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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-424**

Gregory J. Brown, et al.,
Respondents,

vs.

Jill Fisetta Kes,
Appellant.

**Filed November 23, 2010
Affirmed
Connolly, Judge**

Scott County District Court
File No. 70-CV-08-22325

James D. Bates, Prior Lake, Minnesota; and

Dean G. Gavin, Gavin Law Office, PLC, Chaska, Minnesota (for respondents)

Dan Biersdorf, E. Kelly Keady, Biersdorf & Associates, P.A., Minneapolis, Minnesota
(for appellant)

Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of her motion for attorney fees,
contending that, although the district court granted respondents title to the property in the

underlying dispute, she was the prevailing party on claims arising under the parties' option agreement. Because respondents prevailed on the ultimate issue of who possessed title to the property and the parties agreed to abandon all other claims, we affirm.

FACTS

In 2003, respondents Gregory J. and Catherine A. Brown, husband and wife, entered into a contract for deed with appellant Jill Fisette Kes under which they agreed to purchase ten acres of a 45-acre parcel of land owned by appellant. In 2006, the parties entered into an option agreement giving respondents the option to purchase an additional 25 acres of appellant's parcel under certain conditions. In part, the option agreement provided that "[i]n any action brought by either party to enforce the obligations of the other party under this Agreement, the prevailing party will be entitled to collect such party's reasonable attorney's fees, court costs and expenses in such action."

In 2007, the parties entered into a third agreement, often called the "Extra Payment Agreement" or "September 28, 2007 Agreement," which we will refer to as the "Extra Payment Agreement." The Extra Payment Agreement extended the time to exercise the option by six months. The Extra Payment Agreement also provided that if a resolution was not reached regarding the 25-acre parcel by the extended deadline, a new agreement would "be signed and recorded by both parties stating that the 10 acre parcel is paid in full and 10 acre title/deed will be transferred to [respondents] when the platting is completed." Various payments were made by respondents under the three agreements.

When the extended deadline passed without the parties reaching an agreement on the additional 25 acres, respondents asked appellant to sign a document reflecting that the

contract for deed had been paid in full. When she refused, respondents sued appellant. Respondents alleged that appellant had breached all three agreements and asserted a number of alternative claims for relief under different legal theories designed to obtain the equivalent of \$211,120, the total amount paid under the agreements.

As part of her defense, appellant asserted that the Extra Payment Agreement was invalid because it was obtained through duress. Prior to the bench trial, the parties stipulated that the only issue to be decided by the district court would be the validity of the Extra Payment Agreement. If the district court concluded that the Extra Payment Agreement was valid, then the ten acres under the contract for deed would be paid in full. Under the stipulation, the duress question “substitute[d] th[e] complaint” and “all the other allegations or paragraphs in the complaint [were] basically dismissed.”

The district court concluded that appellant failed to show that the Extra Payment Agreement was signed under duress and that respondents were the owners of the ten acres under the contract for deed along with a 33-foot driveway easement over appellant’s property. Duress is not at issue in this appeal.

Appellant then moved for attorney fees, claiming to be the prevailing party in the litigation. Appellant asserted that “prior to trial, the parties agreed to dismiss all claims previously ascertained against [appellant]” and, because “[d]ismissal of all claims asserted in the Complaint . . . is the ultimate favorable outcome or ‘general result’ for [appellant],” she was entitled to attorney fees. The district court denied appellant’s motion, reasoning:

[Respondents'] objective in this lawsuit was to obtain title to a tract of land [they] purchased from [appellant] on a contract for deed or to be compensated for its losses for [appellant's] breach of that contract and others. Prior to trial the parties agreed to limit the issues to enforcement of the contract for deed thereby eliminating any claims for monetary damages. [Respondents] were successful at trial and [appellant] was ordered to convey the property to [respondents].

. . . To conclude that [appellant] was the prevailing party would be a leap no mere mortal could accomplish. Clearly this litigation was all about securing title to a parcel of real property that [appellant] agreed to sell to [respondents]. That the pleadings were in the alternative and all but one dismissed prior to trial cannot obscure the fact that [respondents] obtained the general result they were after.

This appeal follows.

DECISION

We review the district court's determination of "which party, if any, qualifies as a prevailing party" for an abuse of discretion. *Benigni v. Cnty. of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998). "In determining who qualifies as the prevailing party in an action, the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (quotation omitted). "The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered." *Id.*

A. The Other Claims

While appellant argues that "[a]ll claims related to the Option agreement asserted by Respondents were dismissed," we disagree. The record contains no formal dismissal of respondents' claims by the district court. *Cf. Reichert v. Union Fid. Life Ins. Co.*, 360

N.W.2d 664, 668 (Minn. App. 1985) (concluding that, by obtaining dismissal with prejudice, defendant prevailed and district court did not abuse its discretion in awarding costs). Instead, the parties stipulated to a substitution of the duress issue for respondents' claims, suggesting the other claims were withdrawn or abandoned. In the deposition transcript submitted to the district court evidencing the parties' stipulation, appellant's counsel himself characterized the stipulation as a substitution of the duress issue for respondents' complaint.

Although the parties and the district court all describe respondents' other claims as being "dismissed," it is more accurate to say that the duress issue was tried by the express consent of the parties in lieu of the other claims. *See* Minn. R. Civ. P. 15.02 (treating issues that were not raised in the pleadings but then tried by express consent of the parties as if they had been raised in the pleadings). Similarly, the record contains no "stipulation of dismissal signed by all parties who have appeared in the action" pursuant to Minn. R. Civ. P. 41.01(a) or an order of the district court dismissing the claims under Minn. R. Civ. P. 41.01(b). *See* Minn. R. 41.01(b) (stating, unless falling into an exception, "an action shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper"). Thus, we conclude that respondents' other claims were not in fact "dismissed."

B. The Prevailing Party

While appellant frames the issue in terms of the district court's failure to consider the option agreement when ruling on appellant's motion for attorney fees, this does not reach the heart of appellant's argument as the parties appear to agree that the option

agreement allows the “prevailing party” in this litigation to recover attorney fees. The thrust of appellant’s argument is that she is the prevailing party because all of the claims asserted by respondents that related to the option agreement were “dismissed.” Respondents assert that appellant “attempt[s] to compartmentalize the issues in this case,” and that “[t]he [duress] issue tried to the district court was based on, and directly pertained to, the parties’ option agreement.”

Appellant, respondents, and the district court are all correct that the law requires the district court to look at the “general result” of the litigation in determining the prevailing party. *See Borchert*, 581 N.W.2d at 840. As noted above, respondents’ other claims were not dismissed; rather, the parties consented to try the sole issue of whether the Extra Payment Agreement was signed under duress. The district court stated that “this litigation was all about securing title to a parcel of real property that [appellant] agreed to sell to [respondents].” The district court stated that respondents “were successful at trial and [appellant] was ordered to convey the property to [respondents],” and concluded that respondents “obtained the general result they were after.” We agree.

Although appellant can be considered to have “prevailed” in that she was only required to litigate one issue instead of several, respondents prevailed on the merits of the underlying property dispute—they obtained title to the land. *See id.* (although defendant was “successful to some degree” because the judgment against him was less than his prior settlement offer to plaintiff thereby entitling him to recover costs and disbursements, plaintiff was the prevailing party because she prevailed on the merits as the jury found plaintiff’s injuries were the result of the defendant’s negligence). Because

the district court did not abuse its discretion in its determination of who the true prevailing party was in the action, we affirm.

Affirmed.