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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/8/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ABEL GURROLA GONZALEZ,) No. 1 CA-CV 12-0621
)
Plaintiff/Counterdefendant/) DEPARTMENT E
Appellant,)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 28, Arizona Rules of
FRANCISCO GURROLA,) Civil Appellate Procedure)
)
Defendant/Counterclaimant/)
Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause Nos. CV2010-011033 & CV2011-008050 (Consolidated)

The Honorable Michael J. Herrod, Judge

AFFIRMED

Abel Gurrola Gonzalez Phoenix
In *Propria Persona* Plaintiff/Counterdefendant/
Appellant

Herman R. Quiroga Phoenix
Attorney for Defendant/Counterclaimant/
Appellee

D O W N I E, Judge

¶1 Abel Gurrola Gonzalez ("Abel") appeals from a verdict issued by the superior court after a bench trial. The court found that Abel and his brother, Francisco Gurrola

("Francisco"), had an agreement regarding two parcels of real property whereby each would take one property and Francisco would make an equalization payment of \$50,000. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This dispute relates to property at 12011 West Southern, purchased jointly by Abel and Francisco, and property at 12708 West Southern, purchased in Abel's name. Abel sued Francisco, seeking to quiet title to the 12708 property in himself.¹ According to Abel, Francisco forged his signature on a warranty deed transferring the 12708 property and recorded that deed in September 2009. Abel contended he learned of the transfer in January 2010 and demanded Francisco return title to his name, but Francisco refused.²

¶3 Francisco admitted recording the warranty deed but denied forging Abel's signature on it. In a counterclaim, Francisco alleged that he and Abel each contributed substantial sums to the purchase and maintenance of the 12011 property, as

¹ Abel also named as defendants the notary public who notarized a signature on the warranty deed and the surety for the notary. The court entered a default judgment against the notary and set a separate trial regarding the notary bond. Those defendants are not at issue in this appeal.

² Abel filed a second action against Francisco titled, "Forgery of signature for property ownership," alleging that he and Francisco verbally agreed that Francisco would pay rent for the 12708 property, but that when Abel returned from Mexico, he discovered the property was no longer in his name. The court consolidated the two actions.

well as to the purchase of the 12708 property, with the intent that both properties be owned jointly, and that the only reason the 12708 property was titled in Abel's name was because Francisco could not qualify for the lower interest rate. Francisco claimed that in September 2007, he and Abel entered into an oral agreement whereby Francisco agreed to transfer his interest in the 12011 property to Abel, and Abel agreed to transfer his interest in the 12708 property to Francisco. Francisco alleged that he transferred his interest in the 12011 property to Abel in September 2007, but Abel did not transfer the 12708 property to him. Abel went to Mexico for what was to be a two-month period, but he stayed for two years. According to Francisco, Abel eventually signed the 12708 deed in September 2009. Francisco claimed to have made monthly mortgage payments of \$2,400 to \$2,700 per month since September 2007 and improvements to the 12708 property in an amount no less than \$25,000.

¶14 The court held a two-day bench trial. Francisco testified that he and Abel bought the 12011 property together, grew alfalfa, kept cattle, and rented the property for rodeos. In 2004, they bought the 12708 property, which was originally to have been titled in both names, but they learned they would get a better interest rate if it were purchased only in Abel's name.

Francisco identified a copy of a check he wrote to Abel for \$40,000 as a payment for the 12708 property.

¶15 The 12708 property had a house on it, and the brothers lived there together for three years. Francisco testified he made the payments on the 12011 property, and Abel made payments on the 12708 property. In 2007, they agreed Abel would take the 12011 property, and Francisco would take the 12708 property. They asked their siblings to perform an accounting, which concluded that Francisco owed Abel \$17,733 in order for the brothers to be even. Francisco testified that he ultimately agreed to pay Abel \$50,000 in connection with the exchange.

¶16 At the end of 2007, Abel went to Mexico. Francisco testified that before Abel left, he transferred his interest in the 12011 property to Abel and paid him \$7,000 in cash, with the remainder to be paid upon Abel's return in two months. Abel did not transfer the 12708 property before he left, saying he would complete the paperwork when he returned; he did not return for two years. During that time, Francisco, who had been making payments on the 12011 property, instead began to make payments on the 12708 property; Abel had their sister make payments on the 12011 property. Francisco testified that while Abel was in Mexico, he asked him to complete the transaction, and he sent a document for Abel's signature. According to Francisco, Abel

signed the deed and returned it, whereupon Francisco had the document notarized in Arizona.

¶17 Francisco called the parties' sisters, Eva and Teresa, as trial witnesses. They corroborated Francisco's version of events and testified that the brothers owned the properties jointly and later decided to each take one property, with Abel keeping 12011 and Francisco taking 12708. They further testified that the family did an accounting at Abel's request and determined that Francisco owed Abel \$17,733 as an equalization payment; the brothers reportedly both agreed to that amount. Teresa told the court that the brothers bought the properties together and that the second property was solely in Abel's name so that they could obtain a better interest rate. She further testified that when Abel went to Mexico, she talked to him about division of the properties, and Abel stated that Francisco had already signed over one property to him, that he would sign the other over to Francisco when he returned from Mexico, and that Francisco was going to pay him \$50,000.

¶18 The court found that Abel and Francisco jointly purchased and operated the 12011 property and that, though the 12708 property was purchased in only Abel's name, both brothers contributed to the purchase and intended to operate it for their joint benefit. The court found that the parties agreed Francisco would transfer his one-half interest in the 12011

property to Abel, Abel would transfer his interest in the 12708 property to Francisco, and Francisco would pay Abel \$50,000. The court ruled that Francisco had partially performed the oral agreement by deeding his interest in the 12011 property, but that Abel had not deeded his interest in the 12708 property to Francisco as agreed. The court also ruled that the oral agreement would have been barred by the statute of frauds but for Francisco's partial performance. The court concluded that Abel's purported signature on the deed was not properly notarized because it was not witnessed, but the court did not address Abel's claim that the signature had been forged.

¶19 The court entered a judgment awarding Francisco the 12708 property and awarding Abel \$50,000. Abel timely appealed.

DISCUSSION

¶10 Abel contends he was denied a fair trial because he was not allowed to subpoena the notary public who notarized the deed transferring the 12708 property to Francisco. The record does not support this contention.

¶11 On the first day of trial, Abel told the court that the notary had been present to testify, but that she had spoken with opposing counsel, who convinced her to leave. Abel stated that he wanted the notary to testify about whether she had notarized a document provided to her or whether someone had impersonated him. When the court inquired whether he had

subpoenaed the notary, Abel responded, "Yes, she was here. I sent her notice." Francisco's counsel explained that the notary had asked him whether she needed to be there. He responded that if she had been subpoenaed, she had to remain, but if she had not been subpoenaed, it was her decision. According to counsel, the notary stated that she had not been subpoenaed and that she had a medical appointment.

¶12 The court stated that, having heard Francisco's testimony about taking the already-signed deed to the notary, it did not require the notary's testimony and was concerned that she have legal representation before testifying. On the next day of trial, Abel again asked the court to order the notary to appear. The court declined to do so because "there's nothing in front of me to show that she was subpoenaed." The court explained that because the notary was not under subpoena, it could not order her to appear. The court also reiterated that because Francisco had testified that he took the pre-signed document to the notary, it did not need to hear the notary's testimony.

¶13 A party may request a subpoena from the court clerk in the county where a case is pending. Ariz. R. Civ. P. 45(a)(2), (b). The clerk then issues a signed but otherwise blank subpoena to the requesting party, who completes the subpoena before serving it. Ariz. R. Civ. P. 45(a)(2). The court may

hold in contempt a person who has been served with but has failed to obey a subpoena. Ariz. R. Civ. P. 45(f).

¶14 Nothing in the record supports Abel's claim that he was prevented from obtaining and serving a subpoena on the notary. He could have requested a subpoena from the court clerk and served it on the witness. Abel does not claim that he ever attempted to do so or that the notary was in fact under subpoena, such that the court had the authority to compel her to return to court.

¶15 More importantly, the determination that the brothers had an agreement to split the properties was not based on the validity or invalidity of the deed. The court noted, but did not decide, the dispute over whether Abel signed the deed and found, based on Francisco's testimony, that the deed was not properly notarized because the notary did not witness Abel's signature. The court nevertheless concluded, based on the trial evidence, that there was an agreement between the brothers. This determination was independent of the question of the deed's validity.

¶16 Abel also contends he produced substantial evidence that no contract existed and that Francisco and his sisters were not credible witnesses. An appellate court, though, is bound by the trial court's findings of fact unless they are clearly erroneous. *Sabino Town & Country Estates Ass'n v. Carr*, 186

Ariz. 146, 149, 920 P.2d 26, 29 (App. 1996) (citation omitted). “[W]e view the evidence and reasonable inferences therefrom in the light most favorable to the prevailing party” and will affirm if any evidence supports the trial court’s judgment. *Inch v. McPherson*, 176 Ariz. 132, 136, 859 P.2d 755, 759 (App. 1992). Appellate courts do not reweigh conflicting evidence, but determine only if the record contains substantial evidence to support the trial court’s decision. *In re Estate of Pouser*, 193 Ariz. 574, 579, ¶ 13, 975 P.2d 704, 709 (1999) (citation omitted).

¶17 The record contains substantial evidence in support of the verdict. Francisco, Eva, and Teresa all testified that the brothers owned the properties jointly. Francisco testified that each brother made payments on one of the properties. Francisco and Teresa testified that Francisco was not on the title to the 12708 property because the brothers could get a better interest rate if the property were in Abel’s name only. Additionally, all three testified that the brothers had an agreement whereby each would take one property. Both Francisco and Teresa testified that, as part of the property division, Francisco agreed to pay Abel \$50,000. They also testified that Francisco signed over his interest in the 12011 property before Abel left for Mexico, but that Abel did not sign over his interest in the 12708 property at that time. All three rejected Abel’s claim

