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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0941**

Alissa Boehm,
Respondent,

vs.

Melanie Glick, et al.,
Appellants.

**Filed March 25, 2019
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-17-8970

Alissa Boehm, St. Paul, Minnesota (pro se respondent)

Gregory S. Bachmeier, Bachmeier Law Office, Maple Grove, Minnesota (for appellants)

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellants challenge the district court's judgment following a court trial in favor of respondent, ordering appellants to return a cat. They claim that the district court's findings of fact are clearly erroneous, ask this court to consider an argument not raised at trial, and

claim that the district court erred by not applying a “best for all concerned” standard that Minnesota has not adopted. We affirm.

FACTS

This case is about who is the rightful owner of a cat. Sometime in May of 2015, a woman found and took in a stray cat, hereinafter referred to as Django. The woman gave Django to appellants, Melanie Glick and BaoHan Tong, who lived together in a home with Tong’s father. Django’s back legs had some medical issues and appellants paid for veterinary care to address these issues.

Roughly one month after appellants took Django in, they messaged respondent Alissa Boehm asking her and her two then-roommates if they could provide Django with a home. Just before they gave Django to respondent, the cat was diagnosed with a contagious infection commonly known as “cat flu.” But Glick had two other cats and Tong’s father was allergic to cats, so they asked respondent to take the cat. Appellants had also rescued two other stray cats and gave them to friends in the two years before they gave Django to respondent.

In September of 2015, Glick moved into a house with respondent and two other roommates. Tong did not live with them, but frequently visited during the week and stayed on weekends. Prior to Glick moving in with respondent, appellants only visited Django socially and never referred to themselves as the cat’s owners. On the application for the rental where respondent and Glick lived together, respondent listed a cat named Django as her pet and Glick did not. While living together, respondent and Glick exchanged several text messages wherein respondent referred to Django as her cat and Glick did not contradict

her. In another exchange, respondent and Glick discussed a schedule for cleaning the litter boxes that the three cats who lived at the residence shared. Glick, who owned the other two cats, stated that she was fine with cleaning the litter boxes four days out of the week because she owned two cats.

In the winter of 2015, after hearing a rumor that Glick was planning on taking Django when she moved out, respondent asked appellants about their plans. Appellants stated that they would not take Django when Glick moved out.

In July of 2016, Glick moved out of the residence that she lived in with respondent and took Django with her. Respondent was out of town when this happened and received a text message from Tong informing her that appellants had taken Django. When she arrived back in town a few days later, respondent contacted the police to report Django stolen. Police created an incident report suggesting that appellants be charged with theft. It is unclear from the record before us if either appellants were ever charged, but in any event, neither Glick nor Tong was convicted.

Early the following year, respondent filed an action in conciliation court seeking to have Django returned. The conciliation court found in favor of respondent and ordered appellants to return the cat, as well as other property related to Django's care. Appellants demanded removal of the matter to district court and the conciliation court order was vacated. Following a court trial, the district court found for respondent and ordered appellants to return Django and related property to respondent. This appeal follows.

DECISION

“On appeal from judgment following a court trial, this court reviews whether the district court’s findings were clearly erroneous and whether the district court erred as a matter of law.” *In re Distribution of Attorney’s Fees between Stowman Law Firm, P.A. & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff’d*, 870 N.W.2d 755 (Minn. 2015). We review questions of law de novo. *Id.*

“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 [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. In applying Minn. R. Civ. P. 52.01, “we view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). “The decision of a district court should not be reversed merely because the appellate court views the evidence differently.” *Id.* “Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (quotation omitted).

I. Findings of fact

Appellants first argue that the district court’s finding that appellants held respondent out to be Django’s owner through their conduct is clearly erroneous. But the district court’s finding has support in the record. One of respondent’s roommates at the time testified that when appellant Glick dropped off the cat, respondent and both of her then-roommates agreed that respondent would own Django. A mutual friend of respondent and appellants testified that respondent was known to be the owner and primary caregiver of Django.

Respondent testified that appellants had always treated her as Django's owner. The district court found all of these individuals' testimonies to be credible, but did not find appellants' contradictory testimonies to be credible. Further, text messages between respondent and appellant Glick strongly imply that respondent owns Django. On the rental application for the residence where respondent lived with appellant Glick, respondent listed that she owned a cat named Django. When appellant Glick filled out her rental application for the same residence, she did not state that she owned Django. Given that we are obliged to view the evidence in the light most favorable to the judgment, *see Rogers*, 603 N.W.2d at 656, we conclude that the district court's finding that appellants held respondent out as Django's owner is not clearly erroneous.

As part of the above claim, appellants also appear to argue that the district court's implicit finding that appellants were not solely financially responsible for Django is clearly erroneous. But as the district court noted, appellants own two cats other than Django, and the majority of appellants' receipts did not indicate that the expenses incurred were for Django. The receipt for the initial veterinarian payment to take care of Django's back legs, which did specifically reference Django, was from before appellants gave the cat to respondent.¹ To contrast, respondent submitted receipts for cat expenses from the relevant period and did not own another cat at that time. The district court found credible testimony that respondent paid for all of Django's expenses and did not find appellants' contrary

¹ Appellants also submitted receipts from the period of time after they took Django from the shared home, but these are obviously not relevant to the question of who was financially responsible for Django before appellants took the cat without permission.

testimony to be credible. Because “due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses,” Minn. R. Civ. P. 52.01, we conclude that the district court’s finding that respondent, rather than appellants, bore financial responsibility for Django is not clearly erroneous.

Appellants also challenge the district court’s implicit findings about why respondent accepted responsibility for cleaning the litter boxes. It is uncontested that respondent took responsibility for cleaning the litter boxes three days a week, while appellants were responsible for cleaning them the other four days. Appellants argue that the district court erred in concluding that the fact respondent took on this responsibility showed that appellants acknowledged that respondent owned Django.

Respondent argues that they split up the cleaning the way that they did because she owned Django while appellants owned two other cats. Glick testified that she offered to clean the litter boxes more often because she was working long hours and was not able to clean them as often as respondent wanted. The district court’s finding that Glick only accepted this responsibility because she owned two cats and respondent only owned Django is supported by the record. Specifically, appellant sent a text message to respondent accepting respondent’s proposed cleaning schedule by stating, “I’m fine with doing 4 days cause I have 2 babies.” We conclude that the district court’s finding is not clearly erroneous.

Appellants also challenge the district court’s findings that respondent provided for Django financially and emotionally. But respondent provided veterinary and financial records showing that she provided for Django before appellants took him without her

permission in July of 2016. The district court found that multiple witnesses credibly testified that respondent provided for Django financially and was the primary caregiver during the relevant period. Given the deference we grant to the district court's ability to make credibility determinations, we cannot say that these findings are clearly erroneous. See Minn. R. Civ. P. 52.01.

II. Gift

Appellants also argue that respondent has no claim of ownership over Django because respondent failed to establish the elements of a valid gift at trial. "The elements of a gift are (1) delivery; (2) intention to make a gift; and (3) absolute disposition by the donor of the thing which the donor intends as a gift." *Weber v. Hvass*, 626 N.W.2d 426, 431 (Minn. App. 2001), *review denied* (Minn. June 27, 2001).

The district court did not address this argument because appellants did not raise it during the trial. Because we will not consider matters not argued to and considered by the district court, we conclude that appellants forfeited this argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

But even if this argument were not forfeited, these elements were all clearly met. Appellants delivered Django to respondent when they physically gave the cat to her. The district court's findings support a conclusion that the second and third elements are met because appellants no longer held themselves out to be Django's owners after they gave him to respondent. Regarding donative intent, the district court also did not find testimony credible from either appellant that they only intended to give Django to respondent temporarily, and appellants make no claim that they received anything in exchange for

Django. In addition, the district court found credible testimony from a mutual friend of the parties that appellants had previously taken in and given away two other stray cats before Django.

III. Minnesota law controls

Appellants finally argue that the district court committed reversible error by not applying a “best for all concerned” standard to determine who should receive ownership of the cat. But the only authority appellants submit where this standard was applied is a case from an intermediate appellate court in New York. And in fact, binding Minnesota precedent instructs that pets are to be treated as any other personal property. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012) (“[W]hile animal owners have considerable sentimental attachment to their pets, Minnesota law treats an animal like any other item of tangible personal property.”). Appellants’ claim that the New York case is “one of the only apposite cases in the entire country” and that the district court erred in failing to apply this standard is therefore without merit because the treatment of pets as property in the state of Minnesota is settled law.

Affirmed.