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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0791**

Denise M. Tessman,
Respondent,

vs.

Blaine P. Clark,
Appellant.

**Filed November 25, 2019
Affirmed
Bjorkman, Judge**

Becker County District Court
File No. 03-CV-18-329

Zenas Baer, Zenas Baer Law Office, Hawley, Minnesota (for respondent)

Brian P. Toay, Wold Johnson, P.C., Fargo, North Dakota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the order vacating a quitclaim deed that granted him a remainder interest in lake property. He argues that the district court erred by considering extrinsic evidence in violation of the parol-evidence rule and by determining that the remainder interest was not a valid inter vivos gift. We affirm.

FACTS

Respondent Denise M. Tessman is the mother of appellant Blaine P. Clark. Tessman has three other children and several grandchildren. In 2000, Tessman obtained full ownership of the real property in dispute (the lake house), where she has resided ever since.

In 2010, Tessman met with an estate-planning attorney to discuss her wish to protect the lake house from future creditors, specifically a medical-assistance lien, so that the property could stay in the family for the benefit of her children and grandchildren. The attorney advised Tessman to grant a remainder interest in the lake house to another individual and to reserve a life estate for herself. But the attorney did not inform Tessman of the rights and obligations of life tenants and holders of remainder interests, advise her about gifts, or otherwise explain the legal effects of such a transfer.

Based on the attorney's advice, Tessman executed a quitclaim deed on October 27, 2010, transferring the lake house to Clark and reserving a life estate for herself. She recorded the deed on October 29, 2010. Before executing the deed, Tessman talked to Clark about the attorney's advice and Tessman's goal of keeping the lake house in the family. It is undisputed that Tessman executed the deed without Clark's knowledge or consent. But the parties dispute whether Tessman gave the deed to Clark shortly after signing it in 2010, or in 2015. Tessman later testified that she did not intend to give the property to Clark as a gift, and she never filed a gift tax return.

The lake house was subject to a mortgage at the time of the transfer. Neither party was aware that Clark, as the holder of the remainder interest, was legally obligated to pay

the principal on the mortgage. Tessman continued to make all mortgage payments. Clark frequently visited the lake house and performed maintenance on the property until 2015.

In summer 2015, Tessman and Clark had a falling-out. On July 13, Tessman sent Clark a letter, through her attorney, demanding that he remove his personal property from the lake house. The letter also informed Clark that he was legally obligated to pay the principal on the mortgage. Tessman stated that she reserved the right to seek recovery of all the principal payments that she had made since she executed the deed. Clark did not begin making payments or indicate a willingness to do so.

In February 2018, Tessman commenced this action, alleging that Clark breached his duty to pay the principal on the mortgage. She sought to vacate the deed or, in the alternative, to recover damages for the unpaid principal. In his answer, Clark denied that he had breached his obligation with respect to the mortgage payments. But he acknowledged in his trial memorandum that he is liable for principal payments from July 2015 to the present.

Following a court trial, the district court concluded that the deed was not a contract because Clark did not provide any consideration for the remainder interest in the lake house.¹ The court then analyzed whether the remainder interest was a valid inter vivos gift. It determined that the interest was not a valid gift because it lacked two of the necessary elements for a gift: (1) donative intent by Tessman and (2) delivery to and acceptance by

¹ This determination is not at issue in this appeal.

Clark. Because the deed granting Clark a remainder interest was not a valid gift, the district court vacated it and vested title of the lake house in fee simple to Tessman. Clark appeals.

DECISION

Clark argues that the district court clearly erred in determining that the deed transferring the remainder interest in the lake house to him was not a valid inter vivos gift.² An inter vivos gift has three elements: (1) delivery, (2) donative intent by the donor, and (3) absolute disposition of the property. *Oehler v. Falstrom*, 142 N.W.2d 581, 585 (Minn. 1966). The donee must establish each element by clear and convincing evidence. *Id.* The district court found that the third element was satisfied when Tessman recorded the deed. But it nonetheless determined that the deed was not a valid inter vivos gift because the evidence did not establish the elements of donative intent and delivery. Whether donative intent and delivery are present are questions of fact. *Id.* We review findings of fact for clear error. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). Findings of fact are clearly erroneous when they lack support in the record and when we are left with a definite and firm conviction that the district court made a mistake. *Id.*

² Clark also argues that the district court violated the parol-evidence rule by considering extrinsic evidence of Tessman's donative intent. But Clark did not raise this argument or challenge the admission of this evidence in the district court. And he did not move for amended findings or a new trial on this basis. We generally consider only issues that were presented to and decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003) (allowing appellate review of the parol-evidence rule despite failure to file a posttrial motion for a new trial, when the issue was "properly raised and considered at the district court level"). A party forfeits an argument when it fails to timely assert it. *State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015) (quoting *United States v. Olano*, 507 U.S. 725, 733, 113 S. Ct. 1770, 1777 (1993)). Because Clark forfeited his parol-evidence argument, we will not consider it.

I. The district court did not clearly err in finding no donative intent.

A voluntary payment from a parent to her child is generally presumed to be a gift. *Stahn v. Stahn*, 256 N.W. 137, 137 (Minn. 1934). And donative intent is presumed when a person executes a deed that conveys a property interest to another person. *See Olsen v. Olsen*, 552 N.W.2d 290, 292 (Minn. App. 1996) (finding inclusion of two names on a deed to be strong evidence of donative intent to give the property to both people), *aff'd*, 562 N.W.2d 797 (Minn. 1997). But a presumption is “merely a procedural device.” *Kath v. Kath*, 55 N.W.2d 691, 693-94 (Minn. 1952). When “substantial countervailing evidence” is presented, the presumption “ceases to have any function and vanishes completely . . . as if it had never existed.” *Id.* at 694. The presumption of donative intent “may be overcome by proof that the intention of the parent was not to make an absolute gift, as by declarations or acts of the parties inconsistent with the idea that a gift was intended.” *Stahn*, 256 N.W. at 137.

The district court recognized that donative intent is presumed because Tessman executed a deed that transferred a property interest to an immediate family member. But it found the presumption was rebutted by “substantial countervailing evidence” that Tessman did not intend the transfer to be a gift to Clark. Specifically, the district court found that (1) Tessman did not intend the transfer to be a gift, file a gift tax return for 2010, or understand the legal obligations of life tenants and remaindermen; (2) there was no alternative motive for Tessman to give a gift to Clark; (3) Clark never considered the property “his”; and (4) Tessman’s purpose in executing the deed was “to defraud potential future creditors” because she wanted to protect the property from a medical-assistance lien.

With the presumption rebutted, the court determined that Clark had failed to introduce clear and convincing evidence of donative intent.

The record supports the district court's finding that Tessman did not intend to give the lake house to Clark as a gift. Its finding that Tessman's true intent was to defraud future creditors may have been clearly erroneous, as the parties agree that granting a remainder interest to protect real property from a medical-assistance lien is a common practice in estate planning. But the record supports the district court's other findings regarding donative intent. Tessman testified that she did not file a gift tax return for 2010. *See Olsen*, 552 N.W.2d at 292 (finding that listing two parties as recipients on a gift tax return shows intent to give the property to both parties). And Tessman testified that she did not intend the remainder interest to be a gift to Clark. Instead, she executed the deed to protect the lake house from creditors and to keep the property in her family for the benefit of her children and grandchildren. In other words, she did not intend to transfer the lake house to Clark for his sole benefit. On this record, we cannot say that the district court clearly erred in finding that Tessman lacked donative intent.

II. The district court did not clearly err in finding there was no delivery.

Delivery of a deed requires the "surrender of its control by the grantor, together with an intent to convey title thereby." *Exsted v. Exsted*, 279 N.W. 554, 557 (Minn. 1938). Clark contends that delivery was "clearly proven" by evidence that Tessman recorded the deed and gave a copy to him shortly after signing it. We disagree. At trial, the parties submitted conflicting evidence regarding when Clark received the quitclaim deed. On direct examination, Clark testified that Tessman handed him the deed in 2010, about one

week after they had discussed her plan to transfer the lake house to keep it in the family. But on cross-examination, Clark admitted that he did not see the deed until 2015 and specifically requested it from Tessman's attorney at that time. We defer to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01. The district court clearly gave more weight to Clark's testimony on cross-examination when it found that physical delivery of the deed did not occur until 2015.

Nevertheless, delivery can occur even if Tessman did not physically give the deed to Clark. Recording a deed, even without the donee's knowledge, constitutes valid delivery, as long as it is followed by the donee's assent. *Kessler v. Von Bank*, 174 N.W. 839, 840 (Minn. 1919); *see also Ingersoll v. Odendahl*, 162 N.W. 525, 526 (Minn. 1917) (holding that recording a deed without the knowledge of the donee raises a presumption of delivery). A donee must accept the gift before the donor revokes it. *Walso v. Latterner*, 168 N.W. 353, 355 (Minn. 1918). When the gift is "wholly beneficial to the donee, with no burdens imposed, acceptance is presumed as a matter of law." *Id.*

The district court found that Tessman recorded the deed without Clark's knowledge. Clark's acceptance was not presumed because a remainder interest in real property carries the burden of paying the principal on the mortgage, so it is not wholly beneficial to the donee. The court then found that Clark did not accept the transfer because he did not agree to pay the mortgage principal until after Tessman commenced this action, which essentially revoked any gift.

This analysis is consistent with the record and caselaw. As the district court recognized, a holder of a remainder interest is obligated to pay the principal on any

mortgage encumbering the subject property. *Kreuscher v. Roth*, 188 N.W. 996, 997 (Minn. 1922). Thus, acceptance by Clark is not presumed. And the record supports the finding that Clark did not accept the transfer memorialized by the deed before it was revoked. The 2015 letter from Tessman's attorney may not have indicated that she was revoking the transfer, but this 2018 lawsuit clearly demonstrated the intent to revoke. Clark does not dispute that he first accepted responsibility to pay the mortgage principal in his February 2019 trial memorandum, one year after Tessman commenced this action. Although neither party realized that Clark was legally obligated to pay the principal, there is no precedent suggesting that ignorance of this duty changes the fact that recording the deed did not constitute acceptance. Because Clark did not assume the burden imposed by the transfer of the lake house, the district court's finding that delivery did not occur is not clearly erroneous.

In sum, donative intent and delivery are necessary elements of an inter vivos gift. The district court's findings that there was no donative intent or delivery are not clearly erroneous. Accordingly, the deed transferring a remainder interest in the lake house to Clark was not a valid inter vivos gift.

Affirmed.