

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1253**

Burbank Company, LLC,
Respondent,

vs.

Sheila Helmers,
Appellant.

**Filed May 21, 2012
Affirmed
Stoneburner, Judge**

Mower County District Court
File No. 50-CV-093234

Clinton McLagan, Eagan, Minnesota (for respondent)

William L. French, Rochester, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant contract-for-deed vendee challenges the district court's judgment terminating the contract for deed and denial of posttrial motions. Appellant argues that (1) the evidence does not support the finding of default; (2) the district court erred in

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

concluding that the contract for deed was modified by conduct to include debt secured by two mortgages; and (3) the district court erred by denying a new trial based on misconduct of opposing counsel. We affirm.

FACTS

In 1989, Red Cedar Properties, Inc. (RCP), predecessor-in-interest to respondent Burbank Company, LLC, entered into a contract for deed conveying property in Austin to appellant Sheila Helmers. RCP was owned by Burt Plehal, who was a trusted friend of Sheila Helmers' husband, Robert Helmers (collectively the Helmers). The contract for deed was for \$26,191.54, payable in monthly payments of \$491.85, with interest at 10.5%. Burt Plehal signed the contract for deed as president of "seller" RCP and individually as guarantor. Robert Helmers operated a used car dealership on the property. In 1991, RCP and Sheila Helmers modified the contract for deed in writing to correct a mistake in the legal description.

In 1995, RCP loaned the Helmers \$16,000, secured by a mortgage on the property. In 1997, RCP loaned the Helmers \$30,200, secured by another mortgage on the property.¹ The 1995 and 1997 mortgages provided that payments were to be made as provided in the notes that the mortgages secured. The 1995 note provided for monthly payments of \$274.36 beginning December 5, 1995, until paid in full; the 1997 note provided for monthly payments of \$400 to be paid by the 15th day of each month

¹ In 1993, Burt Plehal loaned the Helmers \$25,000 secured by a mortgage on the property. This debt was paid in full. A satisfaction of this mortgage was issued in April 2010. The 1993 mortgage is not implicated in this action.

“commencing February 15, 1997 until paid in full.” In September 2007, RCP conveyed all of its interests in the property to Burbank.

The Helmers made payments on their obligations to RCP that were irregular in both timing and amounts. The payments did not designate the obligation to which the payments should be applied. The Helmers assumed that payments were to be applied first to the contract for deed, then to the mortgages in chronological order, but there is no evidence that these assumptions were shared with RCP or Burt Plehal, and no evidence indicates how the payments were applied by RCP. Burt Plehal’s wife kept a ledger of the amount of the Helmers’ payments from November 1989 through September 1, 1994. Burt Plehal’s son, John Plehal, testified that he continued to keep the ledger of payments after his mother died. The Helmers’ last payment was made on June 5, 2006.

In March 2009, the Helmers received a demand letter and an attached document entitled “RCP/Helmers Amortization” from John Plehal’s attorney, showing that \$46,788.63 was the total amount due on the contract and the two notes. The parties were not able to agree on what, if any, amounts were owed by the Helmers. In January 2010, Burbank began an action for cancellation of the contract for deed and foreclosure of the mortgages. Sheila Helmers answered and counterclaimed, denying that the contract for deed and the mortgages were in default, asserting that the Helmers had fully satisfied all obligations to RCP as of March 15, 1995, and that Burbank’s failure to deliver a warranty deed to the property constituted a breach of contract.

Prior to trial, Sheila Helmers moved to compel discovery of documentation of all business dealings between the Helmers and Burt Plehal and/or RCP. The district court

did not rule on this motion prior to trial. After a bench trial, the district court issued findings of fact, conclusions of law, and an order terminating the contract for deed, resulting in cancellation of the mortgages. The district court concluded that the parties had treated the contract and mortgages as one debt, and the Helmers were in default on that debt at the time of the trial. Sheila Helmers moved for amended findings of fact and conclusions of law or a new trial. The district court denied posttrial relief, and this appeal followed.

D E C I S I O N

I. The district court did not err by denying Sheila Helmers' motion for amended findings of fact and conclusions of law.

Sheila Helmers challenges the district court's denial of her motion for amended findings of fact, asserting that six specific findings of fact relating to the conclusion that the contract for deed was in default and the district court's calculation of amounts paid on the debts are not supported by evidence in the record. When considering a motion for amended findings, a district court "must apply the evidence as submitted during the trial of the case" and "may neither go outside the record, nor consider new evidence."

Rathbun v. W.T. Grant Co., 300 Minn. 223, 238, 219 N.W.2d 641, 651 (1974). Whether to grant a motion for amended findings rests within the district court's discretion, and this court will not reverse its decision absent an abuse of that discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006).

"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the

[district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. In applying Minn. R. Civ. P. 52.01, this court “view[s] the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). “The decision of a district court should not be reversed merely because the appellate court views the evidence differently.” *Id.* “Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). If there is reasonable evidence to support the district court’s findings, this court will not disturb them. *Rogers*, 603 N.W.2d at 656.

Sheila Helmers argues (1) that the record does not support the district court’s finding that the parties treated the three obligations as one debt, (2) a contract for deed cannot be modified except in writing, and (3) the contract for deed was paid in full and was not in default. She specifically challenges finding of fact #14: “Over [Sheila Helmers’] seventeen years of sporadic payments, [s]he never indicated that [s]he wanted [her] payments to be applied to a specific debt that [s]he owed [Burbank].”² Sheila Helmers requested that finding of fact #14 be amended to provide that “Defendant paid Burt Plehal when he asked for money.”

² Although Sheila Helmers is the named defendant in Burbank’s action, all parties treated her husband as the person actively involved in the transactions at issue.

Although the finding that Sheila Helmers proposes appears to be an accurate statement, our painstaking review of the record shows that the finding as made by the district court is also an accurate statement. There is no evidence in the record that either Sheila or Robert Helmers ever designated to which debts a payment, or any portion of a payment, was to be applied. Robert Helmers testified that he assumed that payments would be “applied on the loans as they went,” such that all payments would be applied to the contract for deed until it was paid in full, then applied to the mortgages in chronological order. This assumption is contrary to the specific provisions in the contract for deed and notes secured by the mortgages, each of which specified an amount to be paid monthly from a beginning date until each obligation was paid in full. The district court’s finding that the Helmers never indicated how they wanted the payments to be applied is not clearly erroneous, and the documents in the record do not provide that the Helmers had an option to request that all payments be applied first to the contract for deed and then to the mortgages in chronological order.

Sheila Helmers requested that finding of fact #17, finding that many of the Helmers’ checks provided as proof of loan payments processed by the bank did not show evidence of being deposited into RCP’s account, be changed to state that (1) John Plehal, “unilaterally and without justification decided not to deduct those payments” that were not deposited into RCP’s account from the balances owed to RCP; (2) if those payments had been deducted, the Helmers would have paid off all obligations as of September 15, 1999; and (3) that Burbank intentionally withheld evidence that would have established that all payments from the Helmers had to relate to the contract for deed and the

mortgages. But the record supports the finding made by the district court and does not support the proposed amendment.

The district court, in finding #19, found that, although Sheila Helmers provided copies of some checks to John Plehal in 2006, she never asked him for an accounting. Sheila Helmers requested that this finding be amended to state that “Robert Helmers on numerous occasions requested an accounting from [Burbank]. The one accounting that [Burbank] provided was deeply flawed, containing only a portion of the payments made.” Again, the record supports the district court’s findings, and there is no evidence in the record that Robert Helmers requested an accounting from Burbank or that the omission of checks from the Helmers to Burt Plehal that were not deposited into RCP’s account resulted in a “deeply flawed” accounting.

In finding #20, the district court found that the Helmers paid a total of \$74,286 on the debts, evidenced by entries in Ms. Plehal’s ledger or by original checks that were endorsed by RCP or deposited into RCP’s account. Sheila Helmers wanted this finding amended to state that she had completely paid all money owed with interest by September 15, 1999. Because the record supports the exclusion of checks that were not payable to RCP or deposited into RCP’s account, the record supports the district court’s finding and does not support the proposed amendment.

Sheila Helmers also proposed the addition of two findings of fact stating that the parties never modified the contract for deed in writing to increase the contract balance or amount owed under the contract and that Burt Plehal made no other loans to the Helmers other than the ones at issue in this case. But the district court did not make any findings

to the contrary, so there are no clearly erroneous findings that warrant the additional facts proposed.

Sheila Helmers wanted the conclusions of law to be amended, based on her proposed amended findings, to reflect that she is not in default under any of the instruments at issue. Because the district court's findings were not clearly erroneous and because the findings support the district court's conclusions of law, the district court did not err by denying Sheila Helmers' motion for amended findings of fact and conclusions of law.

II. The district court did not abuse its discretion by denying Sheila Helmers' motion for a new trial.

Sheila Helmers argues that the district court abused its discretion by denying a new trial, which she asserts she is entitled to because (1) Burbank "deliberately and intentionally" concealed "documents pertaining to the other accounts into which many of [the Helmers'] payments were ostensibly deposited"; (2) the district court erred by concluding that the contract for deed was amended by the parties' conduct to include the debts secured by the mortgages; and (3) the district court's decision was not justified by the evidence. *See* Minn. R. Civ. P. 59.01 (providing in relevant part that a district court may grant a new trial for misconduct of a prevailing party, errors of law occurring at trial, or a decision not justified by the evidence).

This court reviews "a district court's new trial decision under an abuse of discretion standard." *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010). "On appeal from a denial of a motion for a new trial, the verdict must stand unless

it is manifestly and palpably contrary to the evidence, viewed in a light most favorable to the verdict.” *ZumBerge v. N. States Power Co.*, 481 N.W.2d 103, 110 (Minn. App. 1992), *review denied* (Minn. Apr. 29, 1992).

Here, the district court found that Burbank’s counsel did not commit misconduct, noting that the Helmers were given full access to counsel’s files and that Burbank produced all of the records it had. John Plehal testified that there were “other financial arrangements” between the Helmers and Burt Plehal. Robert Helmers testified that the Helmers had no other financial obligations to Burt Plehal. The district court, as finder of fact, credited the testimony of John Plehal. Credibility determinations are exclusively the province of the fact-finder. *Kellogg v. Woods*, 720 N.W.2d 845, 852 (Minn. App. 2006).

Sheila Helmers argues that, because there was a discrepancy between the “final” amortization schedule produced by John Plehal at trial and the amortization schedule sent to the Helmers by John Plehal’s prior attorney in 2009, John Plehal’s current attorney must have intentionally failed to disclose proof of other accounts. We disagree. The only evidence available to prove the amount of the Helmers’ total payments to date was the ledger kept by Ms. Plehal and the checks submitted by the Helmers. The final amortization schedule is based on this evidence and an analysis of the checks to assure they had been paid to Burt Plehal or RCP. The district court added two payments that were not included in John Plehal’s final schedule. John Plehal provided reasonable explanations for the exclusion of certain checks, including the checks that were endorsed by “Burbank-Burton.” The evidence does not show that the discrepancy between the amortization schedules is due to attorney misconduct rather than resulting from the

accumulation of more detailed evidence and a more thorough analysis. The district court did not abuse its discretion by denying the motion for a new trial based on misconduct of the prevailing party.

And the district court did not make an error of law in concluding that the parties, through their conduct, incorporated the loans secured by the mortgages into the amount owed under the contract for deed. “[A] written contract may be modified after its execution by the acts and conduct of the parties.” *Wormsbecker v. Donovan Constr. Co.*, 247 Minn. 32, 41, 76 N.W.2d 643, 649 (1956). “It is well settled that the conduct of contracting parties may be evidence of a subsequent modification of their contract.” *Yaritz v. Dahl*, 367 N.W.2d 616, 618 (Minn. App. 1985). “It remains for the trier of fact to determine if and when the [contract] was modified, what were the terms, and appropriate damages.” *Alexander v. Holmberg*, 410 N.W.2d 900, 901 (Minn. App. 1987).

The district court found that the parties treated the amount due on the contract for deed and two mortgages as part of one debt, that each of the debts had an interest rate of 10.5%, and that neither party applied payments to a particular debt. The findings are supported by the record and support the district court’s conclusion that the contract for deed was modified by the parties’ conduct.

Finally, Sheila Helmers argues that the district court’s decision is not supported by the evidence. As discussed above, the district court’s findings and conclusions are supported by the record. The district court examined the evidence presented, which included testimony by Robert Helmers and John Plehal, the amortization schedules

completed by the Helmers and John Plehal's accountants, Ms. Plehal's ledger, and checks submitted by the Helmers. The evidence supports the district court's finding that the contract for deed was in default at the time of trial.

The district court additionally concluded that, even if payments had been credited first to the contract for deed and then to the mortgages, the contract was not fully paid. The district court did not abuse its discretion by denying Helmers' motion for a new trial.

Affirmed.