**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1271**

Leon A. Helmbrecht, et al.,
Respondents,

vs.

Troyd Helmbrecht,
Appellant.

**Filed May 6, 2008**
**Affirmed**
**Harten, Judge***

McLeod County District Court
File No. 43-C3-05-000814

Francis J. Eggert, 182 Main Avenue West, P.O. Box 789, Winsted, MN 55395 (for respondents)

Stephen R. Conroy, Conroy Law Office, Ltd., 261 East Broadway, P.O. Box 999, Monticello, MN 55362 (for appellant)

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

**HARTEN,** Judge

Appellant Troyd Helmbrecht moved under Minn. R. Civ. P. 60.02 for relief from a judgment against him in favor of his father, respondent Leon Helmbrecht, on the ground that a mortgage owed on the property that the trial court divided between them was not considered in the division. Because we see no abuse of discretion in the district court's denial of the motion, we affirm.[1]

## FACTS

In 1997, the parties purchased as joint tenants a parcel of property on which they planned to build a house. They borrowed the $15,000 down payment from Marilyn Helmbrecht, respondent's mother and appellant's grandmother; respondent eventually repaid this loan. Respondent began living on the property in 1998, and both parties contributed about equally to the construction of a house on it. In 2003, they mortgaged the property for about $50,000 to finance construction.

In January 2005, appellant induced respondent to sign a quitclaim deed by telling him he needed to sign a document so they could obtain another mortgage. Appellant took respondent to a notary and folded the document so respondent signed it without seeing that it was a quitclaim deed conveying his interest in the property to appellant. Having obtained respondent's interest in the property, appellant in March 2005 brought an unlawful detainer action against respondent to evict him. That same month, appellant

[1] The term "district court" refers to the judge who denied the motion; the term "trial court" will be used to refer to the judge who issued the judgment that is the subject of the motion.

refinanced the property, taking out another mortgage for $69,220.57 with which he satisfied the $45,339.27 balance on the 2003 mortgage, which was then stamped "PAID."

In June 2005, respondent brought this action against appellant, seeking, among other things, restitution of his half-interest in the property. Also a plaintiff was Marilyn Helmbrecht, who sought repayment of amounts totaling about $17,000 that she had lent for improvement of the property and construction of the house.[2] Appellant considered these amounts to be gifts, not loans. The judgment awarded Marilyn Helmbrecht $16,268.82, to be paid from the equity in the house before it was divided.

Prior to trial, appellant provided his attorney with a copy of his 2005 mortgage, which stated that he would receive funds on "03-28-05," and a copy of the parties' 2003 mortgage bearing that same date handwritten under the stamped word "PAID." But appellant inadvertently failed to provide any document indicating the amount owed on the 2003 mortgage when he satisfied it with the 2005 mortgage; nor did he tell the trial court the final balance he had paid. The trial court found that the parties' 2005 collective equity in the property was the amount for which it was taxed in 2005, less the amount owed to Marilyn Helmbrecht.

The trial court, "unable to determine the full nature and extent of [the parties'] individual contributions[,]" inferred that they each had "an equal interest in the real property prior to . . . [respondent's] signing of the quitclaim deed." The trial court also found that "[respondent] unknowingly signed a quitclaim deed . . . conveying his interest

[2] Appellant does not challenge this award and, although Marilyn Helmbrecht is listed as a respondent, she takes no part in this appeal.

in [the] property to [appellant]" and that appellant "never told [respondent] he was signing a quitclaim deed," never "paid [respondent] any consideration for signing the quitclaim deed," and "misused [respondent]'s reliance and confidence in their [father/son] relationship in order to obtain [respondent's] signature to the quitclaim deed."[3]

In October 2006, respondent was awarded a judgment finding that the parties' equity in the property in 2005 was $136,231.18, granting respondent a constructive trust on the property for half that amount ($68,115.59), and ordering appellant to pay that amount to respondent within 90 days. Appellant did so and, in January 2007, respondent filed a satisfaction of judgment.

In February 2007, four months after judgment had been entered and a month after it had been satisfied, appellant moved for relief under Minn. R. Civ. P. 60.02. He moved to reopen the judgment so he could present evidence of the $45,339.27 mortgage that he paid off in March 2005, have the $45,339.27 subtracted from the parties' $136,231.18 equity in the property, and thereby reduce the equity to $90,891.91. Appellant would then have respondent's $68,115.59 award decreased by half of the $45,339.27 mortgage amount, or $22,669.63, so respondent would receive only $45,445.96. The district court denied respondent's motion; and appellant challenges the denial.

[3] Appellant has never challenged any of the findings as to the quitclaim deed.

## D E C I S I O N

This court reviews a district court's decision to deny a motion brought under Minn. R. Civ. P. 60.02 for an abuse of discretion. *Carter v. Anderson*, 554 N.W.2d 110, 115 (Minn. App. 1996), *review denied* (Minn. 23 Dec. 1996). The moving party must prove (1) a reasonable likelihood of success on the merits, (2) a reasonable excuse for failing to act, (3) the exercise of due diligence after notice of entry of judgment, and (4) lack of substantial prejudice to the opposing party. *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964). The district court found that appellant "made a weak showing on all four elements."

As to the likelihood of success of the motion, the district court noted that the trial court, in dividing the property equally between the parties, had given respondent no credit for the $15,000 he contributed to the purchase price, and concluded it was "highly unlikely and purely speculative that the [trial] Court would have given [appellant] credit for any loans he used to acquire or improve the property." Thus, appellant would have little likelihood of success on the merits.

As to the second factor, a reasonable excuse for failure to act, the district court found that appellant had ample time to prepare for trial and noted that the record had been left open for a month after trial to receive the parties' written closing arguments. Neither during nor after trial was the trial court informed of the amount owed on the property in March 2005. Appellant said this omission was inadvertent. But "a mere inadvertence is not sufficient to require the reopening of a case to receive new evidence." *King v. Larsen*, 306 Minn. 546, 546, 235 N.W.2d 620, 621 (1975).

As to the third factor, due diligence after notice of entry of judgment, more than four months elapsed between the entry of judgment and this motion; almost one month elapsed between the satisfaction of judgment and the motion. Appellant claims that his attorney wrote letters to respondent's attorney asking first that the disputed amount be placed in escrow and then that the matter be settled without court involvement; only after respondent's attorney declined did appellant file the motion. But appellant offers no basis for the assumption that respondent, having sued and litigated the matter through trial, would agree to forego $22,669.63 of the $68,115.59 judgment he received. The record does not reflect that appellant proceeded with due diligence once judgment was entered.

As to the last factor, the district court points out that respondent had possessed the money awarded to him for a month when this motion was brought; he has now had the money for at least 14 months. He would be substantially prejudiced by being required to repay part of it.

The district court's finding that appellant did not make a strong showing on any of the four factors is supported by the record; the denial of appellant's motion was not an abuse of discretion.

**Affirmed.**