STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1599

Brian Mayrand, et al.,
Respondents,

vs.

Dena Joy Rodacker, et al.,
Appellants.

Filed September 8, 2009
Affirmed
Johnson, Judge

McLeod County District Court
File No. 43-CV-08-1133

Mark A. Carrigan, Carrigan Law Office, 227 South Main Street, Hutchinson, MN 55350 (for respondents)

Brian M. Olsen, Cokato Mall, P.O. Box 988, Cokato, MN 55321 (for appellants)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Connolly, Judge.

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

JOHNSON, Judge

Dena Rodacker and Eliseo Rivera were evicted from property owned by Brian Mayrand and Christine Panning. Rodacker and Rivera had sought to purchase the property from Mayrand and Panning and had entered into a written agreement concerning such a purchase. In the district court, Rodacker and Rivera attempted to prove that the

written agreement at issue was a contract for deed that still was in effect, thereby defeating Mayrand and Panning's eviction action. But the district court ruled that the agreement was an earnest-money purchase agreement that had been properly cancelled by Mayrand and Panning prior to the commencement of the eviction action. Therefore, we affirm.

FACTS

Mayrand and Panning own property in McLeod County that includes a residence and an outbuilding suitable for livestock. In 2007, Rodacker and Rivera expressed interest in purchasing the property from Mayrand and Panning. After some discussions, the parties executed a one-page, handwritten agreement on June 4, 2007, entitled "DOWN PAYMENT SUBJECT TO REACHING AGREEABLE CONTRACT FOR DEED." That agreement is at the center of the parties' dispute. The body of the agreement provides, in its entirety:

> I, Dena Rodacker, have given to Brian Mayrand and Christine Panning $4,000.00 (check #1552) as a down payment to purchase the property at 18556 57th St. Brownton MN, 55312 for contract for deed at the price of $179,000 at 8% interest. Starting at 6-5-07 12 am may take possession. First payment of $1200.00 due as of 7-1-07 not late until the 16th of each month thereafter. Sellers will be responsible for bringing the septic to code.

Two days after signing the agreement, Rodacker and Rivera moved into the residence on the property. At some point in time, Rodacker brought horses onto the property. Rodacker and Rivera made monthly payments of $1,200 through December 2007. Rodacker and Rivera stopped making monthly payments in approximately January

2008 on the ground that Mayrand and Panning did not bring the septic system up to code, as required by the written agreement.

After entering into the June 4, 2007, agreement, the parties continued to discuss the terms of the transaction. Mayrand and Panning sent sample language for a contract for deed to an attorney who was assisting Rodacker and Rivera. Rodacker responded by objecting to the length of proposed language and the expense of putting the agreement into final form. Rodacker suggested that the parties instead use a pre-printed form. No meaningful progress was made for several months, apparently because of confusion or disagreement concerning who was responsible for developing the document. In January 2008, an attorney representing Mayrand and Panning prepared a proposed contract for deed. Rodacker responded to Panning by identifying numerous reasons why the proposed contract for deed prepared by Mayrand and Panning's attorney was unacceptable.

In February 2008, Mayrand and Panning apparently concluded that the parties would not agree on the terms of a formal contract for deed and, thus, commenced an eviction proceeding to remove Rodacker and Rivera from the property. The district court summarily dismissed the action on the ground that the parties' June 4, 2007, agreement is an earnest-money purchase agreement, not a contract for deed. The district court reasoned that the parties "did not have a landlord/tenant relationship" and, thus, that the district court did not have jurisdiction to hear an unlawful detainer action.

In early May 2008, Mayrand and Panning took steps to cancel the earnest-money purchase agreement by serving Rodacker and Rivera with a cancellation notice. *See*

Minn. Stat. § 559.217, subds. 1(b), 3(c), 4(c) (2008). Rodacker and Rivera did not respond to the notice.

In late May 2008, Mayrand and Panning commenced this action, their second eviction action against Rodacker and Rivera. After a hearing in July 2008, the district court issued an order in which it ruled that the June 4, 2007, agreement is "an earnest money agreement" and that Mayrand and Panning had "made a *prima facie* showing that the parties' June 4, 2007 purchase agreement was properly cancelled and that they are entitled to repossession of the property." The district court set the matter for trial to resolve the issue whether the agreement was properly cancelled.

After a bench trial, the district court issued an order in August 2008, in which it reiterated its earlier ruling that the June 4, 2007, agreement is an earnest-money purchase agreement. The district court also ruled that Mayrand and Panning had properly cancelled the purchase agreement and that a writ for recovery of the premises would issue if Rodacker and Rivera did not vacate the premises in seven days. The district court later entered judgment. Rodacker and Rivera appeal.

D E C I S I O N

Rodacker and Rivera argue that the district court erred by characterizing the parties' June 4, 2007, agreement as an earnest-money purchase agreement, not a contract for deed. The caselaw provides that a contract for deed

> is a financing arrangement which allows a buyer -- the vendee -- to purchase property by borrowing the money for the purchase from the seller -- the vendor. It is essentially a financing arrangement for a real estate sale in which the vendee has all the incidents of ownership except legal title.

Shields v. Goldetsky (In re Butler), 552 N.W.2d 226, 229 (Minn. 1996). If the relevant facts are undisputed, the existence of a contract is a question of law, to which we apply a *de novo* standard of review. *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 856 (Minn. 1986); *TNT Props., Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 101 (Minn. App. 2004).

The district court ruled three times that the June 4, 2007, agreement is an earnest-money purchase agreement. It did so in the first eviction proceeding, in a pre-trial order in the second eviction proceeding, and in its post-trial order resolving the second eviction proceeding. Our review technically is focused on the post-trial order and the judgment, although the district court's reasoning was consistent in all of its rulings throughout the proceeding. In its final order, the district court reasoned as follows:

> The document the parties signed on June 4, 2007 has more holes than a colander. Nonetheless, the top of the document clear and unambiguously provides: "Down payment *subject to reaching agreeable contract for deed*." (Emphasis added). After entering into their handwritten agreement the parties attempted to negotiate the terms of a contract for deed. The plaintiffs even had their counsel send defendants a proposed draft of a contract for deed. For the defendants to <u>now</u> assert the June 4, 2007 agreement was itself a valid contract for deed flies in the face of the plain language of that agreement as well as the parties' subsequent actions.

Rodacker and Rivera do not challenge the district court's conclusion that Mayrand and Panning properly cancelled the purchase agreement. Thus, the appeal hinges on whether the district court erred in its ruling that the June 4, 2007, agreement is an earnest-money purchase agreement. *Compare* Minn. Stat. § 559.21 (2008) (addressing termination of

contract for conveyance of real estate) *with* Minn. Stat. § 559.217 (2008) (addressing cancellation of residential purchase agreement).

Rodacker and Rivera contend that the June 4, 2007, agreement "had all the elements of a contract for deed." Rodacker and Rivera's argument misses the point of the district court's ruling. The district court recognized that the parties, in June 2007, were working toward a contract for deed but concluded that the June 4, 2007, agreement did not, by itself, accomplish that goal. The plain language of the June 4, 2007, agreement states that it concerns a "DOWN PAYMENT SUBJECT TO REACHING AGREEABLE CONTRACT FOR DEED." By giving the document that title, the parties expressly acknowledged the possibility of entering into a contract for deed in the future. The agreement cannot be interpreted to be an executed contract for deed.

Rodacker and Rivera base their arguments primarily on evidence that is extrinsic to the agreement. The foremost example is a handwritten receipt that Panning provided to Rodacker and Rivera concerning three monthly payments. The receipt states, "for house contract for deed." This evidence is relevant only if the agreement is ambiguous. *Housing & Redevelopment Auth. of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005). The district court essentially determined that the June 4, 2007, agreement is unambiguous. We apply a *de novo* standard of review to such a determination. *See Bank Midwest, N.A. v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004). We conclude that the district court did not err in its conclusion that the agreement is unambiguous. Thus, extrinsic evidence of the meaning of the agreement is irrelevant.

Even if we were to consider the extrinsic evidence cited by Rodacker and Rivera, their argument would not prevail. As an alternative basis for its ruling, the district court made a finding that, notwithstanding Panning's handwritten receipt, the parties did not intend for the June 4, 2007, agreement to be an executed contract for deed. The district court was persuaded by evidence that, even "after the receipt was prepared *both* parties continued, albeit unsuccessfully, to negotiate the terms of an acceptable contract for deed." The parties' intent concerning an ambiguous contract provision is a fact question. *City of Virginia v. Northland Office Props. Ltd. P'ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). Findings of fact are reviewed for clear error. Minn. R. Civ. P. 52.01. The district court's finding incorporates a credibility determination to which we must defer. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

In addition, other extrinsic evidence in the record supports the district court's finding concerning the parties' intent. Panning testified that she wrote "contract for deed" on the handwritten receipt because she believed at that time that the parties eventually would enter into a contract for deed and because she simply wanted to make clear that the receipt, which was written on paper obtained from her workplace, related to personal business and not the business of her employer. More importantly, the parties exchanged proposed contracts for deed after June 4, 2007. Rodacker rejected the January 2008 proposed contract for deed on the ground that it was unsatisfactory for several reasons, but she did not include among those reasons the assertion that a contract for deed already was in existence. Furthermore, Rodacker prepared the June 4, 2007, agreement,

and ambiguous contract language "must be construed against the drafter." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002). All of this evidence shows that, even if the June 4, 2007, agreement is ambiguous, the district court's finding that the parties did not intend it to be a contract for deed is not clearly erroneous.

Rodacker and Rivera also raise the issue of estoppel. We question whether Rodacker and Rivera preserved such an argument in the district court. In any event, the issue is not appropriate in an eviction proceeding. Estoppel is an equitable doctrine. *Leisure Hills of Grand Rapids, Inc. v. MN Dept. of Human Servs.*, 480 N.W.2d 149, 151 (Minn. App. 1992). The summary nature of an eviction proceeding makes it an inappropriate forum for litigating equitable defenses if there is an alternative proceeding in which it may be raised. *Amresco Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444, 446 (Minn. App. 2001); *see also Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. App. 2002). Because Rodacker and Rivera alleged an estoppel claim in a parallel civil action against Mayrand and Panning, an alternative proceeding exists.

Rodacker and Rivera also argue that the commencement of their parallel civil action should have stayed the eviction proceeding. But it does not appear that they ever made a motion to stay. If a civil action is pending parallel to an eviction proceeding, a party may bring a motion, in the parallel civil action, to enjoin the eviction proceeding. *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 359 (Minn. App. 2006). Any ruling on such a motion in the parallel action would not properly be before this court in an appeal from the eviction proceeding.

In sum, the district court did not err by ruling that the June 4, 2007, agreement is an earnest-money purchase agreement that was properly cancelled and by granting relief to Mayrand and Panning.

Affirmed.