STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0239

Patricia J. Fryhling,
Appellant,

vs.

Edward J. France, Jr., et al.,
Respondents.

Filed February 17, 2009
Affirmed
Collins, Judge[*]

Pine County District Court
File No. 58-CV-07-580

Morgan Smith, Richard Raver, Smith & Raver, 1313 Fifth Street Southeast, Minneapolis, MN 55414 (for appellant)

Marcus C. Stubbles, Tennis & Collins, Suite 202, 20 North Lake Street, Forest Lake, MN 55025 (for respondents)

Considered and decided by Larkin, Presiding Judge; Hudson, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

COLLINS, Judge

Appellant challenges the district court's dismissal of her conciliation appeal for lack of jurisdiction, arguing that the district court erred by finding that appellant failed to comply with the requirements of Minn. R. Gen. Pract. 521 for removal of the cause to district court for trial. We affirm.

D E C I S I O N

On the jurisdictional issue presented, the district court was confronted with two conflicting stories. Appellant Patricia Fryhling maintained that she mailed the demand for removal from conciliation court and affidavit of good faith (demand for removal) to respondents Edward and Annette France (the Frances) as required by Minn. R. Gen. Pract. 521(b)(1), but the Frances may not have received it because they routinely throw away their mail. And to explain why the district court did not have the proof-of-service affidavit required under rule 521(b)(2), Fryhling speculated that it had been lost when the courthouse relocated. In response, the Frances asserted that there was no such demand for removal delivered to them; nor was there any record in the district court files—either electronically or on paper—that a proof-of-service affidavit had been filed.

Following review of the file and the hearing at which the district court clerk also testified regarding her knowledge of the case, the district court was unable to find support for Fryhling's claim of compliance with rule 521(b)(1)(2). Fryhling challenges the factual basis of the district court's determination that she had not successfully effected

removal of the cause from conciliation court and, thus, the district court is without jurisdiction over the subject matter.

"It is not the province of this court to reconcile conflicting evidence. On appeal, a trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). We will not disturb the district court's findings if there is reasonable evidence to support the findings. *Id.*; *see also Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987) (holding that findings are clearly erroneous if we are "left with the definite and firm conviction that a mistake has been made"). And, we defer to both the implicit and explicit credibility determinations made by the district court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1998).

Here, the district court heard the conflicting testimony, implicitly weighed the credibility of the witnesses, and determined that Fryhling failed to establish that she complied with all requirements of Minn. R. Gen. Pract. 521 for a timely removal and appeal of the case to the district court. Based on the record before us and the deference we give the district court's factual findings, because there is a reasonable basis for the district court's conclusion, we will not reverse.

Alternatively, Fryhling urges us to determine that even if the Frances never received the demand for removal, and although there is no proof-of-service affidavit present or referred to in the district court records, Fryhling's own self-serving statement that she timely mailed the demand for removal and filed the affidavit is sufficient to

satisfy the service and proof-of-service requirements of rule 521(b)(1)(2).[1] But as a practical matter, deeming service-of-process and filing requirements to be satisfied based solely on the word of a party stating that the requirements were fulfilled, when the district court record is to the contrary, would compromise the presumptive integrity of court records.

Affirmed.

[1] The district court improvidently signed an order vacating the conciliation court judgment, ostensibly certifying Fryling's compliance with rule 521, and issued a notice of hearing. Had that occurred before the expiration of the time to effect removal of the cause to district court, it may have provided Fryling an argument that she relied on such notice and otherwise might have discovered and cured her failure to comply with rule 521(b)(1)(2) within the allowable time. However, the record establishes that the notice of hearing was issued seven days after the expiration of the time provided under rule 521(b) to effect removal.