

IN THE UTAH COURT OF APPEALS

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Margaret Everson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20090311-CA
v.)	
)	
Bobby Larry Cooper Sr.; Laurie)	F I L E D
A. Cooper; and Laurel Ann)	(July 22, 2010)
Cooper, Trustee,)	
)	2010 UT App 200
Defendants and Appellants.)	

Fifth District, St. George Department, 070502070
The Honorable G. Rand Beacham

Attorneys: Reed R. Braithwaite, St. George, for Appellants
LaMar J. Winward, St. George, for Appellee

Before Judges Orme, Thorne, and Voros.

THORNE, Judge:

Bobby Larry Cooper Sr. and his current wife, Laurie A. Cooper,¹ appeal from the district court's judgment in favor of Mr. Cooper's ex-wife, Margaret Everson. The district court set aside Mr. Cooper's transfer of an interest in real property (the property) to a family trust as fraudulent under the Utah Uniform Fraudulent Transfer Act (UFTA), see Utah Code Ann. §§ 25-6-1 to -14 (2007). On appeal, the Coopers argue that the district court erred when it used a 2008 tax valuation in determining whether the Cooper home was an asset under UFTA at the time of the transfer in 2005. We affirm.

UFTA generally prohibits the fraudulent transfer of assets to defeat creditors, see id. §§ 25-6-5 to -6, and defines an asset as "property of a debtor, but [not] . . . property to the extent it is encumbered by a valid lien [or] . . . is generally exempt under nonbankruptcy law," id. § 25-6-2(2). At trial, the Coopers argued that the property was worth \$145,715 at the time

¹Mrs. Cooper acts both individually and as trustee of the Laurel Ann Cooper Family Trust.

of the transfer but that it was encumbered by a mortgage lien of \$124,279 and that the Coopers were entitled to a \$40,000 exemption under the Utah Homestead Act, see Utah Code Ann. § 78B-5-503(2) (2008). Thus, according to the Coopers, the combined mortgage lien and homestead exemption exceeded the value of the property at the time of the transfer, precluding the property from being deemed an asset for UFTA purposes.

The district court made only two factual findings of direct relevance to the Coopers' asset argument, finding that "[i]n 2008, the Washington County Assessor's estimate of the market value of [the property] was \$181,638" and that "[the Coopers'] argument that [the property] was not an 'asset' in 2005 is contrary to the evidence before the Court." The Coopers interpret the district court's factual finding regarding the 2008 value as necessarily indicating that the court used the 2008 figure to evaluate the property's status as an asset in 2005. According to the Coopers, the district court must have relied on the 2008 value because the higher 2008 value exceeded the combined amount of the Cooper's mortgage lien and homestead exemption while the 2005 value did not.

On appeal, the Coopers argue that the district court erred by establishing the property's 2005 asset status using the 2008 tax valuation figure. The Coopers assert that the parties agreed below that a 2005 tax valuation of \$145,715 was the appropriate figure for purposes of the district court's asset analysis. We see no evidence in the record to support the Coopers' assertion that the parties agreed to the use of the 2005 tax valuation.²

Further, we see no reason to interpret the district court's findings of fact as indicating that the court improperly relied on the 2008 figure in its asset analysis. The district court's factual findings simply do not contain any finding as to the value of the property at the time of the transfer.

²The Coopers cite to a trial exhibit, Exhibit 9, in support of their assertion of an agreement between the parties, but that exhibit is not in the record on appeal. Nevertheless, it is apparent that Exhibit 9 was a document listing the property's tax valuations from 2004 to 2008. It further appears that the Coopers' assertion of an agreement between the parties is based on Everson's trial testimony that the property's value "is at least what's indicated on the property tax rolls," combined with Mrs. Cooper's testimony affirmatively responding to the question of whether the 2005 tax valuation "was a fair value for the house."

[I]n cases in which factual issues are presented to and must be resolved by the trial court but no findings of fact appear in the record, we "assume that the trier of facts found them in accord with its decision, and we affirm the decision if from the evidence it would be reasonable to find facts to support it."

State v. Ramirez, 817 P.2d 774, 787-88 (Utah 1991) (quoting Mower v. McCarthy, 122 Utah 1, 245 P.2d 224, 226 (1952)). Thus, so long as the evidentiary record provides reasonable support for the district court's ultimate conclusion, we will assume that the district court determined a 2005 value and properly used that value in its asset analysis.

The Coopers' argument on appeal presumes that the only possible basis for the district court's asset conclusion is the erroneous use of the property's 2008 tax valuation. However, there are multiple other possible factual grounds for the district court's conclusion. First, in the absence of a binding stipulation by the parties as to the property's value in 2005, the district court could have determined the 2005 value to have been higher than the figure reflected on the tax rolls.

More importantly, the Coopers simply presume that they have conclusively established their entitlement to the mortgage lien and homestead exemption offsets that they argued to the district court. However, the district court made no factual findings regarding a mortgage lien against the property in 2005 or the Coopers' entitlement to a \$40,000 homestead exemption for purposes of the UFTA asset analysis.³ In light of the evidence before the district court, which established only a mortgage arising in 2006, it would have been reasonable for the district court to find that the Coopers had failed to establish the existence or amount of any 2005 mortgage lien.⁴ Without a 2005

³The Coopers do not argue on appeal, nor did they preserve any such argument below, that the district court should have entered more detailed factual findings in support of its asset analysis. See generally Robertson's Marine, Inc. v. I4 Solutions, 2010 UT App 9, ¶¶ 10-12, 223 P.3d 1141 (discussing the requirement that challenges to the adequacy of factual findings must be preserved for appeal by objection in the trial court).

⁴The Coopers' entitlement to a statutory homestead exemption, see Utah Code Ann. § 78B-5-503(2), presents more of a question of law. It is possible that the Coopers' entitlement to
(continued...)

mortgage lien apparent on the record, the property clearly qualifies as an asset for UFTA purposes.

Because there is reasonable evidentiary support for the district court's asset conclusion, the lack of a specific finding as to the property's 2005 value does not present a fatal flaw in the district court's decision. See generally id. We reject the Coopers' presumption that the only possible basis for the district court's conclusion was an erroneous acceptance and use of the property's 2008 tax value. Affirmed.

William A. Thorne Jr., Judge

WE CONCUR:

Gregory K. Orme, Judge

J. Frederic Voros Jr., Judge

⁴(...continued)
a \$40,000 homestead exemption is dependent on factual questions that could have reasonably been decided against them by the district court. However, the parties have not provided briefing on the application of section 78B-5-503(2) to the facts of this case, and we do not rely upon that section to reach today's result.