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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0963**

James Roberts,
Appellant,
Ruth Roberts,
Appellant,

vs.

Add-Ventures Corporation, et al.,
Respondents.

**Filed May 26, 2009
Affirmed
Stauber, Judge**

LeSueur County District Court
File No. 40CV05570

James Roberts, Ruth Roberts, 4519 28th Avenue South, Minneapolis, MN 55406 (pro se appellants)

Patrick Dinneen, 5554 Highway 61, Silver Bay, MN 55614 (for respondents)

Considered and decided by Larkin, Presiding Judge; Minge, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this cancellation-of-contract dispute, pro se appellants argue that (1) they were penalized by the court when their contract to purchase real estate was cancelled, alleging that their delay in performing was not their fault; (2) the district court's award of attorney

fees to respondent was excessive; and (3) the district court should have found that a contract did not exist because there was no legal description for the property. Because a contract existed and appellants had ample opportunity to perform, and because the issue of attorney fees was not properly before this court, we affirm.

FACTS

In 2004, appellants James and Ruth Roberts entered into a real estate agreement with respondents Dale Melby and Add-Ventures, Inc., involving three buildings and corresponding lots in Elysian, Minnesota. The agreement was a contract for deed. Respondents statutorily cancelled the contract for deed, and appellants failed to cure within the statutorily allowed time. Appellants then filed a district court action to determine ownership of the real estate, notwithstanding the earlier statutory cancellation. That case was scheduled for a jury trial to begin May 8, 2006. Just prior to the trial, the parties reached a “global” settlement, the terms of which were placed on the record in a telephone conference between the court and the parties. The settlement was approved by the court and incorporated into the court’s May 17, 2006 order. The settlement required a sale of two of the three buildings and corresponding lots with appellants being given the opportunity to purchase the third building and its corresponding lot from respondents. Essentially, the court order amounted to a judicially created purchase agreement with respondents as seller and appellants as purchaser. Respondents performed their part, leaving appellants to perform their part of the contract by tendering a calculable sum to respondents.

The contract required appellants to perform by December 31, 2006, but allowed them to cure any default by January 30, 2007. The deadlines passed without appellants making the required payment, posting bond, or placing funds in escrow. Appellants alleged that an encroachment issue prevented their closing.

In March 2007, respondents moved the court to evict appellants and to cancel the contract. In response, appellants moved for an extension to amend the property description and to remedy the encroachment. After hearing the motions, the district court issued an order on June 14, 2007, extending appellant's performance date to September 30, 2007, and ordering a survey to amend the legal description and remedy the encroachment. The court also ordered appellants to pay \$4,000.00 in attorney fees to respondents, finding that respondents had relied on legal descriptions provided by appellants at the outset and that the "delays, increased litigation costs and attorney fees" were due to appellants' failure to provide accurate legal descriptions. The court also enlisted the services of the Le Sueur County Examiner of Titles to select a surveyor and create a revised legal description for appellants' property. On August 28, 2007, the examiner asked for an extension to complete the survey and create the new legal description. The court granted this request and amended its June 14, 2007 order, extending appellants' performance date to October 30, 2007.

The examiner of titles submitted his final amended report on October 4, 2007. On November 21, 2007, the district court issued a supplemental order, incorporating the title examiner's description of the property into its June 14, 2007 order. Appellants immediately noted that the supplemental order included the description of its parcel but

not residual parcels. The district court thereupon amended its supplemental order on December 11, 2007, incorporating the amended final legal descriptions. Despite having the correct legal description and the encroachment remedied, appellants still failed to perform.

On January 18, 2008, respondents filed yet another motion for eviction and cancellation of the contract. Appellants filed several counter-motions. The district court heard the motions on January 30, 2008. At the hearing, appellants' attorney stated that appellants would be willing to perform within a few days, or at least within 60 days. Although no extension was granted by the court, an order from the January 30 hearing was not issued until April 9, 2008, when the district court granted respondents' motion for eviction and cancelled all of appellants' legal and equitable interests in the real estate. This appeal follows.

D E C I S I O N

On review of a district court order in an eviction and contract cancellation action, this court defers to the district court's findings of fact, and those findings will be upheld unless they are clearly erroneous. *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985) (discussing the standard of review in an unlawful-detainer action, now replaced by an eviction action), *review denied* (Minn. Feb. 19, 1986). But this court does not defer to the district court on a purely legal issue. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

First, appellants argue that they were delayed in curing their default because they could not act before there was a final report by the examiner of titles and because "the

court left for vacation.” But even though there was a delay caused by the examiner of titles and the brief unavailability of the judge, the delay did not impact appellants’ duty to perform pursuant to the terms of the contract. The final supplemental order was issued on December 11, 2007, and the district court did not cancel the contract and evict appellants until April 9, 2008, nearly four months later.

Appellants provide no other reason for their failure to cure their default. If there were any residual issues, appellants had a readily available forum. The district court was familiar with the facts and issues, and, following the May 2006 stipulated order, granted every accommodation requested by appellants.

At the January 30, 2008 hearing, appellants’ attorney indicated that appellants would be willing to close on the deal within a few days, or at least within 60 days. Yet over 60 days passed before the district court issued its order on April 9, 2008, granting respondents’ motion for eviction and contract cancellation. The court’s findings were not erroneous and it did not err in cancelling the contract and granting respondents’ motion for eviction.

Second, appellants argue that the \$4,000 awarded to respondents for attorney fees as a part of the court’s June 14, 2007 order were excessive and without merit. The court entered judgment for attorney fees on June 18, 2007. *See Sheeran v. Sheeran*, 481 N.W.2d 578, 579 (Minn. App. 1992) (stating that an order awarding attorney fees is not separately appealable; proper appeal is from the resulting judgment). Because judgment was entered on June 18, 2007, and nearly a year passed before this appeal was filed,

appeal of attorney fees is not properly before this court. Minn. R. Civ. App. P. 104.01, subd. 1 (“[A]n appeal may be taken from a judgment within 60 days after its entry.”).

Third, appellants argue that no contract actually existed because they did not have a proper legal description by October 30, 2007. But, the district court approved the parties’ May 2006 agreement in its May 17, 2006 order, and the examiner of titles provided the legal description for the land and building on October 3, 2007. Appellants had the information they needed for title marketability. Moreover, appellants did not raise contract existence at the district court level, so it is not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court generally will not consider matters not argued to and considered by the district court). Given the global settlement agreement negotiated by the parties and adopted in the district court order of May 17, 2006, there is no question that an enforceable contract existed.

Affirmed.