STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1119

William John Blomker, et al.,
Appellants,

vs.

Paul N. Magedanz, et al.,
Respondents.

Filed February 18, 2014
Affirmed
Minge, Judge[*]

Stearns County District Court
File No. 73-CV-11-10025

John W. Mueller, Mueller Law Office, Litchfield, Minnesota; and

Douglas A. Ruhland, Ruhland Law Office, Ltd., Eden Valley, Minnesota (for appellants)

Matthew C. Berger, Gislason & Hunter LLP, New Ulm, Minnesota (for respondents)

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and Minge, 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

MINGE, Judge

In this property dispute, appellants argue that the district court erred when it interpreted a deed to respondents as conveying property that was later allegedly conveyed to appellants. Because the deed is ambiguous and the district court did not clearly err by resolving the deed's ambiguity in favor of respondents, we affirm.

D E C I S I O N

After a variety of transactions over a period of about ten years, two parties claimed ownership of the same area in Government Lot Four in Section 3, Township 122, Range 31 of Stearns County. Both parties had dealt with Isadore Thielen, who is now deceased. Thielen had been a farmer and had platted various subdivisions on Long Lake, known as Hickory Hills. Respondents Paul and Connie Magedanz acquired farmland from Thielen in transactions that included a warranty deed dated March 19, 1999. Subsequently, appellants William and Beth Blomker purchased property from Thielen. The controversy on appeal is whether the March 19 deed from Thielen to the Magedanzes conveyed the land in question. The district court concluded that the deed was ambiguous and construed the ambiguous instrument as including the disputed area.

Both parties argue that the deed is not ambiguous and that they are owners of the disputed area as a matter of law. In the alternative, the Blomkers claim that if the March 19 deed is ambiguous, the district court should have resolved the ambiguity in their favor, that the district court did not adhere to proper legal principles in resolving the ambiguous

conveyance, and that the district court failed to adopt sufficient findings of fact to support its decision.

1. Ambiguity

Minnesota courts interpret deeds the same as contracts. *La Cook Farm Land Co. v. Northern Lumber Co.*, 159 Minn. 523, 527, 200 N.W. 801, 802 (1924). When interpreting a contract, the primary goal of the court is to "determine and enforce the intent of the parties." *Am. Nat'l Bank of Minn. v. Hous. & Redevelopment Auth.*, 773 N.W.2d 333, 337 (Minn. App. 2009) (quotation omitted). "If a contract is ambiguous, the finder of fact may consider extrinsic evidence in order to determine the intent of the parties to the contract." *Kilcher v. Dale*, 784 N.W.2d 866, 871 (Minn. App. 2010). A contract is ambiguous "if its language is reasonably susceptible to more than one interpretation." *Id.* at 870 (quotation omitted). The determination of whether a contract is ambiguous is a question of law, which we review de novo. *301 Clifton Place L.L.C. v. 301 Clifton Place Condominium Ass'n*, 783 N.W.2d 551, 564 (Minn. App. 2010).

The language at issue in the March 19, 1999 warranty deed is the bold-face language in the legal description, which reads as follows:

> **The South 40 rods of the West 40 rods of Lot Four (4) of Section Three (3)**; the North Half of the Northwest Quarter (N1/2 NW1/4) and the Southwest Quarter of the Northwest Quarter (SW1/4 NW1/4) of Section Ten (10), all in Township One Hundred Twenty-two (122) North, Range Thirty-one (31) West;

LESS AND EXCEPT: That part of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section 10, Township 122, Range 31, described as follows: [Omitted metes and bounds description of a tract that is distant from the disputed area];
ALSO LESS AND EXCEPT: Lot Three (3), Block One (1), Hickory Hills Plat 2, according to the plat and survey thereof, now on file and or record in the office of the Stearns County Recorder.
ALSO:

The Southwest Quarter of the Southeast Quarter (SW1/4 SE1/4), also Government Lots One (1), Two (2), Three (3) and Four (4);
Less and Except a tract consisting of 10 acres in square form in the Southwest corner of said Lot 4, all in Section Three (3), Township One Hundred Twenty-two (122) North, Range Thirty-one (31) West.
Also Less and Except 57.69 acres described as follows: [Omitted tract is metes and bounds description of Hickory Hill Plat 1];
ALSO LESS AND EXCEPT: Lot Three (3), Block One (1), Hickory Hills Plat 2, according to the plat and survey thereof, now on file and of record in the office of the Stearns County Recorder.

Also Less and except Lot 2, Block 1 of Hickory Hills Plat 2, according to the recorded plat thereof.

Also less and except: All that part of Govt. Lot 4, Sec 3, T. 122, R. 31 desc. as follows: [Omitted area is metes and bounds description of road.].
The purpose of this deed is to dedicate this land as a public roadway as an addition to the Township Road known as Randy Road as shown on Hickory Hills Plat 2.

Also less and except Lot 1, Block 1, Hickory Hills Plat 2, according to the recorded plat thereof.

(Emphasis added.) The parties agree that the disputed property is included in both of the bolded sections above—the first is the 40 by 40 rod area in Lot 4 purportedly conveyed at

the very beginning of the deed, the second is the ten acre parcel that is one of the exceptions later in the deed.

The Magedanzes argue that their March 19 deed conveys two separate areas of Thielen's farm and that the bolded 10 acre exception applies only to the second part of the farm that they purchased, not the first. They suggest that the deed describes two farm areas which had been acquired by Thielen in separate transactions. They assert that the abstract caption was expanded to include these two parts of the farm, that each part had its own, unique exceptions set off by semi-colons, and that at the end there are general exceptions set off by punctuation marks (periods) and blank spaces which apply to both parts of the farm.

The Blomkers argue that all the exceptions in the long legal description apply to the entire March 19 conveyance so that the second bolded exception exempts the disputed property from the overall conveyance. They argue that the Magedanzes' interpretation is unreasonable because it would include in the March 19 conveyance property that was not intended to be conveyed. But the interpretation proposed by the Magedanzes does not require this result, because, as previously stated, it assumes that only the three exemptions at the end of the legal description, which exemptions are separated by periods and blank lines, apply to both parts of the conveyance. In trying to resolve this, the record on appeal is limited. For example, the abstract was not an exhibit, there is no testimony from the attorney who prepared the deed, and Thielen was deceased.

Given the record available, we conclude that the parties have articulated two reasonable interpretations of the contractual language. Given the existence of two reasonable interpretations, we agree with the district court that the language in the March 19 deed is ambiguous. This leaves the question of how to resolve the ambiguity. Our task is to determine whether the district court's construction of the deed was clearly erroneous. *See Foster v. Bergstrom*, 515 N.W.2d 581, 587-88 (Minn. App. 1994) (reviewing district court's construction of a deed for clear error).

2. Application of the rules of construction in resolving ambiguity

The Blomkers argue that the district court erred as a matter of law when it "construed the ambiguous deed in favor of the drafter." Minnesota courts have recognized that "[w]hen a contract bears more than one reasonable interpretation, any ambiguity should generally be resolved *against* the party who drew the contract." *Benson v. City of Little Falls*, 379 N.W.2d 711, 713 (Minn. App. 1986). But "this rule of construction does not give rise to a presumption that the non-drafting party is entitled to a favorable interpretation of the contract; nor does it imply that the burden of proof is on the drafting party, especially in [a] case where the drafting party prevailed below." *Id.* The Blomkers argue that application of this rule renders ambiguous language, unambiguous, or, in the alternative, that any ambiguity must be resolved in their favor without any examination of extrinsic evidence.

The assertion that the rule of construction must be applied prior to examination of any extrinsic evidence is not supported by Minnesota law. The Minnesota Supreme Court has held that

> [t]echnical rules of construction are not favored, and are not to be so applied as to defeat the intention of the parties; for . . . such rules of construction, in modern times, have given way to the more sensible rule, which is, in all cases, to give effect to the intention of the parties, if practicable, when no principle of law is thereby violated.

In re Application of Mareck, 257 Minn. 222, 227, 100 N.W.2d 758, 762 (1960) (quotation omitted). Therefore, it would be inappropriate to construe the deed against the Magedanzes if the evidence indicates that such a construction or outcome was not the intent of the parties.

The parties dispute who should be considered the drafting party. The district court found that although the deed was drafted by an attorney employed by the Magedanzes, the testimony at trial "indicates that the legal description that was used on the deed was provided by Isadore Thielen." The district court appears to have concluded that in this case the drafting attorney was asked to prepare a deed for the land covered by the abstract with a caption sheet that contains a series of complex metes and bounds descriptions. There is support in the record for this conclusion. The legal description attached to the deed is a photocopy of the abstract caption sheet. In this situation, unless the attorney is provided with a variety of surveys and plat maps and unless he is asked to or able to trace out all of the parcels, preparing a deed using this abstract caption sheet does not necessarily involve an active drafting role for the attorney. Here, the district court concluded that "any confusion . . . was created by [Thielen] and not by [the Magedanzes]."

The Blomkers characterize this as "blam[ing] the victim" and argue that Thielen provided only an abstract, not the deed legal description. But the Blomkers acknowledge that the abstract caption sheet was attached to the deed as the legal description. Nothing in the record establishes that the characterization of Thielen as a "victim" is correct, or otherwise clarifies the circumstances under which the deed was prepared. Given this ambiguity, the Blomkers have not provided a compelling reason why the rule of construction that resolves ambiguities against the drafting party must be applied or overcomes the weight of the evidence of the parties' intent.

3. Sufficiency of findings

A district court's interpretation of ambiguous contract language is a question of fact, which we review for clear error. *301 Clifton Place L.L.C.*, 783 N.W.2d at 565. We view the evidence in the light most favorable to the district court's findings and defer to the district court's opportunity to assess the credibility of witnesses. *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012). "Findings of fact are not clearly erroneous unless we are left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). The Blomkers argue that the district court's interpretation of the deed is clearly erroneous because it did not adopt sufficient findings to support its decision and because some of its findings are not supported by the record.

The district court found that the following evidence supported the finding that the intent of the parties to the Magedanzes deed was to convey the property in dispute: (1) testimony from Paul Magedanz that the Magedanzes treated the property as their own,

using it for hunting and as a buffer for their dairy operation and that they intended to purchase all the land that Thielen was using for farming that was not part of the lakeshore development; (2) testimony from Paul Magedanz and his brother that prior to this litigation, neither Thielen nor any other person claimed ownership of the land or asked the Magedanzes to stop using it; (3) testimony that after March 19, 1999, Thielen performed some farm labor for the Magedanzes that was related to the disputed area; (4) the fact that the abstract caption sheets provided by Thielen were used for the legal description on the deed; (5) William Blomker's testimony that the only consideration he paid for the disputed property was the cost of the survey and the costs associated with this litigation; (6) the inference that because Thielen's conveyance to the Blomkers was a limited warranty deed, it was only intended to grant the ownership interest, if any, which Thielen had; and (7) testimony from Thielen's son that he asked permission from Paul Magedanz before mowing a portion of the disputed property.

The district court found that the primary evidence relied on by the Blomkers was the fact that the real estate taxes for the property were paid by Thielen—not the Magedanzes—until sometime in 2006. But the district court noted that the Magedanzes testified that the larger legal description is complicated, that the Magedanzes were not aware that they were not paying taxes on the property, and that when it was discovered in 2006, the county changed the name of the owners of the property to the Magedanzes without requiring any additional documentation. The district court concluded that this showed that the county considered the Magedanzes to be the proper owners, noting also

that the ownership did not change when the Blomkers filed their deed, and had not changed by the time of trial.

The Blomkers argue that the district court improperly ignored other relevant facts: (1) the Magedanzes' attorney drafted the Thielen/Magedanzes deed; (2) the lack of any direct testimony showing Thielen's intent; (3) the language in their 2006 contract for deed in which Thielen granted them a right of first refusal on the disputed area; and (4) Thielen's post March 19, 1999 offer to sell the disputed area to his son and other family members.

The district court specifically adopted a finding regarding the significance of the role of the Magedanzes' attorney, but declined to find this fact compelling in light of the evidence that Thielen provided the exact language used in the Magedanzes deed. Although the Blomkers go to great effort to point out that Thielen provided an abstract, not the legal description, their argument here largely relies on the rule of construction addressed above. In the absence of strict application of that rule or other legal constraint, we view the evidence in the light most favorable to the district court's findings. *See Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d at 507.

The Blomkers argue that because there was no direct testimony showing Thielen's intent, "not one word in the entire 111 pages of the transcript, or in any of the exhibits," the district court should have relied on incidental conduct to establish evidence of Thielen's intent. *See Donnay v. Boulware*, 275 Minn. 37, 44, 144 N.W.2d 711, 716 (1966) ("The construction which the parties in their dealings and by their conduct have placed upon the terms will furnish the court with persuasive evidence of their meaning.");

Leslie v. Minneapolis Teachers Ret. Fund Ass'n, 218 Minn. 369, 374, 16 N.W.2d 313, 315-16 (1944) ("[W]here parties to a contract have given it a practical construction by their conduct, as by acts in performance thereof, such construction may be considered by the court in determining its meaning and in ascertaining the mutual intent of the parties."). We do not disagree. The absence of express language from Thielen does not preclude consideration of the intent expressed by the conduct of the parties.

We recognize that there is support for the Blomkers' argument that they should be recognized as the owners of the area. This includes language in the 2006 contract for deed granting the Blomkers a right of first refusal on the disputed area suggesting that Thielen assumed that he still owned the disputed property in 2006, Thielen's payment of taxes on the property through 2006, and Thielen's offer after 1999 to sell the area to family members. But the district court found other conduct more compelling. To the extent that these findings involve credibility determinations and weighing of conflicting evidence, they will not be disturbed on appeal. *See Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d at 507. The fact that the evidence could have been interpreted to reach a different conclusion is not sufficient to reverse the district court's findings. *See Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101-02 (Minn. 1999).

Finally, the Blomkers argue that some of the findings relied upon by the district court are clearly erroneous. We have reviewed their arguments and the record, but are not left with the "definite and firm conviction that a mistake has been made." *Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d at 507. In sum, we conclude that viewed in

the light most favorable to the findings, there is sufficient evidence to support the district court's conclusions.

4. Denial in part of motion for amended findings

The Blomkers argue that the district court erred when it denied in part their motion for amended findings. A motion for amended findings "must both identify the alleged defect in the challenged findings *and* explain *why* the challenged findings are defective." *Lewis v. Lewis*, 572 N.W.2d 313, 315 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998). "If the evidence as a whole tends to support the findings they should not be disturbed." *Nielsen v. City of St. Paul*, 252 Minn. 12, 29, 88 N.W.2d 853, 864 (1958).

The Blomkers argue that their proposed findings "were undisputed or there was no evidence to contradict the finding." But they provide no support for the assertion that we should reverse the district court's findings simply because the district court did not address certain uncontested facts. The district court noted that many of the factual assertions raised in the Blomkers' motion were either unsupported by citation to the record or simply provided unnecessary background information. Because the district court's observation is correct, the denial of the Blomkers' motion is not a basis for reversal.

Affirmed.