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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1398**

John Boll, et al.,
Respondents,

vs.

Michael Greer,
Appellant,

Michelle Greer,
Appellant.

**Filed April 9, 2012
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-09-29267

Mark E. Dooley, Neaton & Puklich, PLLP, Chanhassen, Minnesota (for respondents)

Michael and Michelle Greer, Minnetrista, Minnesota (pro se appellants)

Considered and decided by Schellhas, Presiding Judge; Bjorkman, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Following a bench trial, appellants challenge the district court's conclusions that (1) appellants' septic system trespassed on respondents' land and (2) respondents did not create a nuisance and did not trespass on appellants' land. We affirm and decline to consider respondents' attorney-fee request contained in their appellate brief.

FACTS

In 2007, respondents John and Bonnie Boll commenced an action against appellants Michael and Michelle Greer, alleging that the Greers trespassed on their land by constructing a septic system in 1993 that is partially located on the Bolls' land. The Bolls sought damages from the Greers and an order to enjoin them from maintaining their septic system on the Bolls' land. The Greers denied that their septic system trespassed on the Bolls' property; alleged laches, estoppel, and waiver; and counterclaimed against the Bolls, alleging that the Bolls stockpiled manure next to their land that created a nuisance and that the Bolls trespassed on the Greers' land by altering the natural drainage on the Bolls' land.

After conducting a bench trial, the district court concluded that the Greers' septic system trespassed on the Bolls' land, ordered the Greers to remove the septic system from the Bolls' land and to pay the Bolls one dollar in damages, and denied the Greers' counterclaims of nuisance and trespass.

This appeal follows.

DECISION

The Greers challenge several of the district court's findings of fact and conclusions of law but fail to provide this court with a transcript of the trial. Appellants have the duty to order a transcript and bear the burden of providing an adequate record on appeal. Minn. R. Civ. App. P. 110.02, subd. 1(a) ("Within 10 days after filing the notice of appeal, the appellant shall . . . order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record"); *Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530, 531 (1968) (stating that appellant has burden to provide adequate record). When an appellant fails to provide a transcript, this court's review is limited to whether the district court's conclusions of law are supported by the findings. *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970). Consequently, we will only review whether the district court's factual findings support the conclusions of law that the Greers challenge on appeal.

Bolls' Trespass Claim

The Greers challenge four of the district court's findings of fact and its second conclusion of law regarding the Bolls' trespass claim against them, but without the benefit of a trial transcript, we will only address the challenged conclusion of law. *See id.* (noting that when appellants do not provide a transcript, this court only determines whether the findings support the district court's conclusions). The second conclusion of law states: "Nelson credibly testified that the property line indicated that [the Greers'] septic mound was approximately one-third on [the Bolls'] property, two-thirds on [the

Greers'] property.” Although labeled a conclusion of law, we deem this conclusion to be a finding of fact and therefore need not address it. *See Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) (stating that “the mislabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item”), *review denied* (Minn. May 16, 2006). Regardless, we find the Greers’ argument unpersuasive. They argue that the district court erroneously relied on the testimony of Curt Nelson, a professional land surveyor, claiming that Nelson’s testimony was speculative and not credible because he could not locate one property marker. We defer to the district court’s credibility determinations. Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Whether the Greers are challenging the third conclusion of law is unclear. That conclusion states: “The Greers’ septic system on the Bolls’ property constitutes a trespass.” Assuming that the Greers are challenging this conclusion of law, based on our review of the district court’s findings, we conclude that the third conclusion of law is sufficiently supported by the findings, specifically the finding that the court labeled as the second conclusion of law, discussed above.

Greers’ Nuisance Counterclaim

The Greers challenge the district court’s finding of fact no. 19, which states:

Boll testified that they keep the manure pile in that location from June 1st through August 1st to spread it on their crops. Boll testified that he has been doing so since the 1970s. Boll testified that he is in compliance with the statutory requirements for short-term manure piles and that no government entity has ever contacted him about the manure pile.

The Greers argue that the Bolls' testimony was false and misleading, that they violated statutory requirements for short-term manure storage, and that they did create an ongoing nuisance on the Greers' land. Without a trial transcript, we will not review this finding. *See Duluth Herald*, 286 Minn. at 498, 176 N.W.2d at 555. Moreover, we defer to the district court's credibility determinations. Minn. R. Civ. P. 52.01; *Sefkow*, 427 N.W.2d at 210.

We note that Minnesota Statutes section 561.19, subdivision 2(a) (2010),¹ provides that an agricultural operation is not a nuisance if it is in an agriculturally zoned area; complies with all applicable laws, regulations, and permits; and operates according to generally accepted agricultural practices. Here, the district court found in finding of fact no. 23 that

The Bolls' land is agriculturally zoned and they use the land for dairy and agricultural purposes making this an "agricultural operation" under Minn. Stat. § 561.19. Furthermore, the Bolls' land has been an agricultural operation for sixty years. Boll testified that he is in compliance with all laws and regulations. *The Greers did not refute this testimony. The Greers offered no evidence to suggest that the Bolls do not operate according to generally accepted agricultural practices.*

(Emphasis added.) Without a transcript, we cannot conclude that the district court's findings are erroneous, and the findings do support the court's conclusion that the Greers did not prove their nuisance claim against the Bolls.

¹ The most recent version of the statute is cited here; it has not changed in relevant part since this action commenced.

Greers' Trespass Claim

The Greers challenge the district court's seventh conclusion of law, which states:

To sustain a cause of action for trespass, the Greers must demonstrate that they own the land and that the Bolls unlawfully entered the land. The Greers have not offered any evidence to explain how the Bolls' act of placing fill caused the water to intrude onto their property. Greers provided no evidence to support a claim for damages for water intrusion. Therefore, Greers' claim for trespass by water intrusion is denied.

(Citation omitted.) The Greers' challenge to this conclusion is unavailing. The district court stated that the Greers, through trial exhibit 40, offered "a series of photographs of the alleged water intrusion," and the court noted that the photographs show "melting snow and water accumulated on the Greers' property." But the court stated that the "Greers did not offer evidence to indicate that this water was due to the Bolls' having imported . . . fill onto their tractor path." And the court found that "Exhibit 40 did not show any damage to the Greers' property." We conclude that the court's findings support its conclusion that the Greers did not prove that the Bolls trespassed on their land.

Attorney Fees

In their brief, the Bolls request attorney fees, arguing that the Greers' claims are frivolous and in bad faith. A party seeking attorney fees on appeal must submit a motion to this court. Minn. R. Civ. App. P. 139.06, subd. 1 ("A party seeking attorneys' fees on appeal shall submit such a request by motion under Rule 127."). Because the Bolls have not submitted a motion for attorney fees, we decline to consider their request.

Affirmed.