

654 So.2d 204, 20 Fla. L. Weekly D968
(Cite as: 654 So.2d 204)

District Court of Appeal of Florida,
 Fourth District.

Norman A. KOPPENHOEFER, Appellant,
 v.
 Diane R. ROBERTS, Appellee.
No. 94-2837.

April 19, 1995.

Owner of property who had executed deed granting remainder interest in property to his granddaughter while retaining life estate brought action seeking to cancel deed, which had been recorded. Granddaughter moved for summary judgment, and the Circuit Court, St. Lucie County, William L. Hendry, J., granted motion. Owner appealed, and the District Court of Appeal held that fact issue precluding summary judgment was presented by fact that owner had retained deed in his possession since its execution.

Reversed.

West Headnotes

Judgment 228  **181(15.1)**

[228](#) Judgment

[228V](#) On Motion or Summary Proceeding

[228k181](#) Grounds for Summary Judgment

[228k181\(15\)](#) Particular Cases

[228k181\(15.1\)](#) k. In General. [Most Cited](#)

[Cases](#)

Fact issue as to intent of owner to convey property to his granddaughter, precluding summary judgment in action brought by owner in which cancellation of deed was sought, was presented where deed conveying remainder interest to granddaughter while retaining life estate for owner had been recorded but owner had retained deed in his possession since its execution.

*[204Clifford M. Miller](#), of Clifford M. Miller, Chartered, Vero Beach, for appellant.

[Norman L. Paxton, Jr.](#), of Paxton & Williams, Fort Pierce, for appellee.

PER CURIAM.

This is an appeal from an order granting summary final judgment in favor of the grantee. We reverse.

This case involves the inter vivos transfer by deed of a parcel of real estate by the grantors, Appellant/Norman A. Koppenhoefer, and his now deceased wife, to the grantee, Appellee/Diane R. Roberts, his granddaughter. The deed conveys a remainder interest to Ms. Roberts while retaining a life estate for Mr. Koppenhoefer. Appellant seeks to cancel the deed, which has been recorded, but which he has retained in his possession since its execution.

Because we find there remains a genuine issue of material fact with respect to Mr. Koppenhoefer's intent to convey the property, we remand this cause back to the trial *[205](#) court. See [Smith v. Owens, 91 Fla. 995, 108 So. 891 \(1926\)](#).

[GUNTHER, POLEN](#) and [SHAHOOD, JJ.](#), concur.
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