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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1566**

Kathy Roe,
Respondent,

vs.

Rolanda Schmidt,
Appellant,

Roger Schmidt,
Appellant.

**Filed May 13, 2019
Affirmed
Reilly, Judge**

Washington County District Court
File No. 82-CV-18-2094

Gregory M. Miller, Nicholas N. Sperling, Trepanier MacGillis Battina, P.A., Minneapolis,
Minnesota (for respondent)

Damon L. Ward, Ward Law Group, St. Louis Park, Minnesota (for appellants)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this appeal from an eviction judgment, appellants argue that (1) the district court erred by denying appellants' motion for an automatic stay, and (2) the district court's factual findings are clearly erroneous. We affirm.

FACTS

In December 2013, appellants Rolanda Schmidt and Roger Schmidt purchased a property for \$289,191.44, through a contract for deed with a contract-for-deed vendor (the vendor). Appellants defaulted on the contract in 2016, and the vendor served notice of cancellation of the contract for deed. During the cancellation process, respondent Kathy Roe, a personal friend of Rolanda Schmidt, agreed to lend appellants the funds they needed to cure the default and continue to occupy the property. Respondent agreed to purchase the property and sell it back to appellants through another contract for deed. Respondent transferred \$301,351.54, to a title company to pay off the original contract for deed with the vendor, and the vendor gave title to appellants. Appellants then quitclaimed the property to respondent. Shortly thereafter, appellants executed the instant contract for deed with respondent.

In June 2017, appellants stopped making regular and timely payments to respondent. In the summer of 2017, the property was damaged in a storm and the insurance company issued a check to appellants and respondent to repair the damage. Rolanda Schmidt forged respondent's signature on the insurance check and kept the money without repairing the property, constituting a breach of the contract for deed. The parties agreed that appellants

would escrow the insurance proceeds and repair the house. Appellants failed to deposit the money in escrow. By October 2017, appellants stopped making any payments to respondent and failed to pay property taxes.

On October 31, 2017, respondent served a notice of cancellation on appellants. Rolanda Schmidt filed for bankruptcy to stop the cancellation. Respondent moved to lift the bankruptcy stay and proceed with cancellation of the contract for deed. In March 2018, the parties reached a settlement agreement requiring appellants to obtain financing and pay off the contract for deed. When appellants failed to complete the refinance, the bankruptcy court granted respondent's motion to lift the stay and proceed with cancellation of the contract for deed.

In May 2018, respondent filed an eviction action upon appellants, asserting that appellants defaulted on a contract for deed and were holding over after proper cancellation of the contract. In September 2018, the district court entered judgment against appellants and in favor of respondent and issued a writ of recovery. Appellants moved to stay the eviction proceedings for 90 days. The district court denied appellants' motion for a 90-day stay of the eviction proceedings, and this appeal follows.¹

¹ Appellants filed several motions in the district court in the fall of 2018, including (1) an emergency motion for a stay; (2) a complaint and a motion for a temporary restraining order seeking to enjoin the sale of the property and vacate the eviction judgment and the confession of judgment; and (3) a motion to vacate judgment. The district court denied each motion. In November 2018, appellants filed a motion for a stay in this court, which we denied.

DECISION

I. Standard of Review

We will not overturn a district court's ruling if it is free of legal or factual errors. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). Interpretations of statutes and the application of caselaw are questions of law subject to de novo review. *In re Estate of Eckley*, 780 N.W.2d 407, 410 (Minn. App. 2010). A district court's factual findings will not be set aside unless clearly erroneous. *Id.* For a mixed question of fact and law, a reviewing court corrects erroneous applications of law but defers to the district court's ultimate conclusions, which are reviewed under an abuse-of-discretion standard. *Porch v. Gen'l Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). We review the record in the light most favorable to the district court's decision and defer to the district court's credibility determinations. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

II. The District Court Properly Denied Appellants' Motion for an Automatic Stay

Appellants argue that the district court erred in denying the motion for a 90-day stay of the eviction proceedings, and contend that the contract between the parties should have been construed as an equitable mortgage, requiring respondent to proceed by foreclosure after issuance of an automatic stay.

We disagree. A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay upon a prima facie showing that the foreclosed homeowner

(1) . . . asserts a defense . . . that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance . . . ;

(2) owned the foreclosed residence;

(3) conveyed title to the foreclosed residence to a third party upon a promise that the defendant would be allowed to occupy the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the foreclosed residence or other real property would be the subject of a foreclosure reconveyance; and

(4) since the conveyance, has continuously occupied the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest.

Minn. Stat. § 325N.18, subd. 6(a) (2018).

With respect to the first two statutory factors, we determine that the contract for deed between the parties was not an equitable mortgage and therefore the statutory protections outlined in section 325N.18 do not apply. “[W]hen the real nature of the transaction between the parties is that of a loan, advanced upon the security of realty granted to the party making the loan, it may be treated as an equitable mortgage, without regard to the actual form of the instrument of conveyance.” *Fraser v. Fraser*, 702 N.W.2d 283, 287 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005). But the transaction will not be construed as an equitable mortgage unless both parties intend it to be so. *Id.* at 288. Here, the circumstances demonstrate that the parties did not intend to enter into an equitable mortgage at the time of the conveyance. Instead, respondent agreed to purchase the property and sell it back to appellants through a contract for deed in order to refinance a preexisting contract for deed between appellants and the vendor. Because there is no record

evidence that both parties intended the contract to act as an equitable mortgage, appellants failed to satisfy the first and second elements of section 325N.18, subd. 6(a).

With respect to the third factor, we determine that respondent does not qualify as a “foreclosure purchaser.” A “foreclosure purchaser” is “a person that has acted as the acquirer in a foreclosure reconveyance,” or “a person that has acted in joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance.” Minn. Stat. § 325N.10, subd. 4 (2018). A foreclosure purchaser does not include “a natural person who shows that the natural person is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner.” *Id.* Here, the district court found that respondent was an eye-lash technician “not in the business of foreclosure purchasing,” and that she had a “prior personal relationship” with Rolanda Schmidt through their church activities. The record supports the district court’s factual findings, which are not clearly erroneous. Because appellants have not satisfied the first three statutory requirements of section 325N.18, subd. 6(a), they cannot prevail on the merits of their appeal and we need not address the fourth factor.

Because appellants did not make a prima facie showing that they were entitled to relief under Minn. Stat. § 325N.18, subd. 6(a), the district court properly denied their motion to stay the eviction proceedings.

III. The District Court’s Factual Findings Are Not Clearly Erroneous

Appellants also challenge the district court’s factual findings as clearly erroneous. A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Rogers*, 603 N.W.2d at 656

(quotation omitted). Appellants argue that respondent provided false testimony to the court because she was a sophisticated real-estate investor. The district court did not find this argument persuasive. Instead, the district court made a specific factual finding that respondent was employed as an eye-lash technician and was “not in the business of purchasing, flipping, or contracting out property.” The district court also found that appellants’ counsel drafted the legal documents, which respondent signed without the benefit of counsel. The record supports the district court’s findings that respondent was not a sophisticated real-estate investor.

Appellants also make conclusory assertions that additional factual findings made by the district court are unsupported by the evidence. But appellants fail to support these assertions with any explanation or reference to facts in the record. We determine that the district court’s factual findings are not “manifestly contrary to the weight of the evidence,” and are “reasonably supported” by the record evidence. *Id.* We therefore reject appellants’ argument that the district court’s factual findings are clearly erroneous, and we affirm.

Affirmed.