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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0431**

Brian J. Henel,
Respondent,

vs.

Rosario Salas,
Appellant,

Chase Manhattan Mortgage Corporation,
Defendant.

**Filed February 10, 2020
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-17-15219

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for respondent)

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appellant)

Chase Manhattan Mortgage Corporation, Columbus, Ohio (defendant)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges the district court's order for allocation of equity after a court trial in a partition-by-sale action regarding a house purchased by the parties. Appellant argues that the district court erred in three findings of fact and in not allocating to her (1) the total mortgage and utility payments; (2) more than half of the remaining equity; and (3) half of the \$8,000 federal tax credit respondent received. We affirm.

FACTS

Appellant Rosario Salas and respondent Brian J. Henel started living together romantically in 2005. The parties and their young son lived in a three-bedroom apartment with Salas's mother and three younger siblings. The parties purchased a three-bedroom house in Minneapolis in May 2009. The house was listed at approximately \$85,000, and the couple financed \$76,948 after receiving a \$10,000 grant from the Greater Metropolitan Housing Corporation, which required them to stay in the house for five years. The monthly mortgage payment on the house started at \$801.40 and increased incrementally to \$1,018.43 as of the date of trial. Salas's family lived with the parties in the house.

At trial, Henel testified that he worked on the house before anyone moved in. Henel stated that he painted the house, installed new toilets and insulation, and fixed a couple of windows, incurring approximately \$5,200 in out-of-pocket expenses. Around this time, Henel also received an \$8,000 federal homeowner's tax credit that he kept for himself.

The parties ended their romantic relationship in December 2009 but continued to live together until July 2010. Salas offered to move out with her family, but Henel testified that he moved out so their son could stay with his mother in a nice home.

The parties did not have any financial agreement when Henel moved out. Salas took over all the mortgage and utility payments for the house and paid approximately \$87,400 in mortgage payments over the past eight years. She also painted the house, installed new flooring, handled a city-required lead abatement, and replaced the locks, roof, and boiler; all of which cost her approximately \$28,500. Salas's family continued to live with her. Her mother contributed by providing child care, and some of her siblings assisted by paying certain utility bills.

On March 27, 2017, Henel brought this lawsuit seeking partition by sale. The parties agreed that a partition is impossible and asked the district court to allocate the equity between the parties. After a court trial in September 2018, the district court ordered a home appraisal and allocated equity using the formula of "[c]urrent market value minus \$62,283.53 (current mortgage balance) minus \$11,871.03 (amount of principal reduction [Salas] paid for) minus \$28,500 equals divisible equity. One half of the divisible equity is awarded to Henel." Salas appeals.

D E C I S I O N

I. The district court's findings of fact are not clearly erroneous or prejudicial to Salas.

Salas argues that the district court erred when it found that (1) Henel made improvements to the house; (2) Salas's family moved in after the parties moved in; and

(3) the parties agreed that Salas’s family could stay with them for one year. We address each issue in turn.

We will not reverse a district court’s findings of fact unless they are clearly erroneous. *Anderson v. Anderson*, 560 N.W.2d 729, 730 (Minn. App. 1997), *review dismissed* (Minn. May 28, 1997). Findings of fact are clearly erroneous if we are “left with the definite and firm conviction that a mistake has been made.” *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted). Appellate courts give great deference to the district court’s findings of fact because the district court can hear the witnesses’ testimony and assess their credibility. *Id.*

A. Henel’s repairs

The district court found that, “[p]rior to moving in, Henel painted the house, installed new toilets and insulation, and put in new windows.” Henel’s trial testimony directly supports this finding.

Salas argues that this is clear error because Henel did not provide any receipts and Salas disputed in her testimony that Henel did the work. But when cross-examined and asked if Henel accurately testified “that he did the work prior to moving in,” Salas responded, “Yes.” Viewing this evidence in the light most favorable to the verdict, *see id.*, the testimony supports the district court’s finding. Further, we defer to the district court’s credibility determinations. *Id.*

B. When Salas’s family moved in

Salas next challenges the district court’s finding that Salas’s family moved in after the parties. But even if we assume without deciding error, Salas cannot show prejudice.

“[W]e do not reverse unless there is error causing harm to the appealing party. In other words, error without prejudice is not ground for reversal.” *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). Nothing in the district court’s award suggests that this finding impacted its allocation of equity. Salas was not prejudiced by this finding.

C. The parties’ agreement about how long Salas’s family would live with them

Finally, Salas contends that the district court clearly erred by finding that “[a]fter moving in, Henel and Salas agreed that Salas’s family could move into the house and live with them for one year.” Salas argues that this fact is shown to be erroneous by Henel’s testimony that the parties did not have a written agreement and his testimony that he did not ask the family to leave after a year. But Henel did testify that Salas and Henel agreed that Salas’s family could live with them for one year. Again, we defer to the district court’s credibility determinations.

Salas also argues that “[t]his greatly prejudiced” her but does not explain how. The district court does not mention the agreement in its conclusions of law or allocation order. Salas cannot establish clear error or prejudice in any of the district court’s challenged findings.

II. The district court did not abuse its discretion in allocating the equity of the house.

Salas argues that the district court should have allocated to her (1) the total mortgage and utility payments; (2) more than half of the remaining equity; and (3) half of the \$8,000 federal tax credit Henel received. We address each issue in turn.

“In Minnesota, an action for partition of real estate is statutory and the court is guided by the principles of equity in its decisions.” *Anderson*, 560 N.W.2d at 730; *see also* Minn. Stat. §§ 558.01-.32 (2018). “A district court has broad discretion when fashioning an equitable remedy.” *State ex rel Swan Lake Area Wildlife Ass’n v. Nicollet Cty. Bd. of Comm’rs*, 799 N.W.2d 619, 625 (Minn. App. 2011). Appellate courts review equitable determinations for an abuse of discretion. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011). A district court abuses its discretion when its decision is based on an error of law or is against the facts in the record. *Id.*

A. Mortgage and utility payments

Salas argues that she is entitled to all payments made toward utilities as well as the portions of her mortgage payments that covered the interest, insurance, and taxes. We are not persuaded.

The district court determined that “Salas should be credited with the reduction in the principal of the mortgage, but not the interest she paid. The interest payments can be viewed as the price she paid in lieu of rent to provide a place for her family to live.”

Salas cites *Kauffman v. Eckhardt*, in which the Minnesota Supreme Court stated that, in a partition, the district court must consider the interests in the property of all parties, whether those interests “consist of liens, taxes paid, advances, or improvements made.” 263 N.W. 610, 611 (Minn. 1935). Here, the district court did consider the interest and taxes Salas paid with her benefit of living in the house and determined that they offset each other. Salas also cites *Kirsch v. Scandia Am. Bank* to argue that interest must be credited to the party that paid it in allocating the property. 199 N.W. 881 (Minn. 1924). However,

Kirsch involved partition after one tenant in common redeemed a foreclosed property. *Id.* at 881-82. *Kirsch* is not controlling. The district court here considered the non-principle mortgage payments to be rent payments for her family. Moreover, divisions of equity need not be equal to be equitable. *See Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005) (addressing equitable division of marital assets).

B. Remaining divisible equity

Salas also contends that she is entitled to more than half of the remaining equity in the property because Henel abandoned her and left her with the financial commitment that they entered into together. Salas argues that Henel “falls short of the equitable principle of ‘clean hands.’” This assertion is not supported by the testimony of the witnesses. Both parties testified that they split amicably, and they both were looking for a new place to live before Henel decided on an apartment. Salas’s argument fails.

C. The \$8,000 federal tax credit

Salas’s final argument is that the district court abused its discretion by not dividing the \$8,000 federal tax credit that Henel received because of the partition in kind and because Henel never paid her brother when he helped paint half of the kitchen wall. But, as previously mentioned, equity allocations do not need to be equal to be equitable. *See Sirek*, 693 N.W.2d at 900. Further, it appears that the district court already accounted for this tax credit. The district court did not credit Henel for his \$5,200 in repairs in its order, apparently to balance out the \$8,000 tax credit. This decision falls within the discretion of the district court.

Affirmed.