STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1625

In re the Estate of Kenneth Edwin Ohlund,
a/k/a Kenneth E. Ohlund, Deceased.

Filed August 15, 2022
Affirmed
Wheelock, Judge

Lake County District Court
File No. 38-PR-21-171

Christopher A. Dahlberg, Dahlberg Law Office, P.A., Duluth, Minnesota (for appellant Elsie Ohlund)

Russell H. Conrow, Lake County Attorney, Two Harbors, Minnesota (for appellant Lake County)

Marianne Ohlund, Eagan, Minnesota (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellants Elsie Ohlund and Lake County challenge the district court's denial of Elsie's[1] petition to sell land she claimed her deceased husband (decedent) owned. The district court determined that a quitclaim deed conveying the land from decedent's children

[1] Because multiple members of the Ohlund family are involved in this case, we identify those who share the last name Ohlund by their first name.

and their spouses to decedent was subject to an unfulfilled condition precedent. Because the district court did not err by admitting parol evidence to determine if a condition precedent existed, and because the district court's determination that an unfulfilled condition precedent existed was supported by the evidence, we affirm.

FACTS

Decedent Kenneth Edwin Ohlund and his wife Shirley Ohlund owned a parcel of land in St. Louis County. On March 11, 1998, decedent and Shirley executed a quitclaim deed (the first deed) conveying the parcel to their five children—Gerald Ohlund, Jeffrey Ohlund, Douglas Ohlund, Terry Ohlund, and Cynthia Robinson. Between March 19 and April 13, 1998, the five children and their spouses, including respondent Marianne Ohlund (Gerald Ohlund's spouse and decedent's daughter-in-law), signed a second quitclaim deed (the second deed) that conveyed the same parcel of land back to decedent and Shirley. The first deed, conveying the parcel to the children, was recorded in St. Louis County on May 15, 1998.

Shirley predeceased decedent, and decedent married Elsie Ohlund in 2012. Decedent died on January 11, 2020. After decedent's death, Elsie's daughter, Janice Collison, found the second deed at decedent's home. Elsie and Collison brought the second deed to the county recorder's office and had it recorded on December 2, 2020. Elsie then filed a petition to sell the parcel as part of decedent's estate. Marianne objected to the petition, arguing that all parties to the second deed intended it to become effective only if one of the children divorced their spouse.

The district court held an evidentiary hearing in July 2021. Marianne and decedent's daughter, Cynthia, both testified that decedent, Shirley, and the children and their spouses intended that the second deed become operative only if one of decedent's children were divorcing because the purpose of the second deed was to keep the land in the Ohlund family. They also testified that the children had continued to act as owners of the land, including by paying the taxes and utilities associated with the land. Cynthia testified that none of the children had divorced their spouse. Marianne, Cynthia, and Douglas testified that they believed their signatures had been attached to the first but not the second deed; however, the second deed bears the signatures of all five children and their spouses.

Elsie asserted that the second deed is an unambiguous contract, and thus, there was no reason to consider extrinsic evidence. Her position was that the second deed was operative immediately upon the children and spouses signing the second deed, and therefore, decedent owned the land. Collison testified in support of her mother that she overheard a conversation before decedent's death in which one of the children told decedent that the children wanted to sell the lake property, and decedent refused. Collison also testified that the children were not maintaining the property well and that decedent believed he owned the property.

Elsie further argued that the first deed was voidable because Shirley incurred a debt to the State of Minnesota for medical assistance totaling $134,000. She asserted that the transfer violated a Minnesota law that renders a transfer or obligation voidable if the transfer or obligation was made "with actual intent to hinder, delay, or defraud any creditor" or "without receiving a reasonably equivalent value" when the debtor reasonably

should have believed the debtor would incur debts beyond the debtor's ability to pay. Minn. Stat. § 513.44(a) (2020). Marianne testified that the transfer of the parcel to the children was unrelated to the medical debt because the debt was incurred long after the deeds were signed—Shirley became ill in 2003 and was "fine until 2006."

The district court credited Marianne's and Cynthia's testimony. It also noted that the children and spouses had signed the second deed "mere weeks" after decedent and Shirley signed the first deed and that the first deed was recorded *after* the second deed was signed. The district court further noted that decedent had never recorded the second deed and that none of his children had divorced during his lifetime. Based on this evidence, the district court determined that the second deed was subject to the condition precedent of one of decedent's children having marital issues that would lead to a divorce. Because there was no evidence that any of decedent's children was divorcing, the district court found that the condition precedent to the second deed had not been fulfilled, and therefore, the second deed had not become effective.

Elsie filed a motion for reconsideration, arguing that the district court failed to consider Lake County's medical-assistance claim against decedent's estate. Lake County argued that the statute of frauds prohibited the district court's decision. The district court denied Elsie's motion, determining that the existence of the medical-assistance claim against decedent's estate was unrelated to and did not impact the analysis of whether the second deed was subject to a condition precedent. The district court determined that the statute of frauds does not conflict with the established rule that parol evidence is admissible to show that an agreement is subject to an oral condition precedent.

Elsie and Lake County appeal.

DECISION

I. The district court did not err by admitting parol evidence of a condition precedent.

The parol-evidence rule excludes evidence of oral representations made outside of a written agreement to encourage parties to put their entire agreement in writing. *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 713 (Minn. 1985). "The application of the parol evidence rule is a question of law subject to de novo review." *Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. App. 2001).

The most common exception to the parol-evidence rule is that parol evidence may be admitted when an agreement is ambiguous. *Nord v. Herreid*, 305 N.W.2d 337, 340 (Minn. 1981). But Minnesota courts also allow parol evidence to show that an agreement is subject to a condition precedent, even when the written instrument is unconditional on its face. *Mollico*, 628 N.W.2d at 642; *see, e.g.*, *Nord*, 305 N.W.2d at 339 ("Parol evidence may be considered in determining whether a condition precedent exists."); *Jansen v. Herman*, 230 N.W.2d 460, 463 (Minn. 1975) ("In Minnesota we have repeatedly held that parol evidence is admissible to show that, notwithstanding the delivery of an instrument, the intention of the parties was that it should not become operative as a binding contract except upon the happening of a future contingent event."); *Craigmile v. Sorenson*, 58 N.W.2d 865, 871 (Minn. 1953) ("The rule is clear . . . that a written document, unconditional on its face and fully executed, can be shown by parol testimony to have been subject to a condition precedent."); *Smith v. Mussetter*, 59 N.W. 995, 995 (Minn. 1894)

("[N]o rule is more elementary than that parol contemporaneous evidence is inadmissible to contradict or vary the terms of a valid written instrument. But the rule is almost equally well settled that parol evidence may be given to prove the existence of any separate parol agreement constituting a condition precedent to the attaching of any obligation under the written instrument."). Parol evidence of a condition precedent "is admitted on the theory that it does not contradict or vary the terms of the written instrument at all but only bears on the question whether a contract ever came into existence."[2] *Craigmile*, 58 N.W.2d at 872.

Here, both appellants dispute the district court's application of *Mollico* to allow parol evidence showing that the second deed was subject to a condition precedent. In *Mollico*, we considered whether the district court correctly refused to admit oral evidence regarding a condition precedent when an attorney received a signed deed with the following attached declaration: "The attached instrument is hereby *unconditionally delivered* to you as agent for the Grantees to be filed of record at such time as you deem appropriate, including your Law Office being notified we have both died." 628 N.W.2d at 640 (emphasis added). The appellants in *Mollico* argued that the deed was to take effect only upon the condition of the owners' deaths or other circumstances and that parol evidence should be admitted to prove that there was such a condition precedent. *Id.* at 642. We held that parol evidence was not admissible to contradict a declaration that "expressly . . . and

[2] Appellants' argument that the statute of frauds prevents the creation of certain types of oral contracts and therefore prevents the introduction of parol evidence is inapposite. Here, the parol evidence does not address the content of the contract, but a potential condition precedent, and Minnesota caselaw allows parol evidence for that purpose.

unambiguously state[d] that delivery was without any conditions." We concluded that the declaration left "no room for the admission of parol evidence." *Id.* at 642-43.

Here, respondents argued that, although it was not written in the agreement, there was an oral condition precedent that the deed would be operative, and the parcel would be conveyed back to decedent and Shirley, *only if* one of the Ohlund children were to divorce their spouse. The second deed's language was limited to the following: "For valuable consideration, [the children and their spouses], hereby convey and quitclaim to [decedent and Shirley] . . . real property . . . described as follows . . . together with all hereditaments and appurtenances belonging thereo." Unlike in *Mollico*, there was no attached declaration that the deed was unconditionally delivered. Here, the deed declared an unconditional obligation but was silent regarding any condition precedent. Thus, parol evidence could be admitted to prove or disprove that a condition precedent existed, and appellants' argument that parol evidence regarding a condition precedent to the formation of the second deed should not have been admitted fails.

II. The district court did not clearly err in its findings supporting its conclusion that there was an unfulfilled condition precedent.

Appellants argue that, even if the district court properly admitted the parol evidence, its findings were clearly erroneous. "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. Findings are clearly erroneous "only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Gellert v. Eginton*,

770 N.W.2d 190, 194 (Minn. App. 2009) (quotation omitted) (applying Rule 52.01 to probate disputes). We will not disturb a district court's findings so long as there is reasonable evidence to support them. *Id.*

Appellants argue that the district court clearly erred because it ignored Collison's testimony and the testimony of some of decedent's children who did not remember signing the second deed.[3] "Appellate courts defer to district court credibility determinations." *Gellert*, 770 N.W.2d at 194-95. Here, the district court credited Marianne's and Cynthia's testimony that the parties to the second deed intended that it become effective only upon the divorce of one of the children. Marianne further testified that the children paid taxes and utilities for the parcel. The district court credited Marianne's and Cynthia's testimony that they believed they owned the land and that they acted as owners. To the contrary, the district court determined Collison's testimony that decedent believed he owned the parcel was not credible. We defer to the district court here regarding its credibility determinations. *See In re Stisser Grantor Tr.*, 818 N.W.2d 495, 507 (Minn. 2012) (clear-error standard). Because the district court's findings are supported by reasonable evidence in the record, we conclude they are not clearly erroneous.

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[3] Appellant Lake County also argues that, even if the arrangement described by Marianne were factually accurate, the Ohlunds would have been engaging in fraud by "appearing to transfer the property to the children, while retaining ownership outside of the public record." Lake County does not offer any legal support for the argument that the "scheme," as the district court called it, of transferring the parcel if one of the children divorced was fraud, or for the argument that if the scheme was fraudulent, the district court erred by determining that there was an unfulfilled condition precedent. An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

Elsie's suggestion that the district court did not address another potential explanation for the scheme—to protect the lake property from Shirley's medical creditors—is also unavailing. The district court heard this theory at trial, and it heard Marianne's testimony that such a scheme was illogical because Shirley developed the illness that resulted in the medical debt years later. The district court may credit one theory over another, and it expressly credited evidence showing that one of the children divorcing their spouse was a condition precedent to the second deed taking effect. Therefore, this argument also fails.

Affirmed.