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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1346**

Stephani Martinsen,
Respondent,

vs.

Jay E. Webb,
Appellant.

**Filed May 29, 2018
Affirmed; motion denied
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-15-19210

Travis M. Ohly, Ohly Law Office, Rochester, Minnesota (for respondent)

Jay E. Webb, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Kirk, Presiding Judge; Hooten, Judge; and Stauber,
Judge.*

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's determination that a quitclaim deed conveying a condominium from himself to respondent and himself as joint tenants is valid.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Because the district court's findings are not clearly erroneous, and it did not err in its application of the law or abuse its discretion by concluding the quitclaim deed is valid, we affirm.

FACTS

In June 2011, a condominium was purchased in Minneapolis and titled in appellant Jay Webb's name the next month. The condominium is Torrens property. Webb and respondent Stephani Martinsen, who were in a relationship and planning to get married at the time that the condominium was purchased, lived together in the condominium until April 2015, when Martinsen moved out. Martinsen subsequently filed a complaint against Webb, alleging unjust enrichment, equitable mortgage, quiet title, and legal partition. At some point in the litigation, Martinsen produced a deed purportedly signed by Webb that had not yet been filed with the Examiner of Titles. Under Minn. Stat. § 508.47, subd. 1 (2016), the deed, if filed, would convey and quitclaim the condominium from Webb to Webb and Martinsen as joint tenants.

The district court referred the case to the Examiner of Titles to determine whether the deed is valid. A hearing was held at which Martinsen, Webb, and a notary testified. Martinsen testified that she convinced Webb to make her a joint tenant and on March 12, 2015, he signed the quitclaim deed in front of a notary. She also explained that they agreed to backdate the deed to January 1, 2012, because she had paid all of the property taxes on the condominium and wanted to be able to write it off on her taxes. According to Martinsen, she tried to record the deed a few days after it was signed, but was unable to do so because of outstanding property taxes owed on the property, so she held on to the deed

and intended to file it. The notary confirmed that the stamp and notary signature on the deed were his, and he testified that he was a commissioned notary on March 12, 2015. Webb disputed Martinsen's testimony, claiming that he did not sign the quitclaim deed that Martinsen was relying upon.

The Examiner of Titles determined that the deed is valid, that it had not taken effect as a conveyance of the property (operating only as a contract between them),¹ and that it meets the standards for recording under Minn. Stat. § 507.24 (2016). The district court adopted the report of the Examiner of Titles, including the findings of fact, conclusions of law, and attached memorandum. This appeal follows.

D E C I S I O N

I.

Webb first argues that the quitclaim deed violates Minn. Stat. § 507.24 because it does not meet the statute's standards for legibility and execution. The statute reads, in relevant part:

To entitle any conveyance, power of attorney, or other instrument affecting real estate to be recorded, it shall be legible and archivable, it shall be executed, acknowledged by the parties executing the same, and the acknowledgment certified as required by law.

Minn. Stat. § 507.24, subd. 1. We understand Webb's argument to raise a mixed question of law and fact because it asserts that the deed does not meet the legal standards of legibility

¹ See Minn. Stat. § 508.47, subd. 1 (explaining that aside from wills and leases under three years, a "voluntary instrument of conveyance purporting to convey or affect registered land . . . shall operate only as a contract between the parties" until it is registered).

and execution. Accordingly, we review factual findings for clear error and legal questions de novo, but the district court is accorded “discretion in its ultimate conclusions and [appellate courts] review such conclusions under an abuse of discretion standard.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. June 26, 2002).

The Examiner of Titles specifically found that “[t]he unrecorded deed meets the standards for recording under Minn. Stat. § 507.24 as it is a conveyance that is legible and archivable, executed, acknowledged by the parties . . . and the acknowledgement certified.” After reviewing a copy of the deed and being able to read its contents, we are satisfied that the district court did not commit clear error in determining that it is legible. As to its execution, the copy of the deed in the record bears a signature and there was testimony from Martinsen and the notary that Webb was the one who signed the deed. Although Webb testified that he did not sign it, the district court, through the Examiner of Titles,² was able to judge the credibility of the witnesses, and we do not see fit to disturb that assessment. *See State v. Vasko*, 889 N.W.2d 551, 559 (Minn. 2017) (explaining that appellate courts defer to a district court’s determinations of witness credibility). Accordingly, we do not believe that the district court committed clear error in deciding that the deed was executed.

Webb next argues that the quitclaim deed is not valid under Minn. Stat. § 359.08 (2016)—which criminalizes acting as a notary after the expiration of a term—because the

² *See* Minn. R. Civ. P. 52.01 (“The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.”).

notary was not commissioned or eligible on January 1, 2012, which was the backdated date included on the quitclaim deed. Whether the notary was commissioned or eligible on the day that the quitclaim deed was signed is a factual question that we review for clear error. See Minn. R. Civ. P. 52.01. Although the quitclaim deed was backdated to January 1, 2012, there was testimony from Martinsen and the notary that the quitclaim deed was actually signed on March 12, 2015. The notary's commission application was brought into evidence and shows that he received his commission on August 22, 2012, and his stamp on the quitclaim deed shows that his commission expired on January 31, 2017. Because there was evidence that the deed was signed on March 12, 2015, a date on which the notary was commissioned and eligible, and not on January 1, 2012, the district court did not commit clear error, and Webb's argument fails.

Webb's third claim is that the quitclaim deed is fraudulent because it contains alterations and crossed out words. It appears that Webb is arguing that the deed is fraudulent because Martinsen's name was crossed out with pen on the part of the deed where the notary is supposed to print out the grantor's name to indicate who signed the document. But Webb cites to no legal authority supporting his argument, so he has forfeited it. See *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017).

Webb's fourth claim is that the quitclaim deed is not valid because it was backdated by Martinsen, which violates Minnesota Statutes chapters 357-359. After examining that range of statutes, we understand Webb to mean that the quitclaim deed is not valid because the signature violated Minn. Stat. § 358.47(a) (2016), which states that "[a] notarial act must be evidenced by a certificate physically or electronically signed and dated by a

notarial officer in a manner that attributes such signature to the notary public.” This argument would be based on the fact that the January 1, 2012 date does not correspond to when the document was signed. If that is indeed Webb’s argument, then it raises a factual question that is reviewed for clear error, see Minn. R. Civ. P. 52.01, and it fails for two reasons. First, the quitclaim deed clearly shows that the notary dated the signature as being on March 12, 2015, and Webb cites to no authority that states that a notarized document cannot have a different date elsewhere within it. Second, the district court found that it was Webb who backdated the document, not Martinsen, and he points to no evidence that would make this finding clearly erroneous.

Webb’s final claim is that the quitclaim deed is not valid because the Examiner of Titles erred by acknowledging multiple alterations to the deed, which he says violates Minn. Stat. § 507.24. Webb does not explain why this would violate Minn. Stat. § 507.24. Furthermore, the only time that the Examiner of Titles even mentioned an alteration was on the last page of her memorandum where she stated that “[a]n alteration could be cause for rejection, but in this case the only alteration is the strikethrough of the plaintiff’s name in the acknowledgement.” This alteration does not change the substance of the quitclaim deed, and Webb’s argument fails.

II.

Webb filed a motion to supplement the record on appeal with new evidence. The purpose of the supplemental evidence would seem to be to undermine Martinsen’s explanation for why she backdated the quitclaim deed to January 1, 2012. But the documents filed in the district court, the exhibits, and the transcript of the proceedings, if

any, shall constitute the record on appeal in all cases. Minn. R. Civ. App. P. 110.01. An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988). “[P]roduction of record evidence is never allowed in an appellate court for the purpose of reversing a judgment.” *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 584 (Minn. 1977). Webb’s motion to supplement the record is accordingly denied.

Affirmed; motion denied.