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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1247**

Gary Thomas, et al.,
Plaintiffs,

vs.

Richard A. Widseth, defendant and third party plaintiff,
Respondent,

vs.

Kenneth Perreault, third party defendant,
Appellant.

**Filed July 15, 2008
Affirmed
Collins, Judge***

Beltrami County District Court
File No. 04-C1-05-000870

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

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

UNPUBLISHED OPINION

COLLINS, Judge

In this real-property dispute, appellant Kenneth Perreault contends that the district court erred in determining that he no longer owned an interest in a parcel (home parcel) within a tract of real property due to a reversionary clause in his deed specifying that Perreault's interest would revert to the grantors, Gary and Patricia Thomas, if he ceased to reside on the home parcel. Perreault argues that the district court's findings are clearly erroneous because the Thomases orally waived the reversionary clause before he moved from the home parcel, and respondent Richard Widseth, who obtained a quit-claim deed to the entire tract from the Thomases after Perreault moved, was not a good-faith purchaser because he had actual and implied notice of the waiver. Perreault also argues that equitable estoppel bars enforcement of the reversionary clause. We affirm.

FACTS

The Thomases and Widseth jointly owned, as tenants-in-common, 35 acres of real property. In 2002, without informing Widseth, the Thomases conveyed their interest in the home parcel, consisting of a house and lot on the property, to Perreault, who served as the property caretaker. The deed to Perreault contained a clause stating that the interest conveyed would revert to the Thomases in the event that Perreault ceased to occupy the home parcel as his principal place of residence.

Perreault occupied the home parcel until 2005 when he decided to sell his interest and relocate. Attempting to preserve his interest until it was sold, Perreault obtained an oral

waiver of the reversionary clause from the Thomases before he moved. In April 2005, Perreault offered to sell his interest to Widseth, but Widseth declined.

In May 2005, the Thomases sued Widseth to partition the entire 35-acre tract. Widseth impleaded Perreault as a third-party defendant due to Perreault's claim of ownership of the home parcel. In March 2006, the Thomases and Widseth settled the partition action subject to the unresolved dispute over the home parcel. As part of the agreement, the Thomases conveyed any interest they retained in the home parcel to Widseth by quit-claim deed. The district court approved the settlement, and Widseth invoked the reversionary clause in Perreault's deed by filing a non-occupancy affidavit.

Following a bench trial, the district court concluded that partition was unnecessary because Perreault no longer had an ownership interest in the home parcel. The district court reasoned that by moving to a new principal residence, Perreault relinquished any ownership interest that he had in the home parcel, based on the express language of the reversionary clause in his deed. The district court also found that prior to receiving the quit-claim deed from the Thomases, Widseth had no actual or constructive notice of any oral waiver of the reversionary clause by the Thomases to Perreault.

Perreault moved for additional and amended findings, or in the alternative, a new trial. The motion was denied, and this appeal followed.

DECISION

I.

Perreault argues that the district court clearly erred in finding that Widseth had no actual notice of the Thomases' oral waiver of the reversionary clause.¹ Findings of fact made by a district court, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01. Factual findings are considered clearly erroneous only if they are not reasonably supported by the evidence. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999). Due regard is given to the district court's opportunity to judge the credibility of the witnesses, and appellate courts view the record in the light most favorable to the district court's judgment. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

The district court's determination was based on the good-faith-purchaser protection afforded by the Minnesota Recording Act, which provides in pertinent part:

Every conveyance of real estate shall be recorded in the office of the county recorder . . . and every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any part thereof, whose conveyance is first duly recorded.

¹ Perreault also argues that the district court did not make a specific finding of fact on this issue. However, the district court's conclusions of law state that "Widseth had no actual or constructive notice of the claimed waiver of the reverter right." Although this factual finding is expressed as a conclusion of law, it is nonetheless treated as a finding of fact for purposes of our review. *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008). But we note that it is unnecessarily confusing when district courts fail to properly denominate findings of fact and conclusions of law.

Minn. Stat. § 507.34 (2006). “The goal of the statute is to protect persons who buy real estate in reliance upon the record.” *Miller v. Hennen*, 438 N.W.2d 366, 369 (Minn. 1989). A good-faith purchaser is “one who gives consideration . . . without actual, implied, or constructive notice of inconsistent outstanding rights of others.” *Anderson v. Graham Inv. Co.*, 263 N.W.2d 382, 384 (Minn. 1978).

Perreault argues that the district court’s finding that Widseth did not have actual notice of the Thomases’ oral waiver of the reverter right is clearly erroneous and belied by the record that unequivocally reveals that Widseth gained such notice by three means prior to receiving the quit-claim deed from the Thomases.²

1. Pleadings

First, Perreault claims that his answers to the original and amended third-party complaints provided Widseth with actual notice. We disagree. It is apparent from our review that neither pleading afforded timely notice to Widseth of the purported oral waiver of the reversionary clause. There is no mention of a waiver in Perreault’s answer to the original third-party complaint; although the waiver is stated in Perreault’s answer to the amended third-party complaint, this pleading was not served on Widseth until November 28, 2006, more than eight months after the Thomases deeded their interest in the home parcel to Widseth.

² Perreault also claims that Widseth had implied notice of the oral waiver. But this issue is waived because it was not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally a reviewing court only considers issues that were actually argued, considered, and decided below).

2. Certified Letter

Next, Perreault claims that Widseth was informed of the oral waiver through correspondence that he sent to Widseth by certified mail in May 2005. The letter was addressed to Widseth, and the delivery receipt bears a signature in Widseth's name. At trial, Widseth denied receiving the letter and asserted that the signature was a forgery. The district court did not make any explicit findings regarding the credibility of Widseth's testimony. But, in any event, the content of this correspondence would not have provided Widseth with actual notice. The letter memorialized Perreault's attempts to contact Widseth to negotiate the sale of his interest in the parcel and informed Widseth that he planned to proceed with a sale to another buyer, but it did not mention the reversionary clause or that the Thomases had orally agreed to waive it.

3. Conciliation Court Hearing

Finally, Perreault argues that Widseth was informed of the waiver at a conciliation court hearing in September 2005. The hearing involved Perreault's claim against Widseth for contribution for his expenses in installing a septic system on the home parcel. Perreault, Widseth, and the Thomases were present. Both Perreault and Gary Thomas testified that Widseth produced the 2002 deed at the hearing and questioned who owned the home parcel. In response, Perreault and Thomas allegedly informed Widseth that Perreault was the rightful owner due to the oral waiver of the reversionary clause.

Widseth's testimony at the partition trial was vague on this issue. On cross-examination, Widseth was questioned about his recollection of the conciliation court

hearing. He remembered bringing a copy of the deed to the hearing and questioning who owned the parcel, but could not recall whether he had been informed of the oral waiver at that time. He also noted that the conciliation court hearing “was quite awhile ago” and was “extremely” confusing.

Therefore, while there is some testimony in the record that supports Perreault’s version of events, the district court apparently found Widseth’s testimony more credible.³ Giving due regard to the district court’s implied credibility determinations, the conclusion that Widseth had no actual notice of the alleged oral waiver is reasonably supported by the record.

II.

Perreault claims that the doctrine of equitable estoppel bars enforcement of the reversionary clause. This argument is not properly before us because it was not considered and decided by the district court. *Thiele*, 425 N.W.2d at 582. However, even if we were to reach the merits of Perreault’s argument, he would not be entitled to relief by virtue of equitable estoppel. In order to invoke the doctrine, the party seeking estoppel must prove that: (1) the party to be estopped made promises or inducements; (2) the party seeking estoppel reasonably relied on the promises; and (3) the party seeking

³ Although we can infer from the ultimate finding that Widseth did not have actual notice of the oral waiver of the reversionary clause that the district court made numerous credibility determinations in Widseth’s favor, no express credibility findings were made. When, as here, credibility of competing witnesses is central to the outcome of the case, it is particularly important for the district court to include explicit credibility determinations within the findings of fact and not leave them to inference.

estoppel will be harmed if estoppel is not applied. *Drake v. Reile's Transfer & Delivery, Inc.*, 613 N.W.2d 428, 434 (Minn. App. 2000).

Perreault argues that he satisfies these elements because he detrimentally relied on the Thomases' oral promise to waive their reversionary rights under the 2002 deed. But this doctrine has no bearing on Widseth's rights. Widseth was not a party to the purported waiver, and the application of estoppel would undermine the good-faith-purchaser protection afforded by the recording act.

Affirmed.