STATE OF MINNESOTA
IN COURT OF APPEALS
A09-614

Donna J. Pellman,
Respondent,

vs.

Wayne Erdman, et al.,
Appellants.

Filed March 16, 2010
Affirmed
Ross, Judge

Crow Wing County District Court
File No. 18-CV-07-2691

Edward R. Shaw, Brainerd, Minnesota (for respondent)

John G. Westrick, Westrick & McDowall-Nix, P.L.L.P., St. Paul, Minnesota (for appellants)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright, Judge.

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

ROSS, Judge

This appeal arises from a dispute among siblings over interests in lakefront property conveyed by their parents. The dispute centers on contradictory 30-year-old documents executed by Lawrence and Norma Erdman, who intended to convey their

property to their son and daughter-in-law subject to their other children's right to use the land under a 50-year lease. The Erdmans executed a 50-year lease and then signed a quitclaim deed to convey the property subject to the lease. But they also signed a conflicting warranty deed that does not mention the lease. If it is given effect, the warranty deed, which was recorded days before the lease and quitclaim deed, would void the siblings' 50-year lease interest in the property. The district court reformed the warranty deed *sua sponte* to conform to the elder Erdmans' intentions.

Appellants Wayne and Kathy Erdman argue that this constituted an abuse of discretion and violated the recording act, Minnesota Statutes section 507.34 (2008). Because the facts and law support reforming the warranty deed, because appellants have failed to show that the *sua sponte* nature of the reformation prejudiced them, and because appellants are not good-faith purchasers entitled to the protections of the recording act, we affirm.

FACTS

This dispute among family members involves a parcel of lakefront property once owned by Lawrence and Norma Erdman. The resolution depends on the effect of three conflicting conveyance documents executed within about one week of each other in June 1980.

On June 10, 1980, Lawrence and Norma Erdman conveyed the property by warranty deed to their son and daughter-in-law, appellants Wayne and Kathy Erdman, for one dollar. The warranty deed was recorded on July 29, 1980. But the warranty deed is inconsistent with two other documents—a lease and a quitclaim deed—drafted by the

elder Erdmans' attorney at about the same time the warranty deed was executed. On June 18, 1980, Lawrence and Norma Erdman executed a lease agreement leasing the property for 50 years to their seven other children. Also on June 18, they executed a quitclaim deed conveying their interest in the property to Wayne and Kathy Erdman for one dollar. The lease was recorded on July 31, and the quitclaim deed on August 19.

For 27 years after these three instruments were executed, the leasehold siblings regularly rented the property, consistent with their rights under the lease. But respondent Donna Pellman sued Wayne and Kathy Erdman over use of the property. Pellman is one of Lawrence and Norma Erdman's daughters and one of Wayne Erdman's siblings. Pellman, alleging that Wayne and Kathy Erdman had indicated that they intended to restrict her leasehold use of the property, sought a permanent injunction and asked the district court to set aside the warranty deed because of the lease. She alternatively claimed an interest by adverse possession.

The district court conducted a bench trial to resolve Pellman's claims. Norma Erdman testified that she and her late husband Lawrence prepared the lease so that all of their children could use the property for 50 years. She testified that she had never signed the warranty deed. She believed that the signatures on the warranty deed must have been forged, but cross-examination seemed to establish that she was mistaken and that the warranty deed does bear her signature.

Steven O'Tool, who had been Lawrence and Norma Erdman's attorney, testified that he drafted the lease and quitclaim deed between June 10 and 18, 1980. Lawrence and Norma Erdman never communicated to O'Tool any intention other than to convey

the property to Wayne Erdman subject to the other children's 50-year leasehold interest. O'Tool testified that a warranty deed was initially drafted but was never executed or recorded. He recalled that when he had learned that his clients wanted their other children to continue to use the property, he explained that a warranty deed would defeat that objective. So O'Tool drafted the lease and quitclaim deed for their execution and instructed his clients to record the lease before recording the quitclaim deed. Except for the fact of the signatures on the warranty deed, the documents are consistent with O'Tool's instructions.

Gerald Marko, who notarized the warranty deed, did not remember doing so. But he testified that he would not have notarized the instrument if it had not been signed in front of him.

The eight children of Lawrence and Norma Erdman also testified. Son Gary Erdman testified that when he signed the lease, he was aware that his father "was going to" sell the property to Wayne Erdman for one dollar and that he would have a 50-year lease. He testified that he has used the property pursuant to the lease since its execution in 1980. Two mobile homes sit on the property. One is owned by the appellants. The other is owned by Norma Erdman and used by the seven siblings who signed the lease. Gary Erdman has paid rent to Norma Erdman for his use of that mobile home.

Daughter Shelly Gleason testified that before she signed the lease, her parents told her that Wayne Erdman "was going to be owner of the land and that [the leasing children] would all be given 50 years rights to go there and that would make it fair for everyone."

Gleason testified that all of the siblings have been using their mother's mobile home regularly since 1980. Gleason paid rent to Norma Erdman when she used the property.

Daughter Bonnie Schiefelbein testified that she has used the property every summer since 1980 and has paid rent. When Schiefelbein signed the lease, her understanding was that Wayne Erdman was "going to be owner of the land and the lease was simply to insure that [the other siblings] would all have access to it."

Son Rick Erdman testified that before he signed the lease, his father told him that he had "signed the land over" to Wayne Erdman. Rick Erdman has used the property approximately six times over the years.

Daughter Janice Bohn testified that when she signed the lease, she understood that Wayne Erdman had been given the property and that the other siblings would be able to use it for 50 years.

Daughter Ronda Trisko testified that she signed the lease with the understanding that she could use the property for 50 years. Trisko has used the property every summer.

Donna Pellman testified that when she signed the lease, her father explained that "he was going to do a quit claim deed over to Wayne, put the land in his name, but the rest of [the siblings] would have a 50 year lease on the property." In 1986, Wayne Erdman mentioned to Pellman that he was going to build on the property. According to Pellman's testimony and Norma Erdman's October 2007 affidavit, Lawrence Erdman had a conversation with Wayne Erdman and no construction took place. Pellman testified that Wayne Erdman raised this topic with her again in 2007, igniting this lawsuit.

Wayne Erdman testified that his parents executed the warranty deed after he and Lawrence Erdman agreed that Wayne would own the property and that Lawrence "was going to put together an agreement for my brothers and sisters to help support their use of the trailer that they had on the property, and that they would pay expenses to use that as long as my mother and father were there using it." Wayne testified that "[e]verybody utilized" the property with his consent and that he contemplated building a cabin in 1986. He asserted that Lawrence approved. Wayne denied having a conversation with Pellman in 1986 about his plans to build. He claimed that he did not learn about the lease until 2007.

The district court found that although Lawrence and Norma Erdman signed the warranty deed,

> it was mutually understood by Lawrence and Norma Erdman and [appellants] that the other children . . . would retain rights to use the property as described in the lease agreement. Lawrence Erdman and Norma Erdman intended that the warranty deed convey the real estate to [appellants] subject to the rights described in the lease agreement and that intention was known by [appellants] when the warranty deed was delivered.

The district court concluded that appellants' interest in the property is encumbered by the lease because they were not purchasers in good faith. It prohibited them from restricting Pellman's right to use the property as described in the lease. The district court amended its order to add findings that the warranty deed failed to express the parties' actual intentions and that this failure was the result of either mutual mistake or the unilateral

mistake of Lawrence and Norma Erdman accompanied by inequitable conduct by appellants.

This appeal follows.

D E C I S I O N

I

Appellants argue that the district court abused its discretion by reforming the warranty deed. They contend that the findings related to the requirements for reformation are clearly erroneous. They contend also that they did not receive notice that Pellman was seeking reformation as a remedy.

"Granting equitable relief is within the sound discretion of the [district] court. Only a clear abuse of that discretion will result in reversal." *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979). A district court's findings of fact "are not to be set aside unless clearly erroneous, and [appellate courts] have expressly followed that standard of review in cases involving reformation of written instruments." *Theros v. Phillips*, 256 N.W.2d 852, 857 (Minn. 1977).

Requirements for Reformation

Minnesota law provides that a deed

> can be reformed by a court using its equitable powers only when it is proved that (1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument allegedly evidencing the agreement failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

Id. We review the evidence in the light most favorable to respondent. *See Nichols v. Shelard Nat'l Bank*, 294 N.W.2d 730, 734 (Minn. 1980).

The first requirement for reformation of a deed is the existence of a "valid agreement between the parties expressing their real intentions." *Theros*, 256 N.W.2d at 857. Appellants argue that Pellman presented no evidence of an agreement between appellants and Lawrence and Norma Erdman beyond what was expressed in the warranty deed. The argument is unavailing.

The district court found that appellants and Lawrence and Norma Erdman understood that the warranty deed would convey the property to appellants subject to the lease. The district court acknowledged that the lease was signed after the warranty deed was delivered, but it found that when the warranty deed was delivered, appellants had been informed of the terms that were being memorialized in the lease.

Wayne Erdman testified that before the warranty deed was executed, he and Lawrence Erdman agreed that Lawrence would "put together an agreement for [Wayne's] brothers and sisters to help support their use of the trailer that they had on the property, and that they would pay the expenses to use that as long as [Lawrence and Norma Erdman] were there using it." This testimony establishes that before he accepted the warranty deed, Wayne Erdman understood that the property would be conveyed to him and Kathy Erdman subject to the encumbrance.

O'Tool's testimony also shows, and the appellants do not contradict, that Lawrence and Norma Erdman clearly intended the warranty deed to convey the property subject to the lease. During the same week that the warranty deed was executed and

delivered, O'Tool drafted the lease and the quitclaim deed. O'Tool testified that Lawrence and Norma Erdman wanted the property eventually to go to Wayne Erdman but wanted their other children to retain rights to use the property in the meantime.

The district court's finding that a valid agreement existed expressing the real intentions of appellants and Lawrence and Norma Erdman is not clearly erroneous. Appellants argue in their brief that the district court's finding that Kathy Erdman knew about the terms of the lease agreement when the warranty deed was delivered is erroneous because her property rights "cannot be unilaterally trumped by any knowledge [Wayne Erdman] may have had." At oral argument, however, appellants' counsel conceded that this argument was never raised in the district court. We therefore decline to consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court generally does not consider matters not argued to and considered by the district court).

The second requirement for reformation is that "the written instrument allegedly evidencing the agreement failed to express the real intentions of the parties." *Theros*, 256 N.W.2d at 857. It is undisputed that the warranty deed does not express the parties' understanding that the other children of Lawrence and Norma Erdman would continue to have the right to rent the property.

The third requirement for reformation is that the written instrument's failure to express the parties' real intentions "was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party." *Id.* Mutual mistake requires that "both parties agree as to the content of the document, but

that somehow, through the drafter's error or otherwise, the document does not reflect that agreement." *Kleis v. Johnson*, 354 N.W.2d 609, 612 (Minn. App. 1984).

Appellants concede that the evidence supports a finding of mistake on the part of Lawrence and Norma Erdman, but they argue that the evidence does not support the district court's finding of mistake on their part. This is a matter of weighing credibility, and the record supports the district court's finding. For 27 years after their agreement with Lawrence and Norma Erdman, appellants acted inconsistently with their desire—first revealed to Pellman and others in 1986—to develop the property and to exclude the other siblings before the 50-year lease ended. Appellants' restraint supports the district court's conclusion that they, like Lawrence and Norma Erdman, understood that the property had been conveyed encumbered by the terms of the lease. We hold that the district court's finding that appellants and Lawrence and Norma Erdman understood that the property would be conveyed subject to the terms of the lease is not clearly erroneous. Because the district court's finding of mutual mistake is not clearly erroneous, we do not reach the issue of unilateral mistake.

Sua Sponte Reformation

Appellants argue that because they were not on notice during trial that respondents were seeking reformation of the warranty deed, the district court abused its discretion by ordering reformation *sua sponte*. We reach a different conclusion.

In an action to determine adverse property claims, the district court may determine any interest in the land which is claimed adversely to the plaintiff, and the district court "may make findings based upon [the intent of the parties] without the necessity of an

action for reformation." *Neill v. Hake*, 254 Minn. 110, 117–18, 93 N.W.2d 821, 827–28 (1958); *see also Miller v. Hennen*, 438 N.W.2d 366, 371 (Minn. 1989) (stating that equitable relief may be granted "upon such terms and conditions as may be necessary to do justice" in an action to determine adverse claims to real estate). Pellman's second amended complaint includes an adverse-possession claim and a request that the warranty deed be set aside. Pellman's action is therefore one to determine adverse claims to real property. *See* Minn. Stat. § 559.15 (2008) (stating that provisions related to determination of adverse property claims apply "if the action is one in effect to test the validity of the title"); *Dean v. Goddard*, 55 Minn. 290, 295, 56 N.W. 1060, 1061 (1893) (allowing plaintiff to pursue action to determine adverse claims under theory of adverse possession).

But a district court "cannot sua sponte exercise its inherent authority to grant equitable relief in a manner that prejudices the opposing party by failing to give it an opportunity to present evidence to oppose the relief ultimately given." *Claussen v. City of Lauderdale*, 681 N.W.2d 722, 726 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004). We must therefore decide whether the *sua sponte* nature of the reformation resulted in prejudice to appellants. We hold that it did not.

In *Claussen*, this court concluded that the appellant "was arguably prejudiced" by the district court's *sua sponte* grant of equitable relief to the respondents because the appellant was not given an opportunity to present evidence to oppose the form of relief granted. *Id.* In that case, the appellant insisted that it could have introduced evidence relevant to the district court's decision to grant equitable relief. *Id.* In contrast,

appellants here do not identify any evidence they would have produced to oppose reformation of the warranty deed. Error is never presumed on appeal. *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). We agree that the district court should have indicated that it was contemplating reformation and invited argument or additional evidence. But we overlook harmless errors. Minn. R. Civ. P. 61. It seems that the same evidence and argument offered to challenge Pellman's expressly sought remedy to void the warranty deed would apply equally to the lesser remedy of reforming the warranty deed. And because appellants have not demonstrated that notice would have resulted in any different presentation of evidence bearing on the outcome, they have failed to show that they were prejudiced by the *sua sponte* nature of the reformation.

We hold that the district court did not abuse its discretion by reforming the warranty deed consistent with the lease, which, according to the district court's factually supported implicit finding, everyone in the family understood would remain in effect for 50 years.

II

Appellants also argue that the district court violated the Minnesota Recording Act, Minnesota Statutes section 507.34, by determining that the lease was a valid encumbrance on the property despite the warranty deed's earlier recording. The argument does not lead to reversal.

The act protects bona fide purchasers, not those who receive property knowing that another interest encumbers it. "Under the Minnesota Recording Act, a bona fide

purchaser who records first obtains rights to the property which are superior to a prior purchaser who failed to record." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 524 (Minn. 1990). But "a purchaser who has actual, implied, or constructive notice of inconsistent outstanding rights of others is not a bona fide purchaser entitled to [the recording act's] protection." *In re Ocwen Fin. Servs., Inc.*, 649 N.W.2d 854, 857 (Minn. App. 2002), *review denied* (Minn. Nov. 19, 2002). "Whether one is a good-faith purchaser is a factual determination that will be sustained unless the reviewing court has a firm and definite impression that a mistake has been made." *Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 488 (Minn. App. 2007).

That the appellants had actual knowledge of the elder Erdmans' intentions and agreed to receive the property subject to the lease terms supports the district court's finding that they were not good-faith purchasers of clear title. The lease was undisputedly recorded after the warranty deed. But the record shows that the other children had been using the property before the execution of the warranty deed, the lease, and the quitclaim deed, and that they intended to continue using the property in that fashion. The purpose of the lease was to memorialize this arrangement and to set a 50-year expiration date, after which the property would belong to appellants without encumbrance. Because appellants had notice of the outstanding rights of the other children at the delivery and recording of the warranty deed, the district court's finding that appellants were not bona fide purchasers is not clearly erroneous.

Affirmed.