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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0143**

Tina Thuy Le, f/k/a Gai Thuy Le-Dang,  
Respondent,

L & D, LLC,  
Respondent,

vs.

Luan Minh Tong,  
Appellant.

**Filed March 25, 2008  
Affirmed  
Collins, Judge\***

Freeborn County District Court  
File No. 24-C4-05-000619

Michael K. Riley, Sr., Nicollet County Attorney, Kenneth R. White, Assistant County Attorney, 326 South Minnesota Avenue, St. Peter, MN 56082-0360; and

Kevin O'Connor Green, Law Offices of Kevin O'C. Green P.A., 126 East Pleasant Street, Mankato, MN 56001 (for respondents)

Patrick T. Tierney, Collins, Buckley, Sauntry & Haugh, P.L.L.P., W-1100 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for appellant)

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\* Retired judge of the district court serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Collins, Judge.

## **UNPUBLISHED OPINION**

**COLLINS**, Judge

Appellant argues that (a) Minn. Stat. §§ 513.075, .076, 553.01 (2006) bar respondent Tina Thuy Le's claims; (b) the record does not support the claim of fraudulent misrepresentation; (c) the parol-evidence rule precluded respondent from introducing oral testimony that she was fraudulently induced into conveying her gas station to him; and (d) the district court erred by denying appellant's claim for conversion. We affirm.

### **FACTS**

This dispute revolves around appellant Luan Minh Tong's alleged fraudulent misrepresentations to respondent Tina Thuy Le after the parties became involved in both a business and personal relationship. Appellant and respondent first met in December 2003. At that time, respondent was married and owned and operated a Mankato gas station. Appellant was dating one of respondent's friends in Minnesota, but lived in Florida, worked as a real-estate investor, and owned several nail salons. Shortly after meeting, the parties became friends, and they also began entering into oral loan agreements. The substance of those agreements is in dispute.

At trial, appellant testified that between January and June 2004 he made more than \$200,000 in cash loans to respondent because she was having difficulty paying her bills. According to appellant, the loans were made with the understanding that he would be repaid with interest. Appellant testified that when he initially began lending her money,

he believed that respondent was a successful businesswoman who would have the means to repay him. But appellant soon learned that respondent's gas station was losing money, and he testified that respondent was a compulsive gambler who had significant credit card debt and who was desperately seeking to avoid bankruptcy. By that time, appellant had begun a serious romantic relationship with respondent. Despite respondent's alleged financial problems, appellant claimed that he continued to lend respondent additional sums because he "felt sorry for her."

Respondent provided a wholly different account of her business dealings with appellant. She denied receiving loans from appellant and alleged that she had actually provided *him* more than \$300,000 to invest in real estate, including more than \$100,000 from the sale of her two homes. The funds also originated from the gas-station receipts, respondent's bank account and credit cards, and through loans from her family members. Instead of investing in real estate, appellant allegedly retained the money for himself. Respondent also disputed appellant's dire characterization of her financial status, claiming that her gas station was profitable and that she was personally solvent.

Respondent filed for divorce from her husband in April 2004. In June 2004, after respondent's divorce became final, appellant visited respondent's mother and asked for her permission to marry respondent. Her mother agreed, and an unofficial Vietnamese ceremony was held. Respondent testified that she became pregnant with appellant's child in July 2004.

Shortly thereafter, appellant asked respondent to move to Florida and marry him in an official ceremony there. Respondent declined his proposal because she wanted to stay

in Minnesota. But later, while in Las Vegas attending a nail-salon convention, appellant again asked respondent to marry him at a drive-through chapel, and appellant agreed. The ceremony was conducted without witnesses or a marriage license, but respondent testified that she believed that she was legally married because “in Vegas anything could happen. And to me, I believe that if they have a drive-through for a wedding ceremony, it could be happening, possib[ly].”

At trial, respondent’s brother-in-law and sister testified that appellant told them that the ceremony had taken place, and appellant did not contradict respondent when she referred to him as her husband after they returned from Las Vegas. Appellant also identified respondent as his “wife” and respondent’s mother as his “mother-in-law” in legal documents pertaining to an order for protection, and referred to respondent as his wife in e-mails that he sent to her. In response to these assertions, appellant admitted that he had an intimate relationship with respondent and that he proposed marriage after learning that she was pregnant, but denied that the Vietnamese ceremony and Las Vegas “wedding” occurred.

Respondent testified that after the parties were allegedly wed, appellant told her that her duties in the relationship were “to take care of [herself] and the pregnancy.” Appellant asked her not to worry about their business and financial matters because he would “take care of everything.” As a businesswoman, respondent found it difficult to accept his wishes, but she claimed to have acquiesced to his request because he was now her husband. In August 2004, respondent transferred title to her vehicle and boat to appellant. Respondent claimed that she was acting under appellant’s direction when she

performed the title transfers. Appellant disputed this assertion; he testified that he received title to the items as partial payment for outstanding loan amounts respondent owed him.

Also in August 2004, respondent drafted and signed a bill of sale transferring her gas-station business to appellant. The terms of the contract required respondent to transfer ownership of the business and property to appellant in exchange for appellant's satisfaction of the mortgage on the property. Respondent testified that she agreed to the transfer only because she believed that she was legally married to appellant.<sup>1</sup> Appellant denied asking respondent to convey the business to him. Instead, he claimed that respondent was having trouble repaying the loans that he had previously extended to her and agreed to the conveyance of the gas station as a means to reduce the debt. Respondent allegedly told him that if he would not accept her offer, she would be forced to file bankruptcy, and he would receive nothing.

A few months after the bill of sale was executed, on November 3, 2004, appellant and respondent consummated a more formal purchase agreement transferring the real estate on which the gas station was located, together with all equipment, fixtures, and inventory in exchange for appellant's satisfaction of the mortgage. The agreement contained a merger clause, limiting the terms of the agreement to the purchase agreement,

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<sup>1</sup> Respondent originally claimed that the bill of sale was a forgery in her answers to interrogatories, at her deposition, and at an unrelated court hearing. But at trial, she admitted to signing it. Respondent testified that she previously denied signing the bill of sale because appellant planned to use the gas station, as a legitimate business, to illegally obtain work visas for alien smuggling, and she did not want to be implicated in this activity.

bill of sale, and warranty deed. Then on January 5, 2005, respondent executed a warranty deed conveying the real estate to appellant, who signed as owner of the business.

Soon after, appellant satisfied the mortgage on the property. Respondent testified that the money appellant used to satisfy the mortgage was obtained from her own funds and through loans she had received from her family members. She also claimed that some of the money was procured through the sale of her Albert Lea home. Respondent testified that appellant convinced her to sell the property to her brother and then deposit the proceeds of the sale in her bank account. After she did so, appellant allegedly withdrew the funds and deposited them in his own account before using the money to satisfy the mortgage on the gas station.

Due to allegations of infidelity and domestic abuse, the parties' relationship began to deteriorate, and in March 2005, respondent discovered that the purported Las Vegas marriage was a sham, after appellant told her that she was merely his girlfriend. Appellant then broke off the relationship.

In April 2005, respondent brought suit against appellant on multiple theories, including fraudulent misrepresentation. After a bench trial, the district court found that appellant had fraudulently obtained title to the gas station and other personal property and awarded respondent rescission of the gas-station sales contract and the return of various personal items.<sup>2</sup> Appellant subsequently moved for a new trial or amended findings. The

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<sup>2</sup> The district court aptly characterized the case as “extremely complicated and confusing,” noting that both appellant and respondent “gave testimony that was intentionally not true.” The court saw two courses of action: “The first would be to deny all claims and dismiss these actions. The second is to try to determine what testimony is

district court made amended findings that provided further clarification of the previous order, but denied a new trial. This appeal followed.

## D E C I S I O N

### I.

Appellant argues that respondent's claims are statutorily barred, contending that they are based on a promise to marry. Statutory interpretation is a question of law, which this court reviews de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). Our function is to adopt the plain meaning of a statute “[w]hen the words . . . in their application to an existing situation are clear and free from all ambiguity.” Minn. Stat. § 645.16 (2006).

In Minnesota, actions based upon an alleged breach of a contract to marry are abolished. Minn. Stat. § 553.01 (2006). The reason for abolishing this cause of action is expressed by the legislature in Minn. Stat. § 553.01, as follows:

Actions based upon [an] alleged . . . breach of contract to marry have been subject to grave abuses, have caused intimidation and harassment, to innocent persons and have resulted in the perpetration of frauds. It is declared as the public policy of the state that the best interests of the people of the state will be served by the abolition of these causes of action.

Appellant draws his argument from the following isolated clause within a single finding made by the district court: “[Appellant] fraudulently induced [respondent] to transfer in excess of \$300,000, valuable personal property and real property . . . *on the*

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credible and try to sort out what happened.” Electing the latter course, the district court stated that the “findings are based upon [the court’s] determination of the credibility of all the witnesses.”

*promise of marriage.*” (Emphasis added.) Focusing on this finding alone, appellant claims that the order appealed from is erroneously premised on a breach of a promise to marry. We disagree.

Although the district court improvidently employed the phrase “promise of marriage,” a careful review of the entire order reveals that the district court did not base its decision on a *promise* of marriage, but rather on a fraudulently consummated marriage and on appellant’s false promises that he would invest respondent’s money, which were intended to induce respondent to transfer her money and assets to him.

The elements of fraudulent misrepresentation include (1) a representation; (2) that is false; (3) that pertains to a past or present fact; (4) that is material; (5) that is susceptible of knowledge; (6) which the representer knew was false or asserted as his or her own knowledge without knowing whether it was true or false; (7) which the representer made with the intent to induce another to act or be justified to act upon it; (8) which did induce or justify another to act; (9) the person acted in reliance upon the representation; (10) the person suffered damage; and (11) the representation was the proximate cause of the damage. *Benson v. Rostad*, 384 N.W.2d 190, 194 (Minn. App. 1986).

Several of the findings support the conclusion that the district court rested its decision on the theory of fraudulent misrepresentation. The district court found that (1) appellant knowingly made materially false representations to respondent by assuring her “that if she merely came up with the money he would invest it and make them both rich” and by representing himself as her husband after the sham marriage ceremony in

Las Vegas; (2) appellant utilized these representations to induce respondent to transfer her money and assets to him; (3) respondent reasonably relied upon appellant's representations in conveying her money and other assets to appellant; and (4) as a result of appellant's misrepresentations, respondent suffered damages including "the loss of . . . cash and property." The district court also noted that respondent did not discover that the marriage was a sham until appellant told her in March 2005, after respondent had transferred the gas station to appellant and provided him with large sums of investment money. Thus, although the phrase "fraudulent misrepresentation" does not appear in the order, we conclude that the findings as a whole demonstrate that respondent was appropriately awarded rescission of the contract based on this legal theory.

Next, appellant argues that Minnesota's anti-palimony statutes, Minn. Stat. §§ 513.075 and 513.076 (2006), barred the district court from providing relief. Minn. Stat. § 513.075 provides as follows:

If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if:

- (1) the contract is written and signed by the parties, and
- (2) enforcement is sought after termination of the relationship.

Minn. Stat. § 513.076 reads:

Unless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the

earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.

A common-sense reading of these statutes demonstrates that they do not apply in situations where one of the parties is laboring under an honest but fraudulently induced belief that the couple is legally married. Because respondent believed that she was married, she had no reason to contemplate a cohabitation contract under Minn. Stat. § 513.075. Instead, she would have assumed that if she no longer wished to continue her relationship with appellant, her rights and obligations were governed by state marital-dissolution laws.

Respondent also argues that Minn. Stat. § 513.076 is inapplicable here because it bars recovery only of the earnings or property *of another individual*. We agree. The anti-palimony statutes do not apply if the party claiming rights to property seeks only to preserve and protect his or her own property, “acquired for cash consideration wholly independent of any service contract related to cohabitation,” and the party is “not seek[ing] to assert any rights in the property of a cohabitant.” *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983). Here, respondent is not seeking any right to property previously owned by appellant; rather, she requests the return of property she claims is her own. Therefore, the anti-palimony statutes have no application in the context of this case.

## II.

Appellant makes a variety of arguments challenging the legal and factual bases for the district court's finding of fraudulent misrepresentation. On appeal from a bench trial, our scope of review is limited to determining whether the trial court's findings are "clearly erroneous and whether the court erred as a matter of law." *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 457 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). We must give due regard to the opportunity of the trial judge to determine the credibility of the witnesses. Minn. R. Civ. P. 52.01. A trial court's findings of fact will be disturbed only if this court is left with a "definite and firm conviction" that the trial court has made a mistake. *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn. 1987). This court exercises independent judgment on purely legal questions. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

### A. Future Event

First, appellant contends that the finding of fraudulent misrepresentation must be reversed because the fraudulent misrepresentation concerned a future event. A promise involving a future event is not a statement of past or present fact and therefore cannot support a claim for fraudulent misrepresentation. *See Benson*, 384 N.W.2d at 194. But a claim for fraudulent misrepresentation can be predicated on a promise to perform at a future date if there is affirmative evidence to establish that, at the time the promise was made, there was no intention to perform. *Hayes v. Northwood Panelboard Co.*, 415 N.W.2d 687, 690 (Minn. App. 1987), *review denied* (Minn. Jan. 28, 1988).

Appellant argues that he did not commit fraudulent misrepresentation in promising to marry respondent because the promise involved the future act of marriage and because such promises are legally unenforceable. As concluded above, appellant misconstrues the district court's holding. Although the district court did include the phrase "promise of marriage" in its findings, the true rationale for the decision was appellant's fraudulent misrepresentations to respondent that they were legally married after the Las Vegas wedding ceremony and his promise to use respondent's money for investment purposes. Thus, the misrepresentations did not involve a legally unenforceable future promise to marry, but present representations that they were married and that the money would be used to invest in real estate. As such, the district court did not err on this basis.

*B. Reasonableness*

Appellant next disputes the sufficiency of the evidence under the "reasonableness" factor. He asserts that respondent, as a sophisticated businesswoman and long-time United States resident, could not have reasonably believed that she was married at the time she transferred her assets. However, after a painstaking review of the record, we conclude that the findings are supported by the evidence presented at trial. Although the unwitnessed and undocumented marriage ceremony did not comply with the legal requirements for a valid marriage in Nevada, respondent believed that the wedding was valid because the ceremony took place in Las Vegas and "anything can happen" there. Thereafter, appellant represented to respondent's family that the couple was married in Las Vegas and referred to respondent as his wife and her mother as his mother-in-law in court documents, and appellant did not correct respondent on occasions when she

referred to him as her husband. While we recognize there is some evidence in the record calling respondent's credibility into question, we cannot conclude that this finding is clearly erroneous because the record also includes evidence that supports the district court's credibility determination.

### *C. Damages*

Appellant also disputes the finding that respondent transferred considerable amounts of money to him. He claims that at the time respondent was allegedly providing him with money for investment purposes, she had no income and her gas-station business was actually losing money. Appellant points to respondent's personal and business tax filings for 2003—the year preceding his relationship with respondent—which purportedly demonstrate that she was losing money, and appellant also notes that respondent was carrying substantial balances on her credit cards and gambling more than \$50,000 a year.

Our review of the record satisfies us that the district court's findings are supported by the evidence. As appellant argues, there is evidence tending to indicate that respondent could not have provided appellant with \$300,000 in investment funds because she was having financial problems both before and during their relationship. But there is also evidence supporting respondent's version of events. Exhibits admitted at trial including bank records, wire transfer and postage receipts, and an invoice from the sale of respondent's home, along with testimony from respondent and her family members, indicate that respondent was transferring significant sums of money to appellant. Many of the funds transfers allegedly involved cash from the gas station or cash loans from

respondent's family, and neither party provided a complete paper trail to substantiate their claims. Accordingly, the district court reduced this issue to a credibility determination that it resolved in favor of respondent. With testimony and exhibits in the record that tend to support the district court's approach, we decline to disturb this finding.

Alternatively, appellant claims that the evidence does not support the finding that respondent had transferred more than \$300,000 *after* the fraudulent marriage occurred. In doing so, appellant seizes on language in the order finding that appellant had fraudulently induced respondent to transfer more than \$300,000 to him on account of their purported marriage.

The language, when taken out of the context of the rest of the order, appears to indicate that the district court relied exclusively on the fraudulent marriage as a basis for providing relief. But the findings as a whole demonstrate that the district court based its decision both on (1) appellant's misrepresentation that the couple was married and (2) appellant's false representations prior to marriage that he would make investments with respondent's money. With regard to the latter basis, the district court concluded that

[appellant] made representations to [respondent] that if she merely came up with the money he would invest it and make them both rich. These representations were false.

....

... [Appellant] deliberately took advantage of [respondent] to obtain possession of the money ... and in return delivered ... nothing of value ....

These findings have support in the record. Respondent testified that she entrusted more than \$100,000 to appellant for investment purposes prior to their marriage, but he

retained the money for himself. Thus, the district court did not err in calculating the monetary damages incurred as a result of appellant's fraudulent misrepresentations.

Finally, appellant argues that even if the gas station was fraudulently obtained, the district court erred by returning it to respondent with the \$212,000 mortgage encumbering the property fully satisfied. But again, there is evidence supporting this outcome. As shown above, respondent testified that, in addition to the gas station, vehicle, and boat, she transferred more than \$300,000 to appellant, including thousands of dollars that were used to satisfy the mortgage. The district court adjudged respondent's testimony as credible, finding that she had transferred more than \$300,000 to appellant induced by the fraud. Though not explicitly stated, a logical inference that can be drawn from the order is that the district court accounted for these damages by granting rescission without requiring respondent to reimburse appellant for amounts paid in satisfaction of the mortgage. Therefore, based on a fair reading of the order, the award of the gas station, unencumbered, was not in error.

### **III.**

Appellant argues that the parol-evidence rule precluded respondent from introducing oral testimony that she was fraudulently induced into conveying the gas station to him. Interpretation of a written contract is a question of law reviewed de novo. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). The parol-evidence rule "prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous

integrated writing.” *Id.* at 312 (quotation omitted). Appellant argues that the district court erred in rescinding the conveyance of the gas station because the bill of sale, commercial purchase agreement, and warranty deed unambiguously articulate the terms of the agreement. Appellant also contends that allegations of fraud cannot be based on testimony that directly contradicts a written agreement.

We agree that the terms of the parties’ written agreements are clear and unambiguous and that evidence of fraud is not admitted to vary the terms of a written contract. *See Nave v. Dovolos*, 395 N.W.2d 393, 396 (Minn. App. 1986) (noting that the terms of a written contract cannot be modified by assertions of fraud). But “[a] well-recognized exception to [the parol-evidence] rule . . . is when one party alleges that he or she was induced by another to enter into a written contract by fraudulent oral representations.” *Id.* The evidence of fraud is admitted “to establish that, because of the alleged fraudulent representations, no enforceable contract was made.” *Id.* Here, the evidence pertaining to the purported Las Vegas wedding was not introduced to alter the terms of the gas-station sale. Instead, it was offered to demonstrate that respondent was fraudulently induced into conveying the gas station because she believed that she was married to appellant. Therefore the parol-evidence rule does not bar admission of this evidence.

#### **IV.**

Finally, appellant argues that his counterclaim was improperly dismissed because there is clear and convincing evidence that respondent converted \$25,000 he loaned to her in January 2005 to pay real-estate taxes and to fill the gas pumps at her gas station.

He also claims that she stole valuable jewelry that he kept at the gas station. Appellant's argument is unpersuasive. He offered no evidence, other than his own testimony, that he lent respondent \$25,000. With regard to the jewelry, appellant argues that the weight of the evidence demonstrates that respondent removed it from the gas station, noting that there was no sign of forced entry into the store and, as he testified, other than himself, respondent was the only other person with a key. And he argues that respondent's testimony is not credible because she otherwise admitted to perjuring herself at trial. However, giving due regard to the opportunity of the trial judge to make credibility determinations, careful review of the record does not lead us to the conclusion that the district court's dismissal of the counterclaim was clearly erroneous.

**Affirmed.**