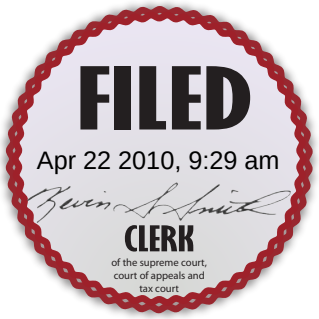

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IN THE
COURT OF APPEALS OF INDIANA

RHONDA CARY,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0909-CV-930
	)	
DUANE R. BERRY, ALL OTHER KNOWN OR UNKNOWN INHABITANTS OF 6305 ALLISONVILLE ROAD, INDIANAPOLIS, INDIANA 46220, and THE MARION COUNTY RECORDER'S OFFICE,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Cynthia J. Ayers, Judge
Cause No. 49D04-0811-PL-51264

April 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Rhonda Cary appeals the trial court's judgment for Duane R. Berry and other defendants (collectively, "Berry") after a bench trial. Cary raises four issues for our review, which we consolidate and restate as the following single issue: whether the trial court's judgment is clearly erroneous.

We affirm.

FACTS AND PROCEDURAL HISTORY

The evidence most favorable to the judgment reveals that, sometime before October 10, 2008, Cary, a California resident, learned of an impending tax sale of Berry's real property in Indianapolis (the "Subject Property"). Cary came to Indianapolis to meet with Berry. Berry believed that the parties agreed that Cary would pay, as a loan to Berry, the $6,500 tax debt, which Berry would repay to Cary over time. Berry further believed that the parties agreed that Cary would obtain a lien on the Subject Property until the loan was repaid in full.

On October 10, 2008, Berry met with Cary at the City-County Building to execute the necessary documents. There, Cary drafted a warranty deed. Among other things, the deed stated:

> DUANE R. BERRY, Grantor, a single man, of Marion County, in the State of Indiana[,] CONVEYS AND WARRANTS to RHONDA CARY, Grantee, a married woman of Riverside County, in the State of California, for the sum of One and no/100----------Dollars ($1.00*********) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Marion County, State of Indiana . . . 6305 Allisonville Road, Indianapolis, Indiana[,] 46220.

Appellant's App. at 274. Three days later, Cary and Berry entered into a month-to-month lease agreement for the Subject Property which described Cary as the "lessor" and "landlord" and Berry as the "lessee[]" and "tenant." Id. at 276 (capitalization removed). That same day, Cary informed Berry by letter that the lease would not be renewed and that he had thirty days to vacate the Subject Property.

Thereafter, Cary sought to record the deed. However, while the deed was signed and notarized, the parties had not completed the required Sales Disclosure Form. As such, the Marion County Recorder refused to record the deed. After learning that the Marion County Recorder had refused to record the deed, Cary sought to obtain Berry's signature on a Sales Disclosure Form. Berry refused to sign the form.

On November 12, 2008, Cary filed a complaint raising several allegations, but most notably seeking relief for breach of contract as well as injunctive relief against Berry. In her complaint, Cary asserted that she was the rightful owner of the Subject Property at issue, that she was entitled to its immediate possession, and that Berry refused to vacate the property. Cary also sought an injunction to require that Berry execute the Sales Disclosure Form.

After numerous hearings, the trial court held a bench trial on May 21, 2009. On June 10, the court entered the following findings of fact and conclusions thereon:

> 1. Plaintiff [Cary] claims to have purchased the house and land at 6305 Allisonville Road, Indianapolis, IN[] 46220 ("Subject Property"), for the consideration of One Dollar and xx/100 ($1.00) and the payment of the property tax debt on the Subject Property in the amount of Six Thousand Five Hundred Dollars and xx/100 ($6500.00).

2. Pursuant to a 2007 Marion County Residential Real Estate Notice, the appraised value of the Subject Property is One Hundred Thirty-Three Thousand Two Hundred Dollars and xx/100 ($133,200.00).

3. Upon learning of an impending tax sale on Subject Property, Plaintiff came from California to meet with Defendant Berry regarding the Subject Property and the accrued property tax debt.

4. On October 10, 2008, Plaintiff and Defendant Berry went to the City-County Building, 200 East Washington Street, Indianapolis, IN, 46204, where Defendant Berry observed Plaintiff draft a warranty deed. In the presence of a Notary Public, Defendant Berry signed said warranty deed.

5. Plaintiff alleged a lease agreement ("Lease Agreement") was created on October 13, 2008 between herself and Defendant Berry; within the alleged Lease Agreement, Defendant Berry agreed to pay Rent to Plaintiff for the Subject Property in the amount of One Thousand Five Hundred Dollars and xx/100 ($1500.00) per month, with the first month's rent due the same day. Defendant Berry did not recall signing the alleged Lease Agreement.

6. Additionally[,] on October 13, 2008[,] Plaintiff served Defendant Berry with a Notice to Vacate the Subject Property ("Notice to Vacate") the same day. Both the Lease Agreement and the Notice to Vacate were admitted into evidence at the Bench Trial on May 21, 2009.

7. On October 15, 2008, Plaintiff filed a Notice of Claim for Possession of Real Estate ("Notice for Possession") in Washington Township Small Claims Court ("Washington Township"). On the form provided by Washington Township, Plaintiff struck the words, "rented to the defendant," and inserted the word, "purchased." Additionally, Plaintiff struck the words, "non-payment of rent," and inserted, "new ownership."

8. On November 3, 2008, after testimony from Plaintiff, Washington Township Judge Kimberly Brown dismissed the cause of action, stating, "cause dismissed for lack of subject matter jurisdiction. No landlord-tenant agreement exists."

9. On November 17, 2008, in a hearing in this Court, Counsel for Plaintiff stated, "My client has already been into Small Claims Court to make this eviction happen, but because there is no lease, the Small Claims Court said that they [sic] don't have jurisdiction."

10. On November 17, 2008, after the hearing in this Court, this Court entered a preliminary injunction without notice, finding that Defendant

Berry was likely to destroy the house if given notice.

11. On November 24, 2008, at a hearing in this Court, Plaintiff was questioned on direct examination about the arrangement with Defendant Berry. Plaintiff stated Defendant Berry agreed to sign "over the warranty deed to [Plaintiff] and [Plaintiff] take full possession of the house." Plaintiff alleged that Defendant Berry "agreed he'd hand over a warranty deed if [Plaintiff] allowed him to stay thirty days past the date that the [Subject Property] was going for sale." Plaintiff did not admit to the existence of the Lease Agreement between Defendant Berry and herself.

12. On January 26, 2009, at a hearing in this Court, Plaintiff was able to demonstrate for the first time the existence of the alleged Lease Agreement between Defendant Berry and herself. During said hearing, Counsel for Plaintiff produced a copy of alleged Lease Agreement bearing a signature identical to signature of Defendant Berry.

13. Defendant Berry has lived in the Subject Property, in a house built by his father, for his entire life of forty-seven (47) years. Defendant Berry has worked as a dishwasher for the past 20 years and participated in Special Education classes during high school. Defendant Berry never intended to sell the Subject Property, made no arrangements to live somewhere else, and made no arrangements to store his belongings anywhere else. Defendant Berry believed the arrangement between himself and Plaintiff was a loan, whereby the warranty deed executed was collateral.

14. The Plaintiff presented evidence in the form of an executed warranty deed with the alleged signature of Defendant Berry; said evidence was provided as [an] indication of a bona-fide sale and transaction between Plaintiff and Defendant Berry for Subject Property.

15. The contract sued upon by the Plaintiff for the sale of the Subject Property was unconscionable and was effectuated without adequate consideration. The sale and transaction was contrary to the interests of Defendant Berry. It is unreasonable that Defendant Berry would sell his fee interest in the Subject Property solely for the amount due on a property tax debt. The alleged sale did not benefit Defendant Berry. Said sale denied him any monies he could have received had the Subject Property been sold at an auction due to the delinquent property tax debt, along with the right to re-acquire the Subject Property within twelve (12) months. Pursuant to Indiana Code § 29-1-15-13, where a Court orders the sale of a piece [of] real estate, where said real estate is sold at a public auction, the sales price must be more than two-thirds of its fair market value.

> 16. Furthermore, Plaintiff has not shown by a preponderance of evidence that the requisite meeting of the minds has occurred. Testimony given by the Plaintiff regarding the alleged bona-fide sale and transaction between Defendant Berry and herself varied between hearings in this Court pointedly with respect to the existence of the Lease Agreement. The Record of this Court indicates that Plaintiff denied the existence of the Lease Agreement at least twice prior to the hearing of January 26, 2009, whereupon Counsel for Plaintiff produced said Lease Agreement.
>
> 17. This Court FINDS that Plaintiff drafted the warranty deed in question and that Defendant Berry did not have a critical role in its creation. The Supreme Court of Indiana has held that the execution of deeds is restricted to attorneys. State of Indiana Ex Rel. Indiana State Bar Ass'n, Relator v. Northouse and Ramer, 848 N.E.2d 668 (Ind. 2006). Plaintiff, a resident of the state of California, is not licensed to practice law in the state of Indiana nor any other state. This Court therefore finds Plaintiff's actions constitute an unauthorized practice of law and as such, the warranty deed in question is thus invalid.

Appellant's App. at 23-26 (emphases added; some alterations original). The court then entered its judgment in favor of Berry. This appeal ensued.

DISCUSSION AND DECISION

Cary appeals from the trial court's judgment for Berry, in which the court entered special findings of fact and conclusions thereon. When a court has made special findings of fact, we review the judgment using a two-step process. Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). First, we must determine whether the evidence supports the trial court's findings of fact. Id. Second, we must determine whether those findings support the trial court's conclusions. Id. Findings will be set aside only if they are clearly erroneous. Id. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id.

In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. Id. In applying this standard, we neither reweigh the evidence nor judge the credibility of the witnesses. Crawley v. Oak Bend Estates Homeowners Ass'n, Inc., 753 N.E.2d 740, 744 (Ind. Ct. App. 2001) (citation and quotation omitted), trans. denied. Rather, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id. We may affirm the judgment on any legal theory supported by the findings. Mitchell v. Mitchell, 695 N.E.2d 920, 923 (Ind. 1998).

Further, Cary appeals from a negative judgment. See Curley v. Lake County Bd. of Elections & Registration, 896 N.E.2d 24, 32 (Ind. Ct. App. 2008), trans. denied. She must, therefore, establish that the trial court's judgment is contrary to law. Id. A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the trial court. Id.

We also note that Berry has not filed an appellee's brief. When an appellee does not file a brief, we do not need to develop an argument for him and we apply a less stringent standard of review. In re R.M.M., 901 N.E.2d 586, 588 (Ind. Ct. App. 2009). We may reverse the trial court if the appellant is able to establish prima facie error, which is error at first sight, on first appearance, or on the face of it. Id. But the appellee's failure to submit a brief does not relieve us of our obligation to correctly apply the law to the facts in the record in order to determine whether reversal is required. Khaja v. Khan, 902 N.E.2d 857, 868 (Ind. Ct. App. 2009).

Cary asserts that she is entitled to reversal of the trial court's judgment for four reasons. Specifically, she states that the trial court clearly erred when it entered judgment for Berry because: (1) transfer of title to the property was not unconscionable, without adequate consideration, or lacking in mutual assent; (2) Cary did not engage in the unauthorized practice of law when she drafted a warranty deed for her own use; (3) even if she had engaged in the unauthorized practice of law in creating the warranty deed, the deed is not invalid; and (4) Cary successfully met her burden of proof on her various claims for relief. However, we hold that the trial court's conclusion that no meeting of the minds occurred is not clearly erroneous. As such, Cary and Berry did not have a contract, and we do not need to consider whether Cary engaged in the unauthorized practice of law or whether she is otherwise entitled to the relief[1] she requested from the trial court.

Among other things, the trial court concluded that Cary and Berry never had a meeting of the minds on the purported sale of the Subject Property. On appeal, Cary suggests that the warranty deed and lease speak for themselves, and that Berry is bound by the documents he signed. But, as we have held:

> The question [of] whether a document has been assented to by the parties as a complete expression of their intent is an ordinary question of fact, and no relevant evidence on this question is excluded on the mere ground that it is offered in the form of oral testimony. Corbin, Corbin on Contracts, §§ 573-596 at 535 (One Volume ed. 1952). No evidence was introduced here purporting to vary the terms of the written document offered; rather, the question was whether there was a meeting of the minds between the parties. The parol evidence rule has no application here.

[1] The term "unjust enrichment" appears twice near the end of Cary's argument section of her appellate brief. However, Cary in no way develops an argument using the doctrine of unjust enrichment or how it might apply to these facts. She has, therefore, waived our review of that possible argument. See Ind. Appellate Rule 46(A)(8)(a).

> The expressions contained in a document purporting to be a sales contract require a meeting of the minds, the absence of which prevents the formation of a contract. Continental Grain Co. v. Followell (1985), Ind. App., 475 N.E.2d 318, 321[,] transfer denied. The intention of the parties is a factual matter to be determined by the trier from all of the circumstances, and a party relying on an express contract bears the burden of proving its existence. Id. Where there is probative evidence to support the conclusion that there was no meeting of the minds between the parties, we will not disturb that conclusion. Id.

Sho-Pro of Ind., Inc. v. Brown, 585 N.E.2d 1357, 1360 (Ind. Ct. App. 1992).

Here, the parties presented conflicting evidence with respect to the nature of their agreement. Cary testified that she and Berry agreed that she would pay his taxes in exchange for her receipt of title to the property, and then she would lease the property back to Berry on a monthly basis. Berry, however, presented witness testimony (including his own) demonstrating that the parties had agreed for Cary to loan the money to Berry and that Berry would repay the loan to Cary on a monthly basis. Berry also presented testimony demonstrating that he had made no arrangements to move out of the Subject Property and that he believed that Cary would not be able to retain an interest in the title once he paid her back. Further, a witness for Berry testified that Cary wanted to pay Berry's tax debt because Berry had provided care for Cary's brother and father.

Cary's contention that the trial court erred in finding that no meeting of the minds occurred between the parties is merely a request for this court to reweigh the evidence, which we will not do. See Crawley, 753 N.E.2d at 744. To the contrary, there was probative evidence to support the trial court's finding that there was no meeting of the minds between Cary and Berry, and we cannot say that the findings and judgment on this issue were clearly erroneous. Accordingly, the trial court did not err in concluding that

there was no contract between the parties. See, e.g., Sho-Pro of Ind., Inc, 585 N.E.2d at 1360.

Affirmed.

VAIDIK, J., and BROWN, J., concur.