciary completed the sale after death. The trial court held that, under the doctrine of equitable conversion, the owner’s “interest in the property at issue was converted from real property to personal property upon the signing of the executory contract to sell the property.” *Id.* at *2.

{¶38} The Sixth District affirmed, holding that the owner’s “interest in the home had been converted to personal property at the time of his death.” *Id.* at *3-4. In reaching that result, the Sixth District quoted the very passage of *Berndt* on which we rely today: land “contracted to be sold” is, in equity, “converted into personalty”; the vendor becomes “trustee for the purchaser”; and “the purchase money would go to the personal representative of the vendor. . . .” *Id.* at *3, quoting *Berndt*, 40 Ohio App. at 176. The parallel to this case is close.

{¶39} Here, too, an owner’s binding, unconditional agreement to sell specifically designated real property—signed shortly before an unexpected death and closed

afterward through the estate—converts the owner’s interest into personalty as of the date of signing, not the date of closing, and that interest passes under the owner’s general dispositive plan rather than to the beneficiary of the non-testamentary designation that would otherwise have attached to the land itself.

{¶40} Nothing about this record takes the WRLC agreement outside that settled rule. It was in writing, for a sum certain, and had become fully binding on both parties before decedent’s death—precisely the kind of absolute contract of sale, as distinct from a mere preliminary agreement that Ohio courts have consistently required before equitable conversion will operate. See *Miller*, 2000 WL 20559, at *4 (equitable conversion applies where there is “an absolute direction to sell and convert” the property); *Gilbert*, 28 Ohio St. at 298-299 (conversion does not arise, and does not relate back, until a binding contract of sale actually exists).

{¶41} Decedent’s TODD affidavit was, by its nature, revocable *at any time*; she did not expressly revoke it, but her failure to do so does not undo the legal consequence of the contract she signed, and which was executed, in completion, before her death.

{¶42} Considering these points, it stands to reason that the doctrine of equitable conversion, grounded in the settled notion that an owner can alienate his or her real property, irrespective of a previous TODD affidavit, is a principle of fairness honoring a real-property owner’s intention to sell. After all, equity effectuates the intention of the owner of real property. See *United States v. O’Dell*, 247 F.3d 655, 684 (6th Cir. 2001) (“The foundation for the doctrine of equitable conversion is [the] presumed intention of the owner, equity regarding as done that which ought to be done.” (Quoting *Lynch v. Burger*, 26 Tenn.App. 120 (1942))). As such, the principle views a transaction as

completed at the time the parties enter into and execute the contract, regardless of whether the formal or “actual” exchange of consideration or legal title has occurred.

{¶43} Descent of real estate is generally controlled by “legal title.” *Lamson v. Patterson*, 45 Ohio St. 77 (1887), paragraph one of the syllabus. Where, however, a valid, enforceable contract for the sale of real estate is made, the doctrine of equitable conversion operates to ensure that the buyer takes title, with the seller as trustee of the same, so long as the buyer meets the obligations of payment under the purchase agreement. Under these circumstances, the right of the seller is a right to receive the balance or full sum of the purchase price, which is secured by his or her retaining the legal title, similar to a mortgage. And that right, pursuant to the doctrine of equitable conversion, passes, upon the death of the seller, to the executor as personal property of the estate. The interest of the purchaser is an equitable title to the real estate, tantamount to the sum of the purchase money agreed upon for the purchase. The purchaser’s equitable interest will ripen into a complete, legal title upon payment of the purchase money and entitle the purchaser to the conveyance of full legal title.

{¶44} Because the contract of sale with WRLC was entered prior to decedent’s death, that contract, by operation of the doctrine of equitable conversion, transformed decedent’s interest in the real estate into a right to the proceeds of sale. When decedent signed the contract and WRLC’s agent accepted, decedent became the equitable owner of the purchase money and held the legal title to the property in trust for the benefit of WRLC; WRLC, reciprocally, became the equitable owner of the real estate to the extent it performed its obligations under the contract. Decedent’s converted interest—the right to the purchase money—was personal property. It did not cease to exist, and it did not

pass under the TODD affidavit, because the affidavit operates only upon an interest in real property. It passed, instead, as an asset of decedent's estate.

{¶45} As aptly noted in *Berndt*, 40 Ohio App. at 177, "[t]he legal and equitable title [are] not united in the same person." Nevertheless, upon final payment of the purchase price, title is vested in the purchaser and all proceeds from the pre-death purchase contract of the real property become personal assets of the estate. The trial court did not err in drawing this conclusion.

{¶46} Despite this legal analysis, exceptors cite several cases in support of their position. We shall address them in turn. First, exceptors cite *In re Estate of Ball*, 2016-Ohio-4917 (7th Dist.). In *Ball*, an oil company possessed a lease to the oil-and-gas rights on decedent's property. *Id.* at ¶ 5. The decedent owned the surface rights and a right to re-obtain the oil-and-gas interests upon the lease's expiration. *Id.* The Seventh District held that the lease remained upon the farm property even though title to the farm transferred from decedent to a TODD beneficiary—the decedent's granddaughter. The court determined the granddaughter received decedent's interest in the property subject to the oil-and-gas lease until the lease expired.

{¶47} *Ball* is not analogous to this case because it involved subsurface rights relating to a lease. The TODD statute does not address such pre-existing lease rights; it addresses only the title to the real estate. In *Ball*, the Seventh District held "[i]n this case, the Lease remained with the farm property even though title to the farm transferred from [decedent] to [granddaughter]. [Granddaughter] now owns [decedent's] interest in the farm property subject to the Lease." *Id.* at ¶ 42. The doctrine of equitable conversion did not obviously apply to that case and was not mentioned.

{¶48} Next, exceptors cite *Oasis Home Buyers LLC v. Estate of Thomas*, 2026-Ohio-487 (2d Dist.). In *Thomas*, a prospective purchaser of real property filed a suit against a decedent-seller's estate and the decedent's sons, seeking specific performance of a contract to purchase real estate. *Id.* at ¶ 2-3. The trial court granted summary judgment in favor of decedent's sons because the prospective purchaser failed to file a claim against the estate. *Id.* at ¶ 4. The appellate court affirmed concluding the prospective purchaser was an estate creditor and failed to meet statutory presentment requirements. *Id.* at ¶ 17-18.

{¶49} *Thomas* does not specifically apply to this matter because, at base, it simply confirms that a contract for the purchase of real estate prior to death does not convey any legal interest in the subject real estate. *Id.* at ¶ 17. Moreover, the court in *Thomas* pointed out that, generally, ownership of real estate passes at the time of the decedent's death to his or her *heirs*. *Id.* In *Thomas*, there was no TODD affidavit and thus the real estate followed the "general rule." The court in *Thomas* therefore did not need to address any non-testamentary interest(s) in the real estate at issue in that case.

{¶50} Considering these points, in *Thomas*, the Second District observed that the prospective purchaser had a right of action against the estate to enforce the contract. *Id.* The appellate court concluded, without mention of the doctrine of equitable conversion, that the prospective purchaser had a claim against the estate but failed to meet the presentment requirements of R.C. 2117.06.² *Thomas*, accordingly, does not control or even inform this court's analysis.

2. There is no reference to the doctrine of equitable conversion in *Thomas*; we assume that the particular equitable theory was either not pleaded or was found otherwise inapplicable.

{¶51} Additionally, exceptors cite what they maintain is persuasive authority from Missouri, specifically, *Estate of Vrana v. Wilson*, 676 S.W.3d 344 (Mo.App. 2023). In that matter, a representative of a decedent's estate petitioned for authorization to execute a pending contract for sale of real estate. *Id.* at 345. The alleged owner of property intervened claiming an ownership interest via a transferred-upon-decedent's-death-by-beneficiary deed. *Id.* at 345-346.

{¶52} In *Vrana*, the court observed that the purchase agreement required the decedent to transfer his interest in the property by warranty deed or equivalent. *Id.* at 348. In Missouri, apparently, "the law requires that 'a deed must be delivered for it to operate as a transfer of the ownership of land, as delivery of the deed gives the instrument force and effect.'" *Id.*, quoting *Hoefer v. Musser*, 417 S.W.3d 330, 338 (Mo.App. 2013). The appellate court further observed that "[a]bsent a transfer of Decedent's interest in the Property, or any other means of revoking the Beneficiary Deed, see [Mo.Rev.Stat.] section 461.033, Decedent's interest transferred to Respondent upon Decedent's death by operation of law." *Vrana* at 348.

{¶53} It is clear that *Vrana* provides no obvious assistance to this court's resolution of the underlying matter. Here, decedent took action, entering into a contract for the sale of real property while alive in which she intended to convey her interests in the real property subject to the 2010 TODD affidavit. At the time the contract for the sale of the real property was signed, decedent could reasonably expect, upon completion of the contract, to possess the proceeds from the sale and not to own the real property; in this regard, the proceeds from the sale were personal property and thus estate assets.

{¶54} Further, decedent's failure to record a new affidavit revoking the 2010 designation does not compel a contrary inference. The doctrine of equitable conversion rests on the presumed intention of the owner. See *O'Dell*, 247 F.3d at 684. Here, the record supplies affirmative indicia of that intention.

{¶55} Some five months before contracting to sell, decedent executed a last will and testament devising her property in equal shares to Michael Hovanick and Lucinda Hovanick and leaving nothing to Carol Mohr, a beneficiary named in the 2010 affidavit; she then contracted to sell the very real estate that was the subject of that affidavit. Read together, the natural inference from these deliberate, affirmative acts is that decedent intended the value of the property to pass through her estate under her will. To treat her decision not to record a revocation—of an affidavit that, once the property was sold, would have no real estate upon which to operate—as evidence of a contrary intent would elevate inaction over her express intentional disposition.

{¶56} The *Vrana* court's treatment of the beneficiary deed does not undermine the application of equitable conversion here. *Vrana* turned on two features of Missouri law absent from Ohio's scheme: a requirement that a deed be delivered to effect a transfer of ownership, and a statutory provision, Mo.Rev.Stat. 461.033, under which a lifetime transfer of the owner's interest itself revokes a beneficiary deed. *Vrana*, 676 S.W.3d at 347-348. Ohio, by contrast, prescribes an exclusive method for revoking or changing a transfer on death designation—the recording of a new affidavit, see R.C. 5302.23(B)(5)—and no new affidavit was recorded here. We therefore do not rest our decision on any notion that decedent's contract "revoked" or "changed" the affidavit. Rather, as explained above, the affidavit remained operative and passed to the beneficiaries the only interest

it can pass—an interest in real property—which, by operation of equitable conversion, was bare legal title held for the purchaser, the proceeds passing to the estate as personalty. To the extent *Vrana* recognizes that an owner's lifetime disposition may defeat a death beneficiary's expectation, that principle is consistent with the result we reach.

{¶57} Accordingly, we hold that an owner's written, unconditional, and specifically enforceable contract to sell real property, entered into before her death, effects an equitable conversion of the owner's interest in that property into a right to the proceeds of sale. Even where the property remained arguably subject to an unrevoked TODD affidavit executed under R.C. 5302.22 and R.C. 5302.23, that real property was validly sold. Under the circumstances, the designated beneficiaries under the TODD affidavit have no interest in the title to the real property. The former TODD beneficiaries, by statute, only take the real property owned by the decedent at her death. By operation of the doctrine of equitable conversion, the decedent did not “own” the real property at her death, she only held bare-legal title to the real property, held in trust, redounding to the benefit of the purchaser (WRLC), who, after the decedent's death, owes the decedent's estate the amount of the purchase upon which both decedent and WRLC agree. That is, the estate has a duty to convey the legal title, subject to the purchaser's equitable interest and the correlative duty to convey, and the proceeds of the sale pass as personal property of the owner's estate.

{¶58} Considering the foregoing, we acknowledge the magistrate's determination which, while not adopted by the trial court, emphasized that “equity follows the law” and cannot be invoked to destroy a legal right, especially where the rights of the parties are clearly defined by law. *See Civil Service Personnel Assn.*, 48 Ohio St.2d at 27.

{¶59} Although equity follows the law, in a matter such as this, the law acknowledges the fundamental interest and right that an owner of real estate possesses to transfer or sell her interests in the same. The former may be accomplished by a TODD affidavit. However, we decline to hold that the TODD affidavit somehow functions to negate the real estate owner's right to sell the subject real estate prior to his or her passing such that a TODD beneficiary would be entitled to the proceeds absent a provision in a decedent's will to the contrary. If no contract was entered and/or executed by the decedent *prior to* her death, the TODD affidavit controls the transfer of the real property through non-testamentary means. If, however, as here, the contract was entered and executed by the decedent prior to her death, the proceeds from the same become personal property—the TODD affidavit statutes speak only to the transfer of real property. Once the real property is sold via a valid purchase agreement, the proceeds of the sale involve money. The TODD affidavit statute does not contemplate a TODD beneficiary receiving money, only real estate.³

{¶60} We perceive no friction between the transfer on death statutes and the doctrine of equitable conversion. To the contrary, the doctrine fills a gap that the statutes do not address. The transfer on death affidavit speaks only to the transfer of an interest in real property; it is silent as to the proceeds of a sale of that property completed by contract during the owner's lifetime. Where, as here, the owner exercises her undoubted right to sell before death, equitable conversion supplies the rule of decision for the resulting proceeds: they are personalty and pass under the decedent's will. That a former

3. Ohio's anti-ademption statute, R.C. 2107.501(A)(1), which affords a specific beneficiary the unpaid balance of the purchase price when devised property is sold before death, does not alter this conclusion. By its terms it applies only to a "specific devisee or legatee" under a will and thus has no application to a non-probate transfer on death beneficiary.

transfer on death beneficiary may also be a beneficiary under the will is of no moment to the analysis; any share such a person takes in the proceeds is taken through the will, as personalty, and not through the affidavit.

{¶61} Applying these principles, we conclude that equity here follows the law rather than supplanting it. Under R.C. 5302.22(C)(1) and R.C. 5302.23(B)(1), title passed on decedent's death to the surviving designated beneficiaries. But a transfer on death beneficiary "takes only the interest that the deceased owner . . . held on the date of death, subject to all encumbrances, reservations, and exceptions." R.C. 5302.23(B)(7)(a). By operation of the doctrine of equitable conversion, the interest decedent held at the moment of her death was not an unencumbered fee, but bare legal title impressed with a trust for the benefit of WRLC—legal title the beneficiaries take subject to the purchaser's equitable title and the correlative duty to convey. What the beneficiaries did not take, because decedent no longer held it as real property, was the beneficial interest in the land; that interest had already been converted into the right to the purchase money, which is personalty. R.C. 5302.23(B)(9) does not compel a contrary result. That provision renders a transfer on death "not testamentary" and directs that it "supersede any attempted testate or intestate transfer"—but only "of that real property or interest in real property." The sale proceeds are neither. The statute therefore transfers to the beneficiaries precisely the real-property interest decedent held at death, exactly as division (B)(9) contemplates, while leaving the converted proceeds to pass, as personal property, under decedent's will. So understood, the transfer on death affidavit is neither negated nor "cancelled"; it operates on the only subject the statute addresses—an

interest in real property—and equity, far from destroying a legal right, gives full effect both to the statute and to the decedent’s exercise of her undoubted right to sell.

{¶62} We underscore that the TODD statutes include no suggestion that they were enacted to abrogate the doctrine of equitable conversion. We underscore this point because the interests subject to transfer under the TODD statute are *ownership* interests in *real property*. The statute is silent regarding proceeds from sales of real property which occur prior to the affiant’s death. See R.C. 5302.23(B)(7)(a). Indeed, the statutory scheme speaks only in terms of ownership interests in real property that can be conveyed. While this point is an almost subtle postscript to this court’s analysis, and may have been suggested above, it is of significant import given the language of the TODD statutes.

{¶63} Exceptors’ assigned error is without merit.

{¶64} The executor has also filed the following cross-assignment of error:

If the transfer on death designation affidavit signed by Eleanor Hovanick on November 10, 2010, is determined to have transferred the interests designated to be received by Michael Hovanick and Carol Mohr in real property under that affidavit upon the death of Eleanor Hovanick, the Inventory filed by the Executor for the Estate of Eleanor Hovanick, Deceased, on June 16, 2022, should continue to include interest relating to that real property by amending the Schedule of Assets of the Inventory to substitute for item no. 2 of the Schedule of Assets a 50 percent interest in the real property located at 3918 Johnson Road in Rome Township of Ashtabula County (P.P. No. 46-005-00-001-00), which is the sum of the interest that Ann M. Zimmer and Peggy Rodriguez would have received under the affidavit had they survived Eleanor Hovanick, but are now part of the Estate of Eleanor Hovanick, Deceased.⁴

4. The executor’s cross-assignment of error indicates the property at issue is in Rome Township, Ohio. The will, the magistrate’s decision, and the trial court’s judgment entry, however, state that the real property at issue is located in Orwell, Ohio. The property numbers match and therefore we perceive the cross-assignment of error’s listing of the property in Rome Township to be a typographical error, oversight, or post office designation.

{¶65} Because we conclude exceptors' assignment of error lacks merit, the doctrine of equitable conversion controls this matter, and the trial court's decision is affirmed, the executor's cross-assignment of error is moot.

{¶66} For the reasons discussed in this opinion, the judgment of the Ashtabula County Court of Common Pleas, Probate Division, is affirmed.

JOHN J. EKLUND, J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellants' assignment of error is without merit, and appellee's cross-assignment of error is rendered moot. It is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas, Probate Division, is affirmed.

Costs to be taxed against appellants, Carol Mohr and Michele Boiarski.

JUDGE EUGENE A. LUCCI

JUDGE JOHN J. EKLUND,
concur

JUDGE ROBERT J. PATTON,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
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