

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0973**

Becky L. Benson,
Appellant,

vs.

Eric Sanders, et al.,
Respondents,
21st Century Bank, successor to the State Bank of Loretto,
Defendant,
First Magnus Financial Corp., an Arizona corporation,
Respondent,
EMC Mortgage Corporation, intervenor,
Respondent.

**Filed July 8, 2008
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-05-011410

Michael T. Kallas, Kallas & Associates, Ltd., 4940 Viking Drive, Suite 652, Edina, MN 55435 (for appellant)

Mark E. Duea, Geck & Duea, L.L.C., 4770 White Bear Parkway, Suite 100, White Bear Lake MN 55110 (for respondents Eric Sanders and ELS Holdings, LLC)

Bradley N. Beisel, Beisel & Dunlevy, P.A., 282 US Trust Center, 730 Second Avenue South, Minneapolis, MN 55402 (for respondents First Magnus Financial Corp. and EMC Mortgage Corporation)

Considered and decided by Ross, Presiding Judge; Minge, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This appeal requires us to decide whether the district court accurately deemed a financial transaction between Becky Benson and ELS Holdings to be a real-estate sale and repurchase, so that ELS now owns the home, or whether it was a mere refinancing device, so that Benson still owns the home. On appeal from a judgment in an action to quiet title, Becky Benson argues that the district court erred by failing to find that the transaction, which involved the purported sale and immediate repurchase of her home on a contract for deed, created an equitable mortgage. She also argues that, because of this error, the district court also erred by concluding that the settlement agreement and quitclaim deed that resulted from her breach of the contract for deed were valid and that First Magnus Financial Corporation is a good-faith mortgagee. Because the record supports the district court's finding that Benson and ELS agreed to a sale and repurchase and did not intend to enter into a loan transaction, we affirm the district court's conclusion that the transaction did not create an equitable mortgage.

FACTS

Becky Benson purchased a home in south Minneapolis in August 1986. She has continuously resided there. In 2002, Benson had two mortgages on the home. Her first mortgage encumbered the home for approximately \$48,000 and the second for approximately \$24,000. Benson's second mortgage fell into arrears in 2002 and the mortgagee commenced foreclosure proceedings. ELS Holdings, LLC, which is solely owned by Eric Sanders, contacted Benson. ELS offered to purchase the home but

Benson wanted to remain in it. On December 4, 2002, Benson entered into two simultaneous purchase agreements with ELS. In the first purchase agreement, ELS agreed to pay Benson \$72,000 in exchange for the property. This was the amount that the parties believed would allow Benson to satisfy both mortgages. The second purchase agreement obligated Benson to pay ELS \$97,000 in a contract for deed that conveyed the property back to Benson.

The real-estate closings for both transactions occurred on December 27, 2002. ELS's purchase price at closing increased to \$77,124 because the parties learned that the property's encumbrances were greater than originally calculated. The parties correspondingly also agreed to an increase in Benson's repurchase price from \$97,000 to \$108,375. ELS financed its purchase in part with a \$72,000 mortgage from State Bank of Loretto. Benson gave ELS a warranty deed to the property, as required by the first purchase agreement, and ELS then gave Benson a contract for deed, as required by the second. Benson signed an agreement subordinating her interest to State Bank of Loretto's interest in the property. Under the \$108,375 contract for deed, Benson agreed to pay ELS \$876.69 monthly and to an interest rate of 8.6 percent on the principal.

But Benson failed to make her contract for deed payments to ELS in May and June 2003. ELS did not want to cancel the contract for deed, however, and Benson did not want to move from the home. So the parties entered into a settlement agreement. The agreement provided that ELS would forgive Benson's arrearages and would waive her upcoming July 2003 payment in exchange for Benson relinquishing her ownership interest. Benson also agreed to waive any claim that the transaction constituted a loan or

an equitable mortgage. The parties signed the settlement agreement, and Benson signed a quitclaim deed and entered into a lease agreement with ELS, which allowed her to continue to reside in the home as ELS's tenant.

In January 2005, ELS signed a quitclaim deed for the property, transferring its interest to Sanders. Sanders then refinanced the property in February 2005, obtaining a \$127,500 mortgage from First Magnus Financial Corporation. Benson paid rent through December 2004 and renewed the lease in January 2005.

But Benson later sought to reestablish herself as the owner. She filed a complaint in August 2005 in district court alleging that the two December 2002 transactions resulted in an equitable mortgage, and she also included claims of usury and unjust enrichment. After a bench trial, the district court held that the transactions did not create an equitable mortgage, that the settlement agreement was effective, and that First Magnus was a good-faith mortgagee. It determined that the 2002 transactions were intended to constitute a sale and repurchase of the property rather than a mere financing device. Benson appeals.

D E C I S I O N

Benson challenges the district court's determination that the parties' December 2002 transactions were for the sale and repurchase of Benson's home, arguing that they instead created an equitable mortgage in which Benson retains ownership of the property with a security interest held by ELS. All parties presented high quality briefing and oral arguments framing this issue tightly. Despite the weight of some of the potential equitable concerns argued, which favor Benson, the law favors ELS in this appeal.

The construction and effect of a contract are questions of law, which we review de novo. *Logan v. Norwest Bank Minn.*, 603 N.W.2d 659, 662 (Minn. App. 1999). We construe contracts to give effect to the intent of the parties. *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). The intent of parties entering into a contract is a question of fact. *Gagne v. Hoban*, 280 Minn. 475, 479, 159 N.W.2d 896, 899 (1968). A district court’s findings of fact “shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. A finding is clearly erroneous when it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Randall v. N. Milk Prods., Inc.*, 519 N.W.2d 456, 458 (Minn. App. 1994) (quotation omitted).

Whether the real-estate transaction is a contract for deed or a mortgage has a significant impact on the rights to the property. If a transaction is a mortgage, the mortgagee can seek foreclosure upon nonpayment, Minn. Stat. § 580.02 (2006); *Fraser v. Fraser*, 702 N.W.2d 283, 288 n.1 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005), but after foreclosure, a mortgagor has a period of six months in which she may redeem the property, Minn. Stat. § 580.23, subd. 1 (2006). In contrast, if the transaction is a contract for deed, upon default the seller may cancel the contract, retaining ownership. Minn. Stat. § 559.21, subd. 2a (2006). The defaulting purchaser under a contract has only 60 days to cure the default, *id.*, and the termination of a contract for deed also results in the buyer’s forfeiting all payments made with full legal and equitable title being restored to the seller. Minn. Stat. § 559.21, subd. 3 (2006). So if the

transactions here resulted in an equitable mortgage, ELS was required to face the more restrictive foreclosure procedure to address Benson's failure to pay. *See Albright v. Henry*, 285 Minn. 452, 462, 174 N.W.2d 106, 112 (Minn. 1970) (stating that terminating a mortgagor's interest in an equitable mortgage requires foreclosure action).

The party asking the court to declare an equitable mortgage bears the burden of proof. *Westberg v. Wilson*, 185 Minn. 307, 309, 241 N.W. 315, 316 (1932). Generally, a deed that is absolute in form will be presumed to be a conveyance. *Ministers Life & Cas. Union v. Franklin Park Towers Corp.*, 307 Minn. 134, 137-38, 239 N.W.2d 207, 210 (1976). But if the real nature of the transaction between the parties is that of a loan, secured by the property, the district court may treat it as an equitable mortgage. *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 503 (Minn. 1981). The intent of the parties is paramount, and to rebut the presumption that a deed is a conveyance, it must be clear that at the time of conveyance *both* parties intended that the transaction would result in a mortgage. *Fraser*, 702 N.W.2d at 288; *Ministers Life & Cas. Union*, 239 N.W.2d at 211.

Here, the district court determined that the parties intended "a sale and re-sale of the [p]roperty, not a financing tool or equitable mortgage." To determine intent, courts may look to the documents relating to the transaction. *Westberg*, 185 Minn. at 309, 241 N.W. at 316. The lack of terms such as "debt," "security," or "mortgage" is strong evidence indicating that a transaction is not a mortgage. *Id.* The district court made clear and thorough findings when it determined that the parties intended a sale and repurchase. The district court relied on the language of the purchase agreements, the warranty deed,

the contract for deed, and the Acknowledgement of Conveyance form. Most clear, the Acknowledgement of Conveyance states as follows:

[Benson] and [ELS] hereby acknowledge that the deed and contract for deed *are not intended by either party to constitute a loan or a security for a debt*. [Benson] hereby waives any right to assert that the sale between the parties and/or the contract for deed constitutes a loan of money or an equitable mortgage. [Benson] has been advised that the time period to cure a default under a contract for deed is less than the time to cure a default under a mortgage foreclosure.

(emphasis added) The court also relied on Sanders's testimony of his intent to buy the property and to reconvey it to Benson and the closing officer's testimony that she explained the sale documents to Benson and that Benson understood them.

Although we are not unsympathetic to Benson's desire to retain ownership, the record supports the district court's finding that the parties intended a sale and repurchase and did not intend to create a loan. This was a risky transaction for Benson, but it was a risk she knowingly took. And her inability to keep pace with her contract payments left her exposed to lose her ownership interest and any equity, which she ultimately did lose. The district court did not err by finding that the transaction did not create an equitable mortgage.

Because Benson's remaining arguments rest on the premise that the transactions created an equitable mortgage, these arguments must also fail.

Affirmed.