STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2255

Steven Rodlund,
Appellant,

vs.

Laura Gibson,
Respondent.

Filed January 3, 2008
Affirmed
Willis, Judge

Sherburne County District Court
File No. C2-05-849

John E. Mack, Mack & Daby, P.A., 26 Main Street, P.O. Box 302, New London, MN 56273 (for appellant)

Jeffrey C. Thompson, Howse & Thompson, P.A., 3189 Fernbrook Lane, Plymouth, MN 55447 (for respondent)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellant challenges the district court's judgment for respondent on appellant's claims of an equitable interest in real property and unjust enrichment. We affirm.

FACTS

Appellant Steven Rodlund and respondent Laura Gibson lived together in Rodlund's townhouse in Bloomington from December 1991 through June 1996. During that time, Gibson paid Rodlund rent each month, and when Rodlund sold the townhouse in 1996, Gibson did not claim or receive any of the proceeds. At about the time that Rodlund sold the townhouse, Gibson purchased real property in Big Lake. The parties lived together in a house on the Big Lake property from June 1996 until September 2004. The mortgage on the property was in Gibson's name alone. Although Rodlund and his sister testified at trial that Rodlund paid cash to Gibson in connection with the purchase of the Big Lake property, the district court found that this testimony was "not credible." The district court noted that "no large sum [of money] was kept out or withdrawn from [Rodlund's] bank to pay toward [Gibson's] June[]1996 purchase of [the Big Lake property]" and "[n]o testimony or documents were offered to identify or prove the source of any such contributions or that such contributions were actually made."

When they moved into the house on the Big Lake property, the parties agreed that Rodlund would pay rent to Gibson in the amount of half of the monthly mortgage payments and utility bills. Rodlund made payments for the first seven months but made none thereafter. In April 2005, Gibson also purchased adjacent property. The district court found that at no time did Rodlund "become a legal owner or a mortgage debtor, relative to [either of the Big Lake properties], through a written deed, mortgage, contract for deed or any other instrument, of record, or otherwise."

Most of the evidence at trial related to the value of Rodlund's alleged contributions to the Big Lake properties in the form of various "improvement projects" that he undertook during the years that he and Gibson lived there, including (1) paving a blacktop driveway, (2) purchasing and installing a heating-and-air-conditioning system, (3) purchasing and installing a water-conditioning system, (4) purchasing and installing a water heater, (5) purchasing materials to re-roof a barn, and (6) purchasing and installing another "hot water heater" and a "boiler heating system and duct work." The district court found that because of "a lack of credible testimony and written evidence from [Rodlund], the total value of the material [he] purchased toward improvement of the [Big Lake properties is] unknown." The district court noted that "the exhibits [he] did submit are inaccurate and inconsistent." The district court found that the value of the time and labor Rodlund expended on the various improvement projects was "more than offset by certain 'trade-outs' he received from [Gibson]" and that "to the extent it was worth anything at all, [Rodlund] has already received enough for his labor."

Both parties introduced expert testimony regarding the value of the Big Lake properties. The experts agreed, and the district court found, that the improvement projects that Rodlund undertook did not result in any "enhancement of value" to the properties. In addition, the district court found that Rodlund's work "in fact may have reduced [their] value and possible marketability." Based on its examination of approximately 200 photographs, the district court found that there had been "significant damage . . . due to shoddy and incomplete work on half-finished projects," including a "problem with chronic mold" throughout the house on the Big Lake property that was

caused by Rodlund's "shoddy and incompetent workmanship in . . . installing the . . . heating and air conditioning system . . . ." Ultimately, the district court found that Rodlund's work "proximately resulted in damage to the house and diminution in its value and marketability" and that the expenses Gibson would incur to fix the problems, together with Rodlund's unpaid rent, "greatly exceeded any amount to which [Rodlund] might otherwise be entitled."

Based on these findings, the district court concluded that Rodlund was not entitled to any claim to the properties, legal or equitable, and that he was not entitled to any compensation for the projects he undertook. The district court awarded judgment to Gibson and subsequently denied Rodlund's motion for a new trial. Rodlund appeals.

D E C I S I O N

I. Minnesota's anti-palimony statutes are not a jurisdictional bar to hearing Rodlund's claims.

As an initial matter, Gibson contends that Minn. Stat. §§ 513.075-.076 (2006), Minnesota's "anti-palimony statutes," demand that this case be dismissed for lack of jurisdiction because Gibson and Rodlund did not have a written contract concerning their property and financial relations. The construction and applicability of a statute are questions of law reviewed de novo. *Olmanson v. LeSueur County*, 693 N.W.2d 876, 879 (Minn. 2005).

The first of the anti-palimony statutes provides:

> If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of

> wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if:
>
> (1) the contract is written and signed by the parties, and
>
> (2) enforcement is sought after termination of the relationship.

Minn. Stat. § 513.075 (2006). The second provides:

> Unless the individuals have executed a contract complying with . . . section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock . . . .

Minn. Stat. § 513.076 (2006). But the Minnesota Supreme Court has instructed that these statutes and their jurisdictional bar apply only in cases in which "the sole consideration for a contract between cohabitating parties is their contemplation of sexual relations out of wedlock." *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983) (quotation omitted).

Here, the district court concluded that the anti-palimony statutes do not apply because "there is no evidence that there was ever any sexual relationship between [Gibson and Rodlund] . . . ." Gibson does not claim that this finding was erroneous. More to the point, there is no evidence in the record to suggest that the "contemplation of sexual relations out of wedlock" was the "sole consideration" for any alleged contract between the parties. Therefore, the anti-palimony statutes do not apply here.

II. The district court did not err by failing to apply here the same principles that it would apply in dividing property in a marriage dissolution.

Rodlund argues that, even though the property dispute here is between unmarried cohabitants, the district court should have applied the same principles it would apply in dividing property in a marriage dissolution, as set forth in Minn. Stat. § 518.58, subd. 1 (2006). Rodlund argues that failure to apply the principles described in section 518.58 to unmarried cohabitants in a long-term committed relationship amounts to discrimination. In support of this argument, Rodlund cites two sources of authority: (1) decisions from Massachusetts, New Jersey, and Vermont in which courts decided that denying same-sex couples the rights and benefits of marriage violates the respective state constitutions[1]; and (2) provisions of the Minnesota Human Rights Act (MHRA) that prohibit discrimination on the basis of marital status in connection with employment issues, such as hiring, firing, promotions, compensation, and real-property issues, such as the sale, rental, or leasing of real property. *See* Minn. Stat. §§ 363A.08, .09 (2006).

But Rodlund did not make his discrimination argument in the district court. Rather, he claimed that because the relationship between Rodlund and Gibson was analogous to a marriage, the district court should analyze the issues as it would in a marriage dissolution. On appeal, "'a case will be considered in accordance with the theory on which it was pleaded and tried, and a party cannot for the first time on appeal shift his position.'" *Security Bank of Pine Island v. Holst*, 298 Minn. 563, 564, 215

[1] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968 (Mass. 2003); *Lewis v. Harris*, 908 A.2d 196, 200 (N.J. 2006); *Baker v. State*, 744 A.2d 864, 889 (Vt. 1999).

N.W.2d 61, 62 (1974) (quoting *Urban v. Cont'l Convention & Show Mgmt., Inc.*, 244 Minn. 44, 47, 68 N.W.2d 633, 635 (1955)). Therefore, we need not consider Rodlund's discrimination argument. But in any event, Rodlund's discrimination argument is without merit.

First, the decisions from other jurisdictions that Rodlund cites have no binding effect on this court. *See State by Ulland v. Int'l Ass'n of Entrepreneurs of Am.*, 527 N.W.2d 133, 136 (Minn. App. 1995) (holding that this court is not bound by decisions from other states), *review denied* (Minn. Apr. 18, 1995). Second, these decisions are inapposite. Those cases determined that denying same-sex couples the rights and benefits of marriage violates certain state-constitution provisions. Rodlund has not been denied the rights and benefits of marriage by any law. And the provisions of the MHRA that Rodlund cites have no bearing on the division of property by a court between either married or unmarried couples.

Rodlund essentially asks this court to change existing law or create a new cause of action for unmarried cohabitants. The Minnesota legislature abolished common-law marriage in 1941. *See* Minn. Stat. § 517.01 (2006); *Baker v. Baker*, 222 Minn. 169, 171, 23 N.W.2d 582, 583 (1946). Affording Rodlund a right to a division of property like that in a marriage dissolution on the ground that Rodlund and Gibson's relationship was sufficiently analogous to a marriage would amount to recognizing common-law marriage. *Cf. Abbott v. Abbott*, 282 N.W.2d 561, 566 (Minn. 1979) (holding that imposing support obligations to nonmarital relationships "would be to contravene the legislative prohibition of common-law marriage," and that "[a]ny change in the definition of marriage or

attachment of marital obligations to specified nonmarital relationships clearly involve issues to be resolved by the legislature, not the judiciary"). Therefore, this court is without authority to grant what Rodlund requests. *See Lake George Park, L.L.C. v. IBM Mid-America Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (recognizing that "[t]his court, as an error correcting court, is without authority to change the law"), *review denied* (Minn. June 17, 1998); *Stubbs v. N. Mem'l Med. Ctr.*, 448 N.W.2d 78, 81 (Minn. App. 1989) (noting that it is not the function of the court of appeals to establish new causes of action), *review denied* (Minn. Jan. 12, 1990).

III. The district court did not abuse its discretion by finding that Gibson was not unjustly enriched.

The district court found that Gibson was not unjustly enriched by Rodlund's improvement projects to the Big Lake properties. We review a district court's denial of claims for equitable relief, such as unjust enrichment, for an abuse of discretion. *See City of Cloquet v. Cloquet Sand & Gravel, Inc.*, 312 Minn. 277, 279, 251 N.W.2d 642, 644 (1977) (stating that the standard of review in cases involving equitable relief is whether the district court abused its discretion). A district court abuses its discretion when, among other things, its ruling is based on an erroneous view of the law. *See Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006).

Rodlund contends that the district court's ruling was based on an erroneous view of the law. He claims that "under an unjust enrichment theory, it is the law that one party to a domestic partnership cannot utterly exclude the other from the property built up by their joint efforts over a lengthy period of time." In support of his argument, Rodlund

cites *Eriksen* and an unpublished opinion of this court.[2] In *Eriksen*, the supreme court affirmed the district court's decision to place a constructive trust on Eriksen's home, reasoning that the claimant's equal contribution to the acquisition and maintenance of the home during her cohabitation with Eriksen required the imposition of a constructive trust to avoid unjust enrichment. 337 N.W.2d at 674.

But in *Eriksen*, and for that matter, in the unpublished opinion that Rodlund cites, the district court found that the parties had made an oral agreement to purchase a home jointly; that the claimant performed under that agreement; and that, therefore, the claimant was trying to protect her interest in the property that had been acquired jointly. *See* 337 N.W.2d at 674. Here, the district court found that "there was never any agreement by the parties, oral or written, to share ownership in or title to either [of] the [Big Lake properties], legal or equitable." Because Rodlund and Gibson had no agreement that Rodlund would acquire an ownership interest in either of the Big Lake properties, Rodlund's claim does not seek to protect his interest in the properties, and *Eriksen* is inapposite.

Rodlund also challenges the district court's finding, without performing a "quantitative analysis," that "the substantial cost which will be borne" by Gibson in repairing the damage that Rodlund caused to the Big Lake properties "more than offset[s]" the value, if any, of his improvement projects. This court reviews findings of fact for clear error. Minn. R. Civ. P. 52.01. As long as the district court's findings are

[2] *Hansing v. Carlson*, No. A04-1986 (Minn. App. Oct. 4, 2005), *review denied* (Minn. Dec. 13, 2005). Unpublished opinions of this court are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2006).

"reasonably supported by the evidence, they are not clearly erroneous and must be affirmed." *Tourville v. Kowarsch*, 365 N.W.2d 298, 299 (Minn. App. 1985). The record contains ample evidence to support the district court's finding, including more than 200 photographs of damage to the Big Lake properties and the testimony of both parties' experts regarding how that damage would diminish the value of the properties. In addition, the district court made express credibility determinations, finding that the evidence showing that Rodlund's work diminished the value of the properties was credible and that Rodlund's evidence regarding the value of the materials he purchased was not. We defer to the district court's credibility determinations. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Rodlund claims that his unpaid rent should be irrelevant because, if this were a division of property in a marriage dissolution, one "married partner would not be able to impute rent to his or her spouse . . . ." Using a similar line of reasoning, he contends that the alleged damage caused by his faulty workmanship is not a legitimate charge against his share of the assets because, if this were a property division in a marriage dissolution, the parties would bear that damage equally. But as we have discussed, this is not the division of property in a marriage dissolution, and those principles do not apply here.

Further, in light of the fact that Gibson alone made the mortgage payments and Gibson alone will bear the cost of repairing the damage caused by Rodlund's "improvements," it would be inequitable to disregard the fact that Rodlund did not contribute to payments on the mortgage and to disregard the damage he caused to the properties. The district court did not err by considering Rodlund's unpaid rent and the

damage caused by his faulty workmanship in determining whether Rodlund was entitled to an equitable remedy.

None of the arguments advanced by Rodlund shows that the district court's ruling was based on an erroneous view of the law of unjust enrichment, and, therefore, the district court did not abuse its discretion.

IV. Rodlund waived any evidentiary error by failing to object at the time of trial.

Rodlund argues next that the district court erred by allowing Gibson to testify about "the nature and proximate cause of the damage to her home, such as that there was mold (something which, as a non-scientist, she had limited ability to conclude[]) and that Mr. Rodlund's actions caused it (something that, as a non-scientist she had no ability to conclude at all)." Rodlund contends that this testimony was based on information that Gibson obtained from an expert witness, whose report and testimony the district court excluded because of late disclosure, and therefore, is hearsay and improper opinion. But Rodlund failed to preserve this issue for appeal because he did not object to the testimony at the time of trial. Although the district court sustained Rodlund's objection to Gibson's testimony regarding the expected cost of fixing the damage to the properties, Rodlund did not object to Gibson's earlier testimony regarding the nature and cause of the damage. Therefore, he waived any claim of evidentiary error on appeal. *See Ray v. Miller Meester Advertising, Inc.*, 664 N.W.2d 355, 363 (Minn. App. 2003); *see also Helm v. El Rehbein & Son, Inc.*, 257 N.W.2d 584, 587 n.2 (Minn. 1977) ("Where allegedly improper or prejudicial evidence has been admitted without objection, a party may not object to its

admissibility for the first time in a motion for a new trial or on appeal."); *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 752 (Minn. App. 1989) (same).

V. The district court's finding that Rodlund's faulty workmanship damaged the Big Lake properties is not clearly erroneous.

Rodlund argues finally that the district court's finding that Rodlund's faulty workmanship caused damage to the Big Lake properties is "demonstrably wrong" because the property purchased in 1996 would not have nearly doubled in value since its purchase if the damage had been "very extensive." On review, the findings of the district court will not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01. As long as the district court's findings are "reasonably supported by the evidence, they are not clearly erroneous and must be affirmed." *Tourville*, 356 N.W.2d at 299. Here, the district court's finding is reasonably supported by the evidence. Although the parties' experts disagreed on the value of the Big Lake properties, they did agree that the damage to the properties—damage that the district court found was caused by Rodlund's faulty workmanship—would significantly affect the value of the properties. Based on this evidence, the district court's finding that Rodlund's faulty workmanship caused damage to and diminished the value of the properties was not clearly erroneous.

Affirmed.