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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1748**

Steven L. Thornberg,
Appellant,

vs.

Alan Witt,
Respondent,

Debra Witt,
Respondent.

**Filed October 28, 2008
Affirmed in part and reversed in part
Worke, Judge**

Pine County District Court
File No. 58-CV-07-216

Steven Thornberg, 34394 Cedar Creek Road, Hinckley, MN 55037 (pro se appellant)

Alan Witt and Debra Witt, 34352 Cedar Creek Road, Hinckley, MN 55037 (pro se respondents)

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

WORKE, Judge

On appeal in this real-estate-related dispute, appellant argues that (1) the conciliation court erred in ruling on an issue that was not properly before the court;

(2) the district court erred by not reversing the conciliation court's award to respondents; and (3) the record does not support the district court's determination regarding certain personal property. Because appellant failed to raise the first two issues in district court, we affirm the district court's ruling on those issues. But because the record does not support the district court's conclusion regarding certain personal property, we reverse on that issue.

FACTS

Respondents Alan and Debra Witt purchased a home from appellant Steven L. Thornberg. Appellant filed a claim in conciliation court against respondents for reimbursement for allegedly unpaid taxes. Respondents filed a counterclaim alleging that appellant was liable for damages as a result of his failure to disclose certain issues with the home. The conciliation court issued an order for judgment in favor of appellant, which was offset by the amount respondents paid for a replacement abstract.

Appellant filed a demand for removal/appeal from conciliation court to district court. The conciliation-court judgment was vacated, and the district court held a new hearing. The district court explained to appellant that when a matter is removed to district court the trial starts over. Appellant stated that he was appealing only the conciliation court's ruling on the issue regarding the abstract. Appellant did not present any evidence on the issue of unpaid taxes. Respondents argued that appellant failed to disclose and misrepresented certain issues regarding the property. The district court found that respondent-wife was entitled to recover certain damages, but that respondent-

husband was not so entitled because he signed an agreement that indicated that he accepted the condition of the property. This appeal follows.

DECISION

Appellant first argues that the conciliation court erred in ruling in favor of respondents on the issue of the abstract. This appeal is from the district court's order, not the conciliation court's order. The conciliation court's order was vacated in April 2007. Therefore, this issue is not properly before this court.

Appellant next argues that the district court erred in failing to sustain the conciliation court's judgment in his favor on the issue of unpaid taxes. Following the conciliation court's order, appellant filed a demand for removal/appeal from conciliation court to district court. The conciliation-court judgment was then vacated. *See* Minn. R. Gen. Pract. 521(a), (d) (stating that when a party aggrieved by a conciliation-court judgment properly removes the case to district court, the district court vacates the conciliation-court judgment and then holds a "trial de novo (new trial)"). At the district court hearing, appellant stated that his appeal was from the conciliation court's award to respondents for the cost of an abstract. Appellant failed to raise the tax issue and presented no evidence. Thus, the district court did not err in concluding that the record is without evidence on the tax issue and, therefore, the court could not rule in appellant's favor.

Finally, appellant argues that the district court erred in awarding respondent-wife damages. In reviewing the decision of a district court sitting without a jury, this court will set aside the district court's findings only if clearly erroneous. *Patterson v. Stover*,

400 N.W.2d 398, 400 (Minn. App. 1987) (citing Minn. R. Civ. P. 52.01). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). “An appellate court is not bound by, and need not give deference to, the district court’s decision on a question of law.” *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001) (citing *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984)).

Respondents presented evidence to support their claim that appellant was going to provide a microwave and a working washing machine; that the inspection indicated that windows were not broken, but were broken at closing; and that respondents had to remove trash from the property. The district court awarded respondent-wife damages for these items, but determined that respondent-husband was not entitled to the award because he signed an agreement that he accepted the home “as is.” The district court relied on Minn. Stat. § 513.55, subd. 1 (2006), which provides that a seller shall make a written disclosure including all material facts of which the seller is aware that could adversely affect ordinary use and enjoyment of the property. The district court also relied on Minn. Stat. § 513.57, subd. 2 (2006), which provides that a seller who fails to make disclosures, and was aware of material facts pertaining to the real property, is liable to the buyer. Although respondents presented evidence of the items that required repair and the expenses they incurred in repairing those items, respondents failed to provide evidence of their underlying purchase agreement, which would have been the only contractual

evidence that appellant was liable for these items. Therefore, respondent-wife is not entitled to any damages and the district court erred in making such an award.

Affirmed in part and reversed in part.