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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0278**

Robert Gentile,
Respondent,

vs.

John M. Gill, et al.,
Defendants,

vs.

Ann T. Gill, additional defendant - judgment debtor,
Appellant,

Sun Products USA, LLC, et al.,
Additional Defendants - Judgment Debtors.

Filed October 15, 2013

Affirmed

Larkin, Judge

Hennepin County District Court
File No. 27-CV-11-19025

Jon S. Swierzewski, Richard J. Reding, Larkin Hoffman Daly & Lindgren Ltd.,
Minneapolis, Minnesota (respondent)

Ann Gill, Hopkins, Minnesota (pro se appellant)

Considered and decided by Cleary, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's order joining her as a judgment debtor, arguing that the district court's finding that she received fraudulently transferred intellectual property was clearly erroneous and that the district court abused its discretion by awarding respondent equitable relief. We affirm.

FACTS

Appellant Ann T. Gill married defendant John M. Gill in 1993. John Gill formed numerous companies including Sun Products Inc., Sun Hockey Inc., Twilight Tracer Inc., Sun Sports International Inc., John Michael Investments LLC, and Sun Pet Toys Inc. In May 2009, respondent Robert Gentile obtained a \$2,194,655.94 judgment in a Massachusetts federal court against John Gill, Sun Products Inc., and Sun Hockey Inc. for patent infringement. Respondent docketed the judgment in Minnesota.

In July 2010, appellant, acting under the direction of John Gill, formed Sun Products USA LLC. John Gill admitted during his deposition that Sun Products USA was formed to avoid respondent's judgment. Sun Products USA continued the operations of Sun Products Inc. The companies employed the same workers and sold the same products.

On July 30, 2012, respondent moved the district court "to join Ann T. Gill, Sun Products USA, LLC, Twilight Tracer, Inc., Sun Sports International, Inc., John Michael Investments, LLC, and American Dog Toys, Inc. as judgment debtors" and for "a temporary restraining order enjoining disposition, destruction, or intentional diminution

of [the] value of assets that are or should be subject to the judgment in favor of [respondent].” After an evidentiary hearing on respondent’s motion, the district court concluded that John Gill and Sun Products Inc. had fraudulently transferred funds, a trademark, and a patent to appellant. The district court therefore “added [appellant] to the judgment” based on the value of those assets: \$789,459.59 in funds fraudulently transferred to appellant from a trust account created by John Gill (the Sun Sports International Trust account), \$13,200 in rent derived from a condominium that appellant had purchased with the fraudulently transferred funds, and the \$80,000 value of the trademark and patent. The district court found that “[a]s to the [monetary] judgment, [appellant] received \$789,459.59 from the trust account. Add to that the amount she received in rent, \$13,200, and then subtract the purchase price of the condo \$165,894.89 for a total judgment of \$636,764.70.” The district court joined appellant as a judgment debtor in the amount of \$636,764.70, imposed a constructive trust over the trademark, the patent, and the condominium, and ordered appellant to transfer those assets to respondent “within 30 days.” This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court “erred in ruling patent and trademarks were fraudulently transferred from Sun Products, Inc. to [appellant] and Sun Products USA, LLC.” “[Appellate courts] review the district court’s factual findings for clear error. That is, [they] examine the record to see if there is reasonable evidence in the record to support the court’s findings.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790,

797 (Minn. 2013) (quotation and citation omitted). “To conclude that findings of fact are clearly erroneous [an appellate court] must be left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

As to the patent and trademarks, the district court made the following findings of fact:

Defendant Sun Products, Inc. owned the Twilight Tracer Light Up Golf Ball trademark and the Twilight Supernova trademark. Sun Products, Inc. used the trademarks to sell the Twilight Tracer golf ball.

....
. . . Sun Products USA, LLC uses patent #7,785,215 (“the Patent”) to produce the Twilight Tracer Ball and it uses a trademark, the Twilight Supernova trademark (“the Trademark”) in support of its production of the Twilight SuperNova golf ball. The Patent identifies Ann Gill as the owner of record. There is, however, no licensing agreement between Sun Products USA, LLC and Ann Gill. Sun Products USA, LLC also does not pay any compensation to Ann for its use of the intellectual property.

. . . John Gill had developed the Trademark and Patent and both were previously owned and used by Sun Products, Inc. Acting through John Gill, Sun Products, Inc. transferred the Trademark and Patent to Ann Gill without any compensation. Despite testifying in her deposition that she did not know if she owned any patents, Ann Gill testified during the evidentiary hearing that she purchased the Patent for \$5,000. This testimony was not credible. Rather, consistent with their other efforts to hinder, delay, and defraud Plaintiff, John Gill and/or Sun Products, Inc. simply transferred the Patent and Trademark to Ann without any compensation.

Appellant challenges the accuracy of those findings, contending that Sun Products Inc. never owned the patent or the Twilight Supernova trademark. Appellant notes that “[t]here is no evidence that Sun Products, Inc. or John Gill was in the chain of title for

[the Twilight Supernova] trademark.” Appellant argues that Sun Products Inc. therefore “could not make any transfers, fraudulent or otherwise.” In essence, appellant reasons that if Sun Products Inc. did not own the patent and trademark, then it could not transfer the intellectual property to appellant. Thus, appellant asserts that the district court’s determination that the patent and trademark were fraudulently transferred to appellant is in error and that the district court “erred in transferring patent and trademark rights from [a]ppellant to [r]espondent.”

To prevail on appeal, appellant must establish error and prejudice. *See Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, an appellant must show both error and prejudice resulting from the error). The district court joined appellant as a judgment debtor and ordered transfer of the patent and trademark to respondent under two alternative theories: Minnesota Rule of Civil Procedure 25.03 and the Uniform Fraudulent Transfer Act. Appellant does not specify which theory her argument addresses, explain why either theory fails as a result of the purportedly erroneous factual finding, or explain how prejudice results from the error.

In sum, even if the district erred in finding that Sun Products Inc. formally owned the patent and trademark, appellant fails to establish that the error necessitates reversal. *See Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (stating that pro se litigants are generally held to the same standards as attorneys); *Midway Ctr.*, 306 Minn. at 356, 237 N.W.2d at 78 (stating that the burden of persuasion is on an appellant to show

error and prejudice). We therefore do not disturb the district court's judgment regarding the patent and trademark.

II.

Appellant contends that “[t]he [t]rial [c]ourt abused its discretion in exercising its power of equitable relief.” Specifically, appellant asserts that the district court abused its discretion by “awarding [a]ppellant’s condominium to [r]espondent” and by “removing [a]ppellant’s ability to be employed in her current occupation.” Appellant accurately states the standard of review that is applicable to an award of equitable relief, but she does not cite legal authority or offer legal argument in support of her assertions of error.

“Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald*, 629 N.W.2d at 119. Moreover, an assignment of error in a brief based on “mere assertion” and not supported by argument or authority is waived “unless prejudicial error is obvious on mere inspection.” *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted). Because appellant does not offer legal argument in support of her assertions of error and we discern no prejudicial error on mere inspection, appellant’s challenges to the district court’s award of equitable relief are waived.

Affirmed.