STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1786

Willie A. Anderson,
Appellant,

vs.

Kim A. Anderson, et al.,
Respondents.

Filed July 9, 2012
Affirmed
Bjorkman, Judge

Clearwater County District Court
File No. 15-CV-10-400

Albert T. Goins, Sr., Goins Law Office, Ltd., Minneapolis, Minnesota; and

Manly A. Zimmerman, Zimmerman & Bix, Ltd., Minneapolis, Minnesota (for appellant)

James C. Fischer, Fischer Law Offices, PLLC, Bagley, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the district court's denial of his request to partition certain real property and its award granting respondent a share of the proceeds from the sale of

jointly owned farm vehicles. Because the district court did not clearly err in its factual findings and properly applied the law to the facts, we affirm.

FACTS

Appellant Willie A. Anderson is the father of respondent Kim A. Anderson (respondent), who is the husband of respondent Laura Anderson. Appellant brought this partition action, claiming that he owns an undivided one-half interest in the subject real property. Appellant relies on a deed that lists appellant, appellant's ex-wife, and respondent as joint tenants and a quitclaim deed conveying appellant's ex-wife's interest to respondent. Respondent counterclaimed, seeking a declaration that appellant has no interest in the property and must compensate respondent for a share of the sale of jointly owned farm vehicles.

Following a court trial, the district court construed the deed as an equitable mortgage, finding that the parties intended it to convey merely a security interest in the subject property. Specifically, the district court found that the parties agreed that appellant would offer the bank a mortgage on his own, separate property so that respondent could obtain a loan from the bank to buy the subject property. In exchange, appellant's name would appear on the deed. But once respondent repaid the loan (satisfying the bank's mortgage on appellant's property), respondent would be the sole owner of the subject property. The district court concluded that because respondent repaid the loan, he extinguished appellant's equitable mortgage, leaving appellant with no interest in the property and no right of partition. The district court also held that

respondent is entitled to $17,809.68 of the proceeds of the sale of the farm vehicles. This appeal follows.

D E C I S I O N

I. The district court properly determined that the deed conveyed an equitable mortgage to appellant, which respondent later extinguished, and that appellant therefore is not entitled to partition the property.

A deed that is absolute in form will be presumed to convey title unless there is clear and convincing evidence that both parties intended it to convey only an equitable mortgage in the property. *Ministers Life & Cas. Union v. Franklin Park Towers Corp.*, 307 Minn. 134, 137-38, 239 N.W.2d 207, 210 (1976) (describing the intent standard); *St. Paul Mercury Indem. Co. v. Lyell*, 216 Minn. 7, 12, 11 N.W.2d 491, 494-95 (1943) (describing the clear-and-convincing-evidence standard). Intent to convey an equitable mortgage is determined by reference to the written documents and "all the facts and circumstances surrounding the transaction." *Gagne v. Hoban*, 280 Minn. 475, 479, 159 N.W.2d 896, 899 (1968). If a mortgagor extinguishes the debt which the mortgage secured, the mortgage is satisfied, and the former mortgagee no longer has an interest in the real property. *See Donnelly v. Simonton*, 13 Minn. 301, 305, 13 Gil. 278, 281 (1868). By extension, the former mortgagee has no right to partition the property. *See* Minn. Stat. § 558.01 (2010) (stating bases for partition).

We review the district court's legal conclusions de novo but review its findings of fact for clear error, giving deference to the district court's credibility determinations. *Gellert v. Eginton*, 770 N.W.2d 190, 194-95 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

A. The district court did not clearly err in finding that the parties intended to create an equitable mortgage at the time of the deed conveyance.

Appellant argues that the district court clearly erred in finding that both parties intended to create an equitable mortgage at the time of the conveyance. We disagree. Respondent testified that prior to the purchase of the property, the parties orally agreed that respondent would become the sole owner of the property once he repaid the bank loan and satisfied the bank's mortgage on appellant's separate property.[1] The district court found this testimony credible, and it is corroborated by the fact that (1) respondent paid the entire purchase price of the property, (2) the subsequent decree dissolving appellant's marriage did not list the property as belonging to either appellant or his ex-wife, and (3) the dissolution decree referred to the property as the "Kim Anderson property."

Appellant asserts that the evidence is insufficient to sustain the district court's findings because (1) appellant denied the existence of any agreement that respondent would be the sole owner of the property once respondent repaid the loan, (2) respondent moved out of state and appellant managed and made improvements upon the property, and (3) neither the purchase agreement nor the deed nor any other written document evinces the existence of an equitable mortgage. We are not persuaded. First, the district court explicitly found that appellant's testimony was not credible because it was "vague,

[1] Appellant argues that respondent was unable to identify when the parties entered into this agreement. But in fact, respondent testified that the parties made this agreement in 1999, before they entered into the financing agreement with the bank. Respondent was unable to identify the exact date of a *different* agreement—the agreement that appellant would execute a quitclaim deed in favor of respondent once respondent repaid the loan.

oftentimes contradictory, unnecessarily tentative regarding unflattering facts, and transparently self-serving." Second, the record demonstrates that the improvements appellant made to the property were largely subsidized by the government or reimbursed by respondent, and appellant derived farming benefits from the improvements. And third, a party need not produce written evidence of a security agreement to prove the existence of an equitable mortgage. *Bennett v. Harrison*, 115 Minn. 342, 355, 132 N.W. 309, 314 (1911) (explaining that the absence of a writing does not preclude a court from construing a deed as an equitable mortgage); *see Ministers Life & Cas. Union*, 307 Minn. at 138, 239 N.W.2d at 210 (explaining that the absence of written documents containing the terms "debt," "security," or "mortgage" merely "indicat[es] that the parties did not have a mortgage in mind"). On this record, we discern no clear error in the district court's factual findings.

B. The district court properly applied the law.

Based on its finding that the parties intended the deed to convey merely a security interest,[2] the district court properly construed the deed as an equitable mortgage. *See Ministers Life & Cas. Union*, 307 Minn. at 137-38, 239 N.W.2d at 210. Appellant argues that the district court arrived at this conclusion without explicitly identifying the clear-and-convincing-evidence standard of proof and without addressing the absence of a writing satisfying the statute of frauds. But appellant waived these challenges by failing

[2] Appellant contends that the district court failed to consider both parties' intent. This argument is unavailing. The district court explicitly found that the parties orally agreed that the property would belong to respondent once respondent satisfied the bank loan. And in its posttrial order, it reiterated its finding that appellant "did in fact intend an equitable mortgage at the time of the purchase of the subject property."

to raise them in his posttrial motion.[3] *See Hassler v. Simon*, 466 N.W.2d 434, 436 (Minn. App. 1991) (explaining scope of review).

Since respondent extinguished the equitable mortgage by repaying the bank loan and satisfying the bank's mortgage on appellant's property, appellant had no interest in the subject property. *See Donnelly*, 13 Minn. at 305, 13 Gil. at 281. The district court correctly concluded that appellant was not entitled to partition the property. *See* Minn. Stat. § 558.01.

II. The district court did not commit reversible error regarding the farm vehicles.

The district court ordered appellant to pay respondent $17,809.68 out of the proceeds of the sale of the jointly owned farm equipment. Appellant argues that the district court's order is inconsistent with its related findings of fact. We disagree. The district court's findings regarding each piece of equipment are summarized as follows:

	Purchase Price	Respondent's Contribution		Sale Price
Dozer	$20,500	$17,634.96	86%	$12,500
Tractor	$39,000	$13,905	35.7%	$25,000 combined
Loader	$8,167.37	$0	0%	

Based on these findings, the district court correctly calculated respondent's equitable share of the dozer sale as $10,750[4] and his equitable share of the loader sale as $0.

[3] Moreover, we infer from the express credibility findings that the district court applied the clear-and-convincing-evidence standard even though it did not explicitly say so. *See Clark v. Clark*, 288 N.W.2d 1, 8 (Minn. 1979) (presuming that the district court applied the correct standard of proof where it did not expressly state the standard).

[4] Respondent's contribution x sale price = .86 x $12,500 = $10,750.

The district court accurately determined that the tractor's share of the combined sale price for the tractor and loader is 82.7%. But the court miscalculated the portion of the total sale price that should be allocated to the tractor as $19,775 instead of $20,675.[5] As a result, the district court miscalculated respondent's share of the tractor's sale proceeds as $7,059.68 instead of $7,380.98.[6] Because this discrepancy favors appellant and respondent does not challenge this discrepancy on appeal, we discern no reversible error.

Affirmed.

[5] The tractor's relative value x total sale price = .827 x $25,000 = $20,675.

[6] Respondent's contribution x tractor sale price = .357 x $20,675 = $7,380.98.