STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0905

Dale H. McKinley, et al.,
Respondents,

vs.

Danny O. Lundell, et al.,
Appellants.

Filed March 25, 2008
Affirmed
Johnson, Judge

Goodhue County District Court
File No. 25-C2-05-001647

George L. May, May & O'Brien, L.L.P., 204 Sibley Street, Suite 202, Hastings, MN 55033 (for respondents)

Adam J. Dowd, Schmitz, Ophaug and Dowd, L.L.P., 220 Division Street South, P.O. Box 237, Northfield, MN 55057-0237 (for appellants)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

JOHNSON, Judge

Dale McKinley and Mary Lundell are siblings and opposing parties in this lawsuit. A Goodhue County jury found that they entered into an oral contract by which Dale and Kathleen McKinley agreed to sell their five-acre homestead to Mary and Danny Lundell,

who agreed to rent the property back to the McKinleys and later sell it back to the McKinleys after the McKinleys recovered from a period of financial difficulties. This lawsuit arose when the Lundells refused the McKinleys' request to sell the property back to them.

The district court ordered specific performance of the contract after a jury returned a verdict favorable to the McKinleys. When the re-conveyance did not occur within the time period contemplated by the district court, the McKinleys moved to clarify the amended judgment, which the district court granted by allowing additional time for the transaction to occur. The Lundells' appeal presents the question whether the district court was permitted to clarify the amended judgment. We conclude that it was and, therefore, affirm.

FACTS

In 1988, Dale and Kathleen McKinley acquired a five-acre parcel of land from Dale's father. That same year, the McKinleys built a house on the property. In late 2001, Dale McKinley lost his job. As a result, the McKinleys fell behind on their mortgage payments by approximately $5,000.

In January 2002, Mary Lundell suggested to Dale McKinley that the McKinleys transfer their property to the Lundells to save the property from foreclosure. The McKinleys understood, and a jury found, that this transfer was to be only temporary and that the Lundells would transfer the property back to the McKinleys after the McKinleys were able to make regular mortgage payments.

In February 2002, the McKinleys signed a deed conveying the property to the Lundells, and the Lundells paid off the McKinleys' two mortgages. The Lundells financed the transaction by taking out a mortgage loan of their own. At that time, the property was worth approximately $240,000, and the McKinleys' outstanding mortgages totaled approximately $125,000. The McKinleys continued to live on the property and paid rent to the Lundells.

In the spring of 2005, the McKinleys obtained financing to pay off the Lundells' mortgage and asked the Lundells to convey the property back to them. The Lundells refused to do so. In October 2005, the McKinleys commenced this action.

In May 2006, the matter was tried to a jury, which found by way of a special verdict form that the parties had entered into an oral contract and that the Lundells had breached the contract by refusing to convey the property back to the McKinleys when requested. The jury found damages of approximately $162,000.

After the district court entered judgment on the jury verdict, the McKinleys filed a motion seeking, among other things, specific performance in lieu of the money judgment. On August 16, 2006, the district court granted the motion and ordered the Lundells to transfer title to the McKinleys. The pertinent part of the district court's amended judgment states:

> That Defendants are hereby ordered to convey title of Plaintiffs' property at 33066 42nd Avenue, Goodhue County, Minnesota, back to Plaintiffs on the condition that Plaintiffs tender a sum equal to satisfy the outstanding mortgage on the property that is currently in Defendants' names. *Closing for this conveyance shall be set 60-90 days after the appeal period has run.*

(Emphasis added.) On August 21, 2006, the McKinleys served the Lundells with notice of the filing of the amended judgment.

The Lundells did not appeal the district court's August 16, 2006, amended judgment. The appeal period expired on October 23, 2006. The McKinleys then began attempts to obtain financing. The closing, however, did not occur by January 21, 2007, the 90th day following the expiration of the appeal period. On January 30, 2007, the Lundells' counsel sent a letter to the McKinleys' counsel stating, "There was a time limit within which [the McKinleys] could avail themselves of the remedy they requested. That time limit has now passed, and the Lundells will not be transferring the property to your clients."

The McKinleys then returned to the district court and brought a "motion for clarification of and to enforce amended findings of fact, conclusions of law, order for judgment and amended judgment dated August 16, 2006." On April 26, 2007, after a hearing, the district court granted the motion. Paragraph 2 of the district court's April 26, 2007, order states: "A closing, wherein Plaintiffs shall tender a sum equal to satisfy the outstanding mortgage on the property located at 33066—42nd Avenue, Goodhue County, Minnesota, shall take place on or before April 30, 2007." On May 3, 2007, the Lundells filed a notice of appeal.

D E C I S I O N

The Lundells argue that the district court erred when it clarified paragraph 3 of the August 16, 2006, amended judgment. A district court may clarify a judgment if it is

ambiguous. *Stieler v. Stieler*, 244 Minn. 312, 318-19, 70 N.W.2d 127, 131 (1955). "A writing is ambiguous if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning." *Metro Office Parks Co. v. Control Data Corp.*, 295 Minn. 348, 351, 205 N.W.2d 121, 123 (1973). Whether a judgment is ambiguous is a question of law, which this court reviews de novo. *Gray v. Farmland Indus., Inc.*, 529 N.W.2d 514, 516 (Minn. App. 1995), *review denied* (Minn. June 14, 1995). The particular meaning of an ambiguous provision in a judgment is a question of fact, however, which this court reviews for clear error. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005). Accordingly, a district court's construction of its own ruling is given great weight. *Johnson v. Johnson*, 627 N.W.2d 359, 363 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001); *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

In *Stieler*, after a judgment was entered in a divorce case, the executor of the husband's estate moved for, among other things, clarification of the district court's judgment. 244 Minn. at 316, 70 N.W.2d at 130. The district court held that it was without jurisdiction to amend the findings of fact that had been entered in the divorce. *Id.* at 317-18, 70 N.W.2d at 131. The supreme court reversed, stating, "If [the judgment] conveys different meanings to these parties, it was within the right of the executor to move for its clarification and within the province of the court to hear and determine his motion for such purpose." *Id*. at 318, 70 N.W.2d at 131. *Stieler* also applies outside the realm of family law. *See, e.g., Farmland Indus.*, 529 N.W.2d at 516 (applying *Stieler* in a tort action).

The pertinent part of the district court's August 16, 2006, amended judgment, paragraph 3, consists of two sentences. The first sentence orders the Lundells to convey the property to the McKinleys on the condition that the McKinleys tender an amount sufficient to satisfy the Lundells' outstanding mortgage on the property. The second sentence states that the closing should "be set" between 60 and 90 days after the appeal period has run.

The parties dispute whether paragraph 3 imposed a requirement that the parties must take action, if at all, within 90 days. If so, then the McKinleys have forfeited the relief of specific performance that was ordered by the district court. The Lundells argue that the amended judgment was not ambiguous because it imposed on the McKinleys an absolute temporal limitation on their right to repurchase the property. The McKinleys contend that the second sentence of paragraph 3 did not impose an absolute limitation on their right to regain the property because the time period merely was a guideline for the parties.

Each party's interpretation of paragraph 3 is plausible. Although the Lundells' interpretation of paragraph 3 has superficial appeal, there also are valid reasons supporting the McKinleys' interpretation. First, the reference to "60-90 days" is not contained in the same sentence as the reference to the parties' obligations. Second, while the first sentence uses the active voice when describing what each party must do, the second sentence uses the passive voice, thus refraining from imposing on either party the sole obligation to take action within the time period. As the district court explained at the

hearing on the McKinleys' motion, "I did put in the 60- to 90-day time frame, but I didn't put it in as a drop dead date."

Moreover, the district court's interpretation of the amended judgment is consistent with case law interpreting statutes that contain references to time periods or deadlines. Some time limits are deemed "mandatory," while some are merely "directory." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 541 (Minn. 2007); *In re Civil Commitment of Giem*, 742 N.W.2d 422, 428 (Minn. 2007); *Wenger v. Wenger*, 200 Minn. 436, 438, 274 N.W. 517, 518 (1937). As the supreme court recently explained,

> [W]here the provisions of the statute do not relate to the essence of the thing to be done, are merely incidental or subsidiary to the chief purpose of the law, are not designed for the protection of third persons, and do not declare the consequences of a failure of compliance, the statute will ordinarily be construed as directory and not as mandatory.

Hans Hagen Homes, 728 N.W.2d at 541 (quoting *State ex rel. Lord v. Frisby*, 260 Minn. 70, 76, 108 N.W.2d 769, 773 (1961)). Even the use of the word "shall" does not make a time limit mandatory if there is no consequence for a failure to comply with the time limit. *Hans Hagen Homes*, 728 N.W.2d at 541. The second sentence of paragraph 3 did not contain any reference to "consequences of a failure of compliance." Also, the second sentence was "merely incidental" to the main purpose of the amended judgment but did "not relate to the essence of the thing to be done." As the district court stated at the hearing, "this case was always about plaintiff[s'] preserving their right to live on the property and buy back their ownership interest."

We conclude that paragraph 3 of the amended judgment was "reasonably susceptible of more than one meaning." *Metro Office Parks*, 295 Minn. at 351, 205 N.W.2d at 123. Accordingly, the district court properly concluded that paragraph 3 of its August 16, 2006, amended judgment was ambiguous and, thus, subject to clarification. Therefore, the district court did not err in granting the McKinleys' motion.

The district court's April 26, 2007, order stated, "Closing, wherein Plaintiffs shall tender a sum equal to satisfy the outstanding mortgage on the property located at 33066—42nd Avenue, Goodhue County, Minnesota, shall take place on or before April 30, 2007." The closing has yet to occur because the Lundells filed this appeal. This decision makes clear that the McKinleys still are entitled to specific performance. If the parties and their counsel are unable to schedule and execute a closing within a reasonable period of time following this decision, either party may apply to the district court for an appropriate order that will effectuate the district court's relief.

Affirmed.