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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0601**

Michael J. Antonello, et al.,
Appellants,

vs.

George Reilly,
Trustee of the Nathan L. Bentson 1993 Irrevocable Trust, et al.,
Respondents.

**Filed November 5, 2012
Affirmed
Stauber, Judge**

Washington County District Court
File No. 82CV113185

Warren E. Peterson, Peterson, Fram & Bergman, P.A., St. Paul, Minnesota (for appellants)

Phillip Gainsley, Minneapolis, Minnesota (for respondents)

Considered and decided by Chutich, Presiding Judge; Stauber, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from an order declaring that certain real property is not appellants' homestead, appellants argue that the record does not support the district court's determination. We affirm.

FACTS

In 1982, appellants Michael and Jean Antonello purchased a home in a residential neighborhood of New Brighton (New Brighton property). The home has three bedrooms, five bathrooms, a great room, a family room, a living room, a den, a playroom, and a fully appointed kitchen. Appellants raised their three children at the New Brighton property.

In August 2002, appellants purchased a house on the St. Croix River (St. Croix Beach property) by contract for deed. After the purchase, appellants filed a homestead declaration in Washington County declaring the St. Croix Beach property as their homestead. Two years later, after all of appellants' children had moved out of the New Brighton property, appellants conveyed the property to their children "[s]ubject to a reservation of a life estate to the Grantors." Michael Antonello subsequently "ran into financial difficulty," and in 2008, his children conveyed the fee interest in the New Brighton property back to the Antonellos so the Antonellos could obtain mortgage financing against that property. In conjunction with the mortgage financing, Michael Antonello signed an affidavit of occupancy stating that the New Brighton property would "be Borrowers' Primary Residence." A homestead declaration was also filed with the Ramsey County Assessor classifying the New Brighton property as homestead property.

In August 2009, appellants completed performance under the contract for deed on the St. Croix Beach property and the warranty deed conveying the fee to them was filed. Pursuant to the practice of the Washington County Assessor, the homestead classification of the St. Croix Beach property was terminated upon the filing of the deed.

On February 7, 2011, a judgment was entered in Hennepin County in favor of respondents George Reilly, Trustee of the Nathan I. Bentson 1993 Irrevocable Trust, et al., against Michael Antonello in the aggregate amount of \$3,005,058. The judgment, together with costs and accumulated interest, was entered in the amount of \$3,011,863, and docketed in Washington County.

After the judgment was entered, appellants were served with a notice of sheriff's execution sale pertaining to the St. Croix Beach property. Appellants subsequently applied to the Washington County Assessor for homestead status of the St. Croix Beach property. Appellants then filed a complaint in Washington County District Court seeking declaratory and injunctive relief in the form of an order declaring the St. Croix Beach property as appellants' homestead within the meaning of Minn. Stat. § 510.01 (2010), and an order permanently restraining and enjoining respondents and the Washington County Sheriff from conducting a sheriff's execution sale on the property.

An evidentiary hearing was held in October 2011. At the hearing, appellants testified that they intended the St. Croix Beach property to be their homestead. According to appellants, they are registered to vote in Lake St. Croix and have friends there. Appellants also claimed that they spend the majority of their time at the St. Croix Beach property, living there from April until November and spending an occasional weekend there in the winter. Jean Antonello testified that she has an "extensive" garden at the St. Croix Beach property and Michael Antonello claimed that he was "quite involved in local politics" in St. Croix Beach. Although Michael Antonello admitted that he goes to the New Brighton property every day, he claimed that he uses the property as a

place of business and that he collects his mail there every day. He also claimed that although the New Brighton address is still listed on appellants' driver's licenses, he "never saw a need" to change it.

The district court found that after looking "at the entire record, weigh[ing] the testimony carefully, [and] consider[ing] [appellants'] conduct and representations," appellants "did not occupy the St. Croix Beach property as their dwelling space since 2003, and, as such, it is not their homestead within the meaning of Minn. Stat. § 510.01." The district court denied appellants' motions for declaratory and injunctive relief. The court further concluded that the St. Croix Beach property is not exempt from seizure, sale, or attachment under Minn. Stat. § 550.175, subd. 6 (2010), and that respondents are "entitled to reimbursement for all costs attendant to the postponed sheriff's sale in the amount of \$2,148.28." This appeal followed.

D E C I S I O N

In reviewing declaratory judgments, we apply a clearly erroneous standard to the district court's findings of fact and review the district court's legal conclusions de novo. *Pestka v. Cnty. of Blue Earth*, 654 N.W.2d 153, 157 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). We will not reverse the district court's factual findings unless they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. *Milbank Ins. Co. v. Johnson*, 544 N.W.2d 56, 59 (Minn. App. 1996). The reviewing court gives deference to the findings of the district court, which had the advantage of hearing the testimony and judging the credibility of the witnesses. *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996).

Appellants challenge the district court's determination that the St. Croix Beach property is not their homestead within the meaning of Minn. Stat. § 510.01. This statute provides that the homestead shall be "exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants." Minn. Stat. § 510.01.

Here, the record reflects that appellants homesteaded the St. Croix Beach property when they purchased it in 2002. But the record also reflects that pursuant to Washington County's administrative practice, the homestead classification for the St. Croix Beach property was terminated in 2009 when appellants completed performance under the contract for deed on the property and accepted and recorded a warranty deed. This local practice is not further explained on this record, and we comment on it only to point out that the county's automatic termination of the homestead classification on the St. Croix Beach property pursuant to this practice is not conclusive evidence that appellants intended to terminate the homestead classification on that property.

However, notwithstanding Washington County's independent termination of the homestead classification on the St. Croix Beach property, the record reflects that various documents—including appellants' credit-card bills, invoices, and statements for personal services—continued to be received at the New Brighton property. In fact, Michael Antonello testified that even while appellants occupied the St. Croix Beach property, he still went to the New Brighton property every day to collect the mail. The record also reflects that appellants' driver's licenses have continuously recited the New Brighton

property as their home address, and appellants' income tax returns, including their application for an extension to file their 2010 returns, dated April 15, 2011, identify the New Brighton property as appellants' "home address." The record further reflects that although appellants conveyed the New Brighton property to their children in 2004, the conveyance was subject to a life estate, meaning appellants continued to have the exclusive right to occupy the premises for their lifetime. And when appellants' children re-conveyed the New Brighton property to appellants in 2008, appellants secured a mortgage loan for \$417,000 against the New Brighton property. In connection with this mortgage, Michael Antonello executed an affidavit of occupancy in October 2009, declaring:

The [New Brighton property] is or will be [appellants'] Primary residence. This means at least one of the Borrowers who execute the Note and Deed of Trust or Mortgage will take title to and occupy the Property. The [New Brighton property] is now occupied as [appellants'] principal residence or will be occupied as [appellants'] principal residence no later than sixty (60) days after this date or sixty (60) days after the Property shall first become ready for occupancy as a habitable dwelling, whichever is later. [Appellants] have no present intention that is contrary to this representation.

Moreover, at the time of the refinance, a declaration of homestead was filed with the Ramsey County Assessor classifying the New Brighton property as homestead property. This is evidence supports the district court's determination that the St. Croix Beach property is not appellants' homestead property within the meaning of section 510.01.

Appellants argue that the district court's conclusion that the St. Croix Beach property is not appellants' homestead is clearly erroneous because it conflicts with the

weight of the evidence, including appellants' testimony. But the only evidence in the record supporting appellants' claims is their own self-serving testimony. Although appellants testified that they intended to occupy the St. Croix Beach property as their homestead, the district court specifically determined that appellants' testimony lacked credibility. In making its credibility determinations, the district court specifically found that appellants failed to offer any evidence to corroborate their claims and questioned Michael Antonello's candor when testifying about the mortgage on the New Brighton property. The court also referenced appellants' lack of credibility in finding:

After losing the homestead classification on the St. Croix Beach property, [appellants] did nothing until after [respondents] entered and docketed their \$3,011,863.00 judgment against [appellants]. [Appellants] de facto efforts to have the St. Croix Beach property classified as homestead property appears to have been made to bolster their efforts to avoid collection on the judgment.

The district court is in the best position to make credibility determinations and we defer to the district court's credibility determinations. *See Hasnudeen*, 552 N.W.2d at 557. Therefore, the district court did not clearly err by determining that the St. Croix Beach property is not appellants' homestead within the meaning of Minn. Stat. § 510.10.

Affirmed.