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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0974**

Paul M. Doepke, et al.,
Respondents,

vs.

Jill B. Fisette-Kes,
Appellant,

Gregory J. Brown, et al.,
Defendants.

**Filed January 7, 2013
Affirmed
Cleary, Judge**

Scott County District Court
File No. 70-CV-08-3756

John H. Brennan, Wayzata, Minnesota (for respondents)

Jill B. Fisette-Kes, Lakeville, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and
Cleary, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant challenges the district court's order denying her motion to set aside a judgment under Minn. R. Civ. P. 60.02, arguing that her motion was timely and, alternatively, that respondents' attorney committed fraud on the court. We affirm.

FACTS

Prior to 2008, appellant Jill Fisette-Kes was the fee simple owner of 60 acres of real property (Kes property) in Scott County. In February 2008, respondents Paul and Constance Doepke filed a complaint seeking specific performance on a contract for deed that they had executed with appellant in which appellant agreed to sell them a ten-acre portion of the Kes property (contract-for-deed property). Gregory and Catherine Brown were also named as defendants in the complaint. Respondents alleged that the Browns were mortgagees named in a mortgage that encumbered the Kes property and that their mortgage secured or otherwise related to an option agreement between appellant and the Browns. In addition to specific performance, respondents sought a determination that the Browns had no interest in the contract-for-deed property.

In September 2008, the Browns filed a stipulation that they had executed with respondents. In the stipulation, respondents withdrew their claim that the Browns had no interest in the contract-for-deed property and agreed that they would only request that the court determine that respondents' interest was prior and superior to any interest that the Browns had. In return, the Browns agreed that if respondents prevailed against appellant, the Browns would release the contract-for-deed property from the lien of their mortgage

on the Kes property, terminating any interest that they had in the contract-for-deed property. Appellant did not file any cross-claims against the Browns, and they were dismissed from the action as a result of the stipulation.¹

During the bench trial, Scott County Planner Martin Schmitz testified about the requirements for the subdivision of the Kes property. In their complaint, respondents had alleged that the contract for deed could not be recorded until “a subdivision of the Kes Property has been approved by Scott County pursuant to which the Contract for Deed Property is divided from the remainder of the Kes Property.” Schmitz testified that although formal platting was one option for the subdivision, it could also be accomplished administratively because respondents already owned the adjoining property. Schmitz also stated that the subdivision was “just swapping land between the two” adjoining parcels.

After the trial, the district court entered the Amended Findings of Fact, Conclusions of Law, and Order for Judgment and Judgment. The court concluded that respondents performed their obligations under the contract and that appellant was in default of her obligations under the contract. The court adjudged and decreed that respondents were the owners of the contract-for-deed property. The amended judgment was entered in March 2009. The judgment was not appealed.

¹ The Browns later filed a separate action against appellant regarding a contract for deed and option agreement that they had executed with her. That case was also tried in Scott County District Court. Appellant challenged the decision in this court, and this court issued an opinion in that case in 2010. *See Brown v. Kes*, No. A10-0424, 2010 WL 4721548 (Minn. App. Nov. 23, 2010).

In January 2012, almost three years later, appellant filed a “Motion to Re-open and to Amend Findings of Fact and Conclusions of Law.” Sometime after April 2009, appellant had discovered an easement on the Kes property. The easement, executed in 1966, is described as “An easement only for roadway purposes over and across the East 33 feet of the North 60 acres” In her motion, appellant appeared to argue that respondents’ attorney committed misconduct because he knew, or should have known, of the existence of the easement and withheld evidence of it during the 2008–2009 proceeding. Respondents filed a motion to dismiss, citing various parts of Minn. R. Civ. P. 12.

After a hearing, the district court issued an order denying appellant’s motion. In its memorandum accompanying the order, the court noted that it interpreted appellant’s motion as one to set aside the 2009 judgment under Minn. R. Civ. P. 60.02 “on the grounds that it was obtained by fraud, misrepresentation or other misconduct of plaintiff.” The court also noted that appellant’s argument appeared to address an issue raised at trial regarding the question of whether appellant’s land was “landlocked” as a result of the contract with respondents. Finally, the court was not convinced that appellant’s landlocked argument was correct, and even if it were, the court concluded that the easement in question “appears to have no bearing on whether land was landlocked.” This appeal follows.

DECISION

Determining whether to vacate a judgment based on the fraud, misrepresentation, or other misconduct of an adverse party lies within the discretion of the district court.

Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1, 775 N.W.2d 168, 173 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). We review a district court’s denial of a motion to vacate a judgment under Minn. R. Civ. P. 60.02 for an abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988).

I

A motion for relief under Minn. R. Civ. P. 60.02 must be made “not more than [one] year after the judgment, order, or proceeding was entered or taken.” Under rule 60.02(c), the court may relieve a party from a final judgment upon a showing of fraud, misrepresentation, or other misconduct of an adverse party.

Appellant first appears to argue that the judgment should be set aside on the basis of mistake, inadvertence, surprise, or excusable neglect, as well as fraud, misrepresentation, and other misconduct of respondents and their attorney. *See* Minn. R. Civ. P. 60.02(a), (c). She argues that the witnesses at the trial were not proper witnesses; that the district court was required to have expert witnesses and surveyors testify; that the subdivision of her property was improper without such expert witnesses; that the easement she discovered prevented the district court from ruling as it did; that respondents and their attorney knew about the easement; and that respondents did not fulfill their obligations under the contract.

These are the same arguments that appellant made in her January 2012 motion, but she appears to argue here that her motion was timely because she filed it within one year of the resolution of the separate action involving the Browns. However, the Browns were dismissed from this case following the 2008 stipulation with respondents, and appellant

fails to demonstrate how the separate action involving the Browns has any bearing on this case. It is not clear whether appellant believes that the separate action is relevant because she discovered the easement on the Kes property during that proceeding, or because she believes that the resolution of that proceeding somehow tolled the one-year time limit on filing a rule 60.02 motion. Although both the present case and the separate action address appellant's sale of portions of the Kes property, appellant fails to demonstrate any connection between the proceedings.

Because appellant filed her motion almost three years after entry of the judgment in this case, the motion was untimely. The district court did not abuse its discretion by denying relief.

II

Appellant also appears to argue that respondents' attorney committed fraud on the court. She relies on Minn. Stat. § 548.14 (2010), which states:

Any judgment obtained . . . by means of perjury, subornation of perjury, or any fraudulent act, practice, or representation of the prevailing party, may be set aside in an action brought for that purpose by the aggrieved party in the same judicial district within three years after the discovery by the aggrieved party of such perjury or fraud.

A Minn. R. Civ. P. 60.02 motion does not limit the power of the court “to set aside a judgment for fraud upon the court.” Minn. R. Civ. P. 60.02.

An action for fraud on the court is not restricted by the one-year time limit. *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989). Minnesota courts have stated that fraud on the court exists “[w]here a court is misled as to material circumstances, or

its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair.” *In re Welfare of C.R.B.*, 384 N.W.2d 576, 579 (Minn. App. 1986) (quoting *Halloran v. Blue & White Liberty Cab Co.*, 253 Minn. 436, 442, 92 N.W.2d 794, 798 (1958)), *review denied* (Minn. May 29, 1986).

Although the district court interpreted appellant’s motion as a rule 60.02 motion to set aside the judgment, the Minnesota Supreme Court has previously interpreted such a motion as one to set aside a judgment based on fraud on the court. *See Maranda*, 449 N.W.2d at 164. Appellant claims that respondents’ attorney committed fraud on the court because he knew about the easement. She also alleges that he withheld this knowledge, induced false testimony from Schmitz, introduced hearsay, and induced misleading testimony from multiple witnesses regarding the easement.

Appellant fails to demonstrate how the easement is material to whether respondents fulfilled their obligations under the contract for deed, the relevant issue in the district court proceeding. Nor does she explain how the easement is relevant to the contract-for-deed property. Appellant’s arguments do not demonstrate that the district court was misled as to material circumstances, and respondents’ attorney’s conduct did not constitute fraud on the court.

The district court construed appellant’s January 2012 motion as one to set aside the judgment under Minn. R. Civ. P. 60.02(c) and denied the motion as untimely. Judgment was entered in March 2009, and appellant filed her motion almost three years later. Because appellant failed to file her motion within the one-year time limit, the

district court did not abuse its discretion by denying appellant's motion under rule 60.02(c).²

Affirmed.

² Appellant makes several arguments regarding parol evidence, tortious interference with the contract for deed, and the Statute of Frauds. She also makes numerous references to her remaining land being landlocked and damaged. To the extent those arguments address misconduct by respondents, they are addressed above. Otherwise, appellant fails to demonstrate how these arguments and damages are relevant to or a basis for the motion to set aside the judgment under Minn. R. Civ. P. 60.02.