

APPELLATE COURT CASE NUMBER: A11-721

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Thomas J. Maday,

Appellant,

vs.

Tim Grathwohl, Jason Grathwohl, Randy Grathwohl,
and Grathwohl Brothers, LLP.

Respondent,

INFORMAL LETTER ARGUMENT

Trial Court Case Number: 46-CV-10-536

Appellate Court Case Number: A11-721

~~APPELLANT'S BRIEF AND APPENDIX~~

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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PROCEDURAL POSTURE

By Order Dated, December 3, 2011, the Honorable Linda S. Titus, Judge of District Court, Martin County, Fifth Judicial District, State of Minnesota, granted Respondents' motion for summary judgment. Judgment was entered on March 16, 2011. The Appellant timely filed an appeal of the District Court Order with the Minnesota Court of Appeals, in accordance with Rule 103, of the Minnesota Rules of Civil Appellate Procedure. The appeal requested that this Court reverse the judgment of the District Court upon the grounds that the District Court erroneously found that evidence of a prior oral agreement between the parties was inadmissible parol evidence and therefore there were issues of material fact in dispute.

JURISDICTION AND STANDARD OF REVIEW

The appealability of judgments and orders of district courts is governed by the rules of civil appellate procedure. MinnR.Civ.App.P. 101.01(2011). Appellant is appealing a judgment of the District Court, dated March 16, 2011 and has identified his basis of his appeal as Minn.R.Civ.P. 103.03(a).

On appeal from summary judgment, the Appellate Court examines the record with two fundamental questions in view: (1) whether there are any issues of material fact to be determined, and (2) whether the court has erred in its application of the law. *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 112 (Minn. 1992). In cases involving summary judgment, the evidence must be viewed in the light most favorable to the one against whom the motion for summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761(Minn. 1993). On

appeal, error will never be presumed; it must be made to appear affirmatively on the face of the record. *City of Brooklyn Center v. Metropolitan Council*, 243 N.W.2d 102 (Minn. 1976). It is always presumed that the trial court acted regularly and in accordance with the law unless the record affirmatively shows the contrary. *Clark v. Clark*, 288 N.W.2d 1 (Minn. 1979). Where material facts are not in dispute, the only questions before the reviewing court are questions of law and no deference need be given to the decisions below. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989). In this case the Appellant appeals the granting of summary judgment to Respondent. Where the trial courts findings, conclusions of law, and order for summary judgment are supported by clear and convincing evidence and are not clearly erroneous, the trial court should be affirmed. Thus, if this Court finds that the trial court correctly applied the law to the facts, and made appropriate findings in support of its Order granting summary judgment as required by Minn.R.Civ.P. 52.01, it should uphold the District Court's Judgment.

ARGUMENT

The Prior Oral Agreement is not Consistent with the Final Written Agreement

The Appellant uses the same flawed logic the Appellant used in the District Court to support his claim that the prior oral agreement and final written agreement are consistent with one another, thereby making the oral agreement admissible parol evidence. This identical claim was rebutted in the District Court by the Defendants' Motion for Summary Judgment, the Reply in Further Support of Defendants' Motion for Summary Judgment, and also in the Honorable Linda S. Titus' Order on Motion for Summary Judgment which specifically stated "the alleged oral agreement is inconsistent with or varies from the Easement Agreement in several particulars" (A-5). The terms of the prior oral agreement and the final written agreement are in direct conflict with each other. Therefore, the prior oral agreement is inadmissible parol evidence offered to contradict the unambiguous terms of the final written agreement between the parties. *Borgerson v. Cardiovascular Systems, Inc.*, 729 N.W.2d 619, 625 (Minn. App. 2007) (citing *Flynn v. Sawyer*, 272 N.W.2d 904, 907-908 (Minn. 1978)).

The Prior Oral Agreement and the Final Written Agreement Would Not Naturally be In Separate Agreements

Again, the Appellant uses the identical defective logic he used in the District Court to claim that the prior oral agreement and the final written agreement would naturally be two separate agreements because they involve different subjects. This claim was rebutted in the District Court by the Defendants' Motion for Summary Judgment, Reply in Further Support of Defendants' Motion for Summary Judgment, and was rejected by the Honorable Linda S. Titus in her Order

on Motion for Summary Judgment. Judge Titus concluded that if it was the intent of the parties that the Appellant have a property interest in the manure produced at the Iowa site, the final written agreement should have, and would have, reflected this. Instead the final written agreement refers to the manure as belonging to the Respondents and grants the Respondents a right, but not a duty, to spread the manure over the Appellants land.

The Appellant's reliance on *W.R. Millar Co. v. UCM Corp.*, 419 N.W.2d 852 (Minn. App. 1988) as analogous to and supportive of his claims in the instant case is misplaced. Respondents do not dispute the core holding in *W.R. Millar*, which is that a prior written contract involving the same parties but a different subject than a later in time written contract does not merge with the later written contract. The two written contracts at issue in *W.R. Millar* are not at all similar to the prior oral agreement and the final written agreement at issue in this case. The contracts at issue in *W.R. Millar* were a written purchase agreement for cassette recorders and a written sales representative contract. The Respondents readily concede that a written purchase agreement for goods and a written sales representative contract involve two separate subjects and must be treated as two independent contracts. If in fact the prior oral agreement and the final written agreement involved separate subjects like the contracts as issue in *W.R. Millar*, the integration clause in the final written contract would be ineffective in barring the Appellant from offering the prior oral agreement as evidence. However, unlike in *W.R. Millar*, in this case the subject of the prior oral agreement and the final written agreement cannot be separated. The subject of both agreements is manure produced at the Iowa site and the final written agreement represents the entire final agreement between the parties relative to said manure. Therefore, Appellant's claim that the prior oral agreement and the final written agreement would naturally be in separate agreements is incorrect as determined by the District Court; and this court should sustain the lower court's determination on this matter.

Appellant is not Allowed to Offer a New Theory Regarding the Admissibility of the Prior Oral Agreement on Appeal which was not Offered in District Court

In this appeal, Appellant raises a wholly new argument based on the theory that the prior oral agreement is not prohibited by the parol evidence rule because the circumstances surrounding the case and the conduct of the parties indicate that the parties did not intend for the written easement agreement to be the final statement of their agreement. The Minnesota Supreme Court has held that "A reviewing court must generally consider 'only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.'" *Thiele v. Stitch*, 425 N.W.2d 580 (Minn. 1988) (citing *Thayer v. American Financial Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982)). The Appellant waived the right to offer this new theory on appeal when he failed to offer it in District Court. Respondents object to this Court allowing him to argue this new theory on appeal.

Furthermore, even if this new theory is heard by this Court, it is without merit and should be rejected. The Appellant asserts that the prior oral agreement claimed by the Appellant provided that the manure belonged to the Appellant as soon as it left the pig and that the Respondent agreed to supply, and Appellant agreed to accept all manure produced at the Iowa site. (A-16) However, on two occasions Appellant refused to accept Respondents' manure when it was offered to him. (A-16) On one occasion in 2007, the Appellant refused to take the Respondents' manure but made arrangements for a third party to take manure he refused. After making the arrangements, the Appellant instructed the third party taking the Respondents manure to pay the Respondents for their manure. (A-17) All of these facts are inconsistent with Appellant's theory. Particularly, the Appellant's instruction to a third party to pay the Respondents for manure makes no sense at all if the Appellant believed that the manure belonged to him. However, this instruction makes perfect sense if the Appellant understood that the manure did not belong to him and he gave this instruction because it was not his manure to sell. It is logical for Appellant to do this in an attempt to keep the Respondents happy with him so that they would continue to allow the Appellant to take the Respondents' manure when he did want it. This course of conduct of the Appellant shows that the Appellant fully recognized that he did not have a property interest in the manure.

CONCLUSION

For the foregoing reasons, the Appellants appeal of the District Courts Summary Judgment should be, in all things, denied.

Dated this 17th day of June, 2011

Wollschlager, Tow & Ringquist, P.A.

By: 

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