STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1062

Robert Metzler,
Appellant,

vs.

Robin Lanahan,
Respondent.

Filed May 20, 2008
Affirmed
Connolly, Judge

Anoka County District Court
File No. 02-C1-05-010975

Randall D.B. Tigue, Randall Tigue Law Office, P.A., 810 Lilac Drive, #205, Golden Valley, MN 55422 (for appellant)

James J. Kretsch, Jr., Kretsch & Associates, PLLC, 8500 Normandale Lake Boulevard, Suite 960, Minneapolis, MN 55437 (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Minge, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's order denying his motion seeking to forfeit respondent's supersedeas bond. Because the district court's conclusion that

appellant did not prove that he incurred damages as a result of respondent's appeal is not clearly erroneous, we affirm.

FACTS

Appellant Robert Metzler and respondent Robin Lanahan previously lived together in appellant's home. Following the end of their relationship, they reached a court-approved settlement. This settlement addressed a number of topics, including the occupancy of the residence appellant and respondent had shared. Specifically, the settlement provided respondent with exclusive possession of the residence from October 20, 2003 to October 20, 2005. Respondent was responsible for making the monthly mortgage payments, less real-estate taxes and insurance. The payments were made directly to the bank responsible for servicing the mortgage. The settlement stipulated that appellant was responsible for paying the real-estate taxes and insurance.

At the end of the agreed-upon occupancy, respondent remained in appellant's house. Appellant filed an eviction action against her. On November 15, 2005, the case was heard, and judgment was entered in appellant's favor. Following an appeal by respondent to this court, the district court continued its stay of the writ of recovery. The continuance was conditioned on respondent's ability to "post an appeal bond on or before December 22, 2005 in the amount of $50,000." Respondent posted this bond and remained in the house.[1]

[1] At some point in time the home went into foreclosure. It was sold at a sheriff's sale on May 18, 2006.

On October 23, 2006, the district court issued an order increasing the supersedeas bond. Respondent did not post the additional bond and lost possession of the house. Appellant then filed a motion in district court seeking to recover the full amount of respondent's supersedeas bond, arguing that he incurred damages as a result of respondent's December 12, 2005 appeal. In an order dated March 21, 2007, the district court denied appellant's motion, finding that appellant had "not met his burden of proof that he actually incurred the damages he seeks in this case." This appeal follows.

D E C I S I O N

"[A] court that approves a supersedeas bond to stay enforcement of a judgment during an appeal has the inherent power to later assess actual damages incurred as a result of the stay and may assess those damages on the motion of a party." *O'Leary v. Carefree Living of Am. (Minnetonka), Inc.*, 655 N.W.2d 639, 643 (Minn. App. 2003). "The amount of damages sustained by the prevailing party in consequence of the appeal must be rationally related to the loss suffered . . . ." *County of Blue Earth v. Wingen*, 684 N.W.2d 919, 923 (Minn. App. 2004). "A district court's findings of fact are reviewed for clear error and will not be disturbed if they are supported by reasonable evidence." *Id.*

The Minnesota Rules of Civil Appellate Procedure control a district court's authority to require a party to post a supersedeas bond. It provides:

> If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience to and satisfaction of the order or judgment

> which the appellate court may give if the order or any part of it is affirmed or if the appeal is dismissed.

Minn. R. Civ. App. P. 108.01, subd. 2.

Appellant argues that he suffered damages in the form of: (1) lost rent, (2) lost equity, and (3) wrongful conversion of insurance proceeds. The district court found that appellant failed to establish the "damages he seeks in this case." Because this finding is supported by the record, we affirm.

First, regarding lost rent, the record is devoid of any evidence as to what the rental value of the property would be. Appellant apparently assumes that it would be equal to the monthly mortgage payments that respondent made during her occupancy of the property. However, the amount one is willing to pay to rent a property does not necessarily correspond to the mortgage payment associated with that property. The record is devoid of any evidence that appellant would even have been able to find a renter for the home. Absent further evidence, we cannot say that the district court's finding that respondent did not establish lost rent is clearly erroneous.

Second, regarding lost equity, the district court found that appellant did "not give this court any idea as to the amount of equity he claims to have lost." The district court stated that it did "not know the fair market value of the property" and did not "know the amount of any encumbrance[s] against it." As a result, it found that "[w]ithout more certainty and exactness as required by *Nelson v. Smith*, this Court cannot award damages

for lost equity."[2] This finding accurately states the record. In terms of the home's value, the record contains only a lone, outdated appraisal by a realtor. There is no other evidence that establishes the property's value. There is no evidence about what encumbrances might have existed against the property. Absent more definitive evidence about the value of the home, and the claims against it, the district court did not err in its refusal to award damages for lost equity.

Third, regarding wrongful conversion of insurance proceeds,[3] appellant claims that respondent fraudulently cancelled an insurance policy on the home and had it reissued in her name. The district court stated that "it does not appear [appellant] has any claim to these insurance proceeds" because "[h]e did not purchase this policy and thus had no contractual relationship with the insurer." It concluded with the observation that "[i]f there was a conversion of the insurance proceeds, this would be an issue between the insurance company and [respondent]." The district court's finding on this point is supported by evidence in the record. The record lacks sufficient evidence of fraud by respondent. Appellant can only point to the affidavit of one insurance manager in support of his argument, and this affidavit is ambiguous on the point of whether respondent actually committed any fraud. Moreover, whether respondent committed fraud on the insurance company that issued the policy or the bank that serviced the

[2] *See Nelson v. Smith*, 349 N.W.2d 849, 854 (Minn. App. 1984) (holding that lost profits "may be recovered where they are shown to be the natural and probable consequences of the act or omission complained of and their amount is shown with a reasonable degree of certainty and exactness" (quotation omitted)), *review denied* (Minn. July 26, 1984).

[3] In September of 2005, the home was damaged by a tornado. The proceeds in question stem from this incident.

mortgage are issues that are best resolved between respondent and the insurance company or bank.

Affirmed.