This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1815

Julianne E. Micken,
Respondent,

vs.

Daniel Schierschmidt, et al.,
Appellants.

Filed July 7, 2025
Affirmed
Johnson, Judge

St. Louis County District Court
File No. 69DU-CV-22-2012

Christopher A. Dahlberg, Dahlberg Law Office, P.A., Duluth, Minnesota (for respondent)

Matthew J. Schaap, Cassandra C. Wolfgram, Dougherty, Molenda, Solfest, Hills & Bauer, P.A., Apple Valley, Minnesota (for appellants)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal concerns the purchase of a townhouse on a contract for deed. The buyer did not comply with all terms of the contract for deed, but the sellers never canceled or terminated it. The district court found that the buyer committed a material breach of the contract for deed but did not abandon it. The district court determined the buyer's pay-off amount, ordered the buyer to pay that amount to the seller within 60 days, and ordered the seller to deliver a warranty deed to the buyer upon receiving that payment. We affirm.

FACTS

On April 10, 2009, Juliann[1] Micken and Ted Micken agreed to purchase a townhouse from Daniel Schierschmidt and Melissa Schierschmidt for $155,000, including a down payment of $10,000. The parties entered into a contract for deed that required the Mickens to make monthly payments of $1,300, to pay monthly homeowners-association (HOA) fees of $140, to pay property taxes, and to maintain insurance on the property. The contract for deed also provided that the parties would jointly open a bank account and that, for two years, the Mickens would deposit their payments into the joint account and the Schierschmidts' mortgage lender and the HOA could withdraw funds from the joint account. The contract for deed further provided that the Mickens would pay off the balance of the purchase price with a balloon payment on April 10, 2011.

In addition, the contract for deed provides that, if the Mickens "fail to timely perform any of the terms of this contract, [the Schierschmidts] may, at [their] option, elect to declare this contract cancelled and terminated by notice to [the Mickens] in accordance with applicable law." Furthermore, the contract for deed provides, "After service of notice of default and failure to cure such default within the period allowed by law, [the Mickens]

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[1]The case caption in the district court identifies the plaintiff as "Julianne E. Micken." The caption of this opinion conforms to the caption used in the district court, as required by the rules of appellate procedure. *See* Minn. R. Civ. App. P. 143.01. But the contract for deed and respondent's brief indicate that she spells her first name "Juliann." Thus, we use her preferred spelling throughout the body of this opinion.

shall, upon demand, surrender possession of the property to [the Schierschmidts], but [the Mickens] shall be entitled to possession of the property until the expiration of such period."

The Mickens did not make a balloon payment on April 10, 2011, as required by the contract for deed. Shortly after that date, there was some communication between the parties regarding the missed payment, but the parties introduced conflicting evidence at trial about that communication. Juliann testified that Daniel called her by telephone and that she told him that she and Ted could not make the balloon payment because they were unable to obtain a loan. She testified that Daniel responded by saying that, because the Mickens did not have "any problems with payments" and "everything was going fine," they could continue making monthly payments under the contract for deed. In contrast, Daniel denied that he talked to Juliann or that he agreed to extend and modify the contract for deed. Daniel testified that he spoke by telephone with Ted and offered to give the Mickens a short extension on the contract for deed but that Ted responded by saying that "would not be helpful." Daniel further testified that, in light of Ted's response, he proposed that the Mickens remain in the home as renters. According to Daniel, Ted agreed to convert the contract for deed into a month-to-month lease. Daniel further testified that he spoke by telephone with Ted a second time and agreed to reduce the Mickens' monthly payments to $1,200 per month because they were renters. The district court specifically found Juliann's testimony about her conversations with Daniel to be credible.

After the Mickens did not make the balloon payment in April 2011, the Schierschmidts did not provide the Mickens with a written notice of default and notice of termination or cancellation, as permitted by statute and by the contract for deed. The

Schierschmidts also did not prepare a written lease for the Mickens and did not apply for a rental license for the property. For more than 12 years, from April 2011 to October 2023, the Mickens or Juliann made monthly payments of between $1,225 and $2,600, paid monthly HOA fees, and maintained insurance on the property.

Ted passed away in October 2021. Several months later, Juliann contacted the Schierschmidts by telephone to talk about paying off the balance of the purchase price. Daniel did not give Juliann a pay-off amount on the ground that the contract for deed "ended after two years" and the parties had entered into "a rental agreement." On three occasions between April and August of 2022, Juliann's attorney requested a pay-off amount from Daniel's attorney in an unsuccessful attempt to determine what payment would allow Juliann to obtain title to the property.

Juliann commenced this action against the Schierschmidts in October 2022. In her complaint, under the heading "cause of action," she alleged that the parties entered into a "valid, binding, and enforceable contract"; that she "has been in compliance with" the contract; and that the Schierschmidts failed to perform their contractual obligations by not allowing her to pay off the contract for deed. In her prayer for relief, she requested an order requiring the Schierschmidts to provide her with a record of her payment history, requiring her to pay the Schierschmidts the balance due less the costs and fees she incurred in the action, and requiring the Schierschmidts to convey to her a warranty deed upon receiving her payment.

In their answer, the Schierschmidts denied most of Juliann's allegations but admitted that they "never conducted a statutory cancellation of the contract for deed." The

Schierschmidts asserted several affirmative defenses, including the affirmative defense that Juliann's claims are barred by the Mickens' material breach of the contract for deed and by an "agreement to convert the contract to a lease." The Schierschmidts requested, among other things, an order declaring that the contract for deed "has become null and void" and is "of no further effect."

The district court conducted a court trial on two days in October and November of 2023. Juliann testified and called three additional witnesses. Both of the Schierschmidts testified, and they called two additional witnesses.

In January 2024, the district court filed a 23-page order with its findings of facts, conclusions of law, and order for judgment. The district court first determined that Juliann breached the contract for deed by not making the balloon payment in April 2011 and that the breach is material. The district court next determined that, because of Juliann's material breach, she is not immediately entitled to an order granting her title to the property. The district court then determined that the contract for deed is not canceled or terminated because the Schierschmidts did not take the steps necessary to do so. The district court also determined that Juliann did not abandon the contract for deed. The district court concluded that Juliann may cure the default arising from her material breach by, within 60 days, paying the Schierschmidts the balance due on the contract for deed of $55,503.86, which includes a two-percent statutory penalty and $500 in attorney fees. The district court ordered that, upon the Schierschmidts' receipt of Juliann's timely payment, the Schierschmidts must deliver a warranty deed to her.

The Schierschmidts filed a motion for amended findings, judgment as a matter of law, or a new trial. In June 2024, the district court denied the Schierschmidts' post-trial motion. The district court administrator entered final judgment in October 2024. The Schierschmidts appeal.

DECISION

The Schierschmidts challenge the district court's decision by making six arguments. Before considering those arguments, we review the relevant legal principles.

A.

A contract for deed is an agreement that "allows a buyer—the vendee—to purchase property by borrowing the money for the purchase from the seller—the vendor." *In re Butler*, 552 N.W.2d 226, 229 (Minn. 1996). A contract for deed "is essentially a financing arrangement for a real estate sale in which the vendee has all the incidents of ownership except legal title." *Id.*

If a party defaults on a contract for deed and the other party has a right to terminate the contract for deed, the non-defaulting party may do so by seeking statutory cancellation of the contract for deed pursuant to Minnesota Statutes section 559.21 (2024) or by a judicial action. *Miller v. Snedeker*, 101 N.W.2d 213, 225 (Minn. 1960); *Sitek v. Striker*, 764 N.W.2d 585, 592-93 (Minn. App. 2009), *rev. denied* (Minn. July 22, 2009); *O'Meara v. Olson*, 414 N.W.2d 563, 567 (Minn. App. 1987). The non-defaulting party may terminate the contract by serving a notice of termination that specifies "the conditions in which default has been made." Minn. Stat. § 559.21, subd. 2a. The notice of termination must inform the defaulting party that the contract for deed will terminate 60 days after service of the notice. *Id.* But the buyer has a statutory right to cure the default if, during the period specified in the notice, the buyer "complies with the conditions in default," "makes all payments due and owing to the seller under the contract through the date that payment is made," "pays the costs of service of the notice," "pays two percent of any amount in default at the time of service," and pays a specified amount of attorney fees. *Id.* If the buyer complies with these requirements, the contract is reinstated. *Id.* The purpose of the statutory-cure provision is "to provide buyers with notice of impending cancellation and to avoid the harsh result of forfeiture by allowing buyers a reasonable time to remedy their default." *Edina Dev. Corp. v. Hurrle*, 670 N.W.2d 592, 597 (Minn. App. 2003), *rev. denied* (Minn. Dec. 23, 2003).

In the alternative, the non-defaulting party may, in some situations, terminate a contract for deed by a judicial action. *Sitek*, 764 N.W.2d at 592-93; *O'Meara*, 414 N.W.2d at 566. A judicial remedy is available so long as it is not foreclosed by the language of the contract for deed. *See Sitek*, 764 N.W.2d at 592-93; *O'Meara*, 414 N.W.2d at 566.

Thus, a non-defaulting party may utilize either the statutory procedure or a contractually permissible judicial procedure to terminate a contract for deed that is in default. *Miller*, 101 N.W.2d at 225; *O'Meara*, 414 N.W.2d at 567. But the non-defaulting party must affirmatively exercise its rights. *Sitek*, 764 N.W.2d at 592-93. A default, by itself, does not automatically terminate a contract for deed or excuse the seller from properly cancelling a contract. *Id.*

Notwithstanding a seller's failure to properly terminate a contract for deed, a buyer may "abandon" a contract for deed, in which case the buyer "is not entitled to enforcement of the contract." *Loppe v. Steiner*, 699 N.W.2d 342, 350 (Minn. App. 2005). Abandonment is the "voluntary relinquishment of an interest by the owner with the intent of terminating his ownership." *Melco Inv. Co. v. Gapp*, 105 N.W.2d 907, 909 (Minn. 1960). A non-defaulting seller may plead the affirmative defense of abandonment, which may result in termination of the contract for deed if the elements of abandonment are proved. *Loppe*, 699 N.W.2d at 348, 350.

B.

We now consider each of the Schierschmidts' arguments for reversal.

1. Findings of Fact

The Schierschmidts argue that the district court erred in certain findings of fact.

This court applies a clear-error standard of review to a district court's findings of fact. *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). A finding of fact is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). "If there is reasonable evidence to support the trial court's findings of fact, a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). "In applying the clear-error standard, we view the evidence in a light favorable to the findings." *Kenney*, 963 N.W.2d at 221. "We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Id.* (quotations omitted). Importantly, clear-error review does not permit an appellate court to engage in fact-finding, reweigh the evidence, make credibility determinations, or reconcile conflicting evidence. *Id.* at 221-23.

"Consequently, an appellate court need not 'go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.'" *Id.* at 222 (quoting *Meiners v. Kennedy*, 20 N.W.2d 539, 540 (Minn. 1945)).

> Rather, because the factfinder has 'the primary responsibility of determining the fact issues' and the 'advantage' of observing the witnesses in 'view of all the circumstances surrounding the entire proceeding,' an appellate court's 'duty is fully performed' after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. (quoting *State ex rel. Peterson v. Bentley*, 71 N.W.2d 780, 786 (Minn. 1955)) (other quotiation omitted).

The Schierschmidts contend primarily that the district court erred by relying on Juliann's testimony instead of other evidence, such as their own testimony and the testimony of third parties. The Schierschmidts contend that the district court's reliance on Juliann's testimony led to clearly erroneous findings of fact with respect to whether Ted, as opposed to Juliann, made unauthorized withdrawals from the parties' joint account and whether the Mickens were renters.

As an initial matter, the Schierschmidts' contention is contrary to the well-established principle that an appellate court does not reweigh the evidence, does not make credibility determinations, and does not reconcile conflicting evidence. *See Kenney*, 963 N.W.2d at 221-23. The Schierschmidts' acknowledgment that the district court's findings are supported by Juliann's testimony is a sufficient reason for this court to conclude that the challenged findings are not clearly erroneous. *See id.*

In any event, the record shows that the challenged findings are supported by evidence in the record, including evidence other than Juliann's testimony. For example, the district court's finding that Ted made withdrawals from the parties' joint account is supported by exhibits consisting of withdrawal receipts signed by Ted. The district court also reconciled the evidence concerning whether the Mickens were renters by crediting Juliann's testimony that she explained the contract for deed to Ted as a "rent-to-own" situation.

The Schierschmidts also contend that the district court erred by relying on a report prepared by Juliann's non-testifying expert instead of their own evidence. They contend that the expert's report is inaccurate because it does not account for unauthorized withdrawals from the parties' joint account.[2] The district court specifically found that the Schierschmidts' contention that the expert's report is inaccurate for this reason is "flatly wrong." That finding is supported by the expert's report, which identifies and accounts for approximately 50 unauthorized withdrawals.

Thus, the district court did not clearly err in its findings of fact.

2. Abandonment

The Schierschmidts also argue that the district court erred by concluding that Juliann did not abandon the contract for deed.

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[2]We acknowledge the Schierschmidts' contention in their reply brief that the expert's report also is inaccurate on the grounds that it does not account for property taxes that the Mickens were required to pay and makes certain unwarranted assumptions. But we may not consider that contention because the Schierschmidts did not include it in their principal brief. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010).

Abandonment is the "voluntary relinquishment of an interest by the owner with the intent of terminating his ownership." *Melco*, 105 N.W.2d at 909. In a case concerning a contract for deed, a seller may assert abandonment as an affirmative defense for the purpose of terminating the contract for deed, even if the seller did not properly cancel it pursuant to the contract for deed statute, because a buyer "who abandons a contract for deed is not entitled to enforcement of the contract." *Loppe*, 699 N.W.2d at 348, 350.

A district court should consider four factors in determining whether a contract for deed has been abandoned: (1) the buyer's "[f]ailure to pay on the contract for a long period of time;" (2) the buyer's "failure to take or retain possession of the property;" (3) the buyer's "failure to pay real estate taxes;" and (4) the buyer's "awareness of the seller's intent to terminate the contract for deed interest, coupled with failure to assert any right to the property." *In re Application of Berman*, 247 N.W.2d 405, 408 (Minn. 1976). Possession "is a significant factor," but a "finding of abandonment 'depends upon the intentions of the parties and is not predicated on any single factor.'" *Loppe*, 699 N.W.2d at 350 (quoting *Berman*, 247 N.W.2d at 408).

"A party seeking to prove abandonment of a contract must present clear and convincing evidence of an intention by the other party to abandon its rights." *Id.* (quotation omitted). The determination that a contract for deed has been abandoned is a mixed question of law and fact. *See Mitteness v. Dahl*, 351 N.W.2d 685, 688 (Minn. App. 1984). Accordingly, we apply a *de novo* standard of review to the district court's application of law and an abuse-of-discretion standard of review to the district court's ultimate conclusion. *See Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

In this case, the district court thoroughly analyzed the four *Berman* factors in six pages of its January 2024 order. The district court concluded that "all four *Berman* factors and the totality of the circumstances weigh against a finding of abandonment" and, thus, determined that the Schierschmidts did not "meet their burden to show their failure to cancel the contract via the required statutory cancellation is excused by abandonment."

On appeal, the Schierschmidts do not analyze each *Berman* factor and do not attempt to identify with specificity how the district court misapplied the *Berman* factors. The Schierschmidts simply refer to the district court's findings that the Mickens did not pay off the contract for deed in April 2011, sometimes made monthly payments in incorrect amounts, sometimes withdrew money from the parties' joint account, and sometimes did not pay property taxes. The district court considered all of these facts in its analysis of the *Berman* factors. The Schierschmidts also note the evidence that Ted made a statement to third parties that the Mickens were renters. The district court considered that evidence but found that it was outweighed by other evidence that Juliann and Ted were performing under the contract for deed when they made monthly payments for the purchase price, HOA fees, and property insurance.

The record supports the district court's findings on abandonment with respect to all four *Berman* factors. First, Juliann made continuous monthly payments on the contract for deed from 2009 until trial. Second, Juliann took possession of the property in 2009 and has lived there continuously since then. Third, Juliann applied for and received a veteran's homestead exclusion for the property, which reduced the taxes due on the property, and property taxes were consistently paid out of the parties' joint account. Fourth, the

Schierschmidts knew in 2011 that the Mickens were unable to pay off the contract for deed but did not give them notice of a default, did not commence statutory cancellation proceedings, did not give the Mickens written documentation of a month-to-month lease, and did not report any rental income on their income-tax returns.

Thus, the district court did not err in its analysis of the *Berman* factors and did not err in its conclusion that the Schierschmidts did not satisfy their burden of proving that Juliann abandoned the contract for deed.

3. Opportunity to Cure Default

The Schierschmidts also argue that the district court erred by applying the statutory cure provisions in section 559.21, subdivision 2a, on the ground that Juliann's claim is barred by the statute of limitations and the statute of frauds.

The Schierschmidts contend that the six-year statute of limitations for breach-of-contract claims applies and that Juliann's action is untimely because it was commenced in 2023, long after the Mickens failed to make the balloon payment. The Schierschmidts cite *Boulevard Plaza Corp. v. Campbell*, 94 N.W.2d 273 (Minn. 1959), for the proposition that a seller's failure to cancel a contract for deed does not allow a buyer to perform contractual obligations years later. But the plaintiff in *Boulevard Plaza* had abandoned the contract for deed, and that fact was central to the supreme court's conclusion that the plaintiff was not entitled to relief from its default. *Id.* at 282-83. In this case, the district court found that Juliann did *not* abandon the contract for deed, and we have affirmed that finding. *See supra* part B.2. Accordingly, *Boulevard Plaza* is distinguishable.

The Schierschmidts also cite *Lewis v. Prendergast*, 39 N.W. 802 (Minn. 1888), in which the buyer sought specific performance of a contract for deed almost ten years after the date on which a final payment was required. *Id.* at 803. The supreme court noted that there was "no allegation that the time of performance had ever been extended." *Id.* Consequently, the supreme court concluded that the buyer's cause of action accrued when he became "entitled to file his bill for specific performance" and, thus, was untimely. *Id.* In this case, however, the district court found that the time for Juliann's performance was extended by an oral agreement between her and Daniel. Accordingly, *Lewis* also is distinguishable.

The Schierschmidts further contend that the statute of frauds should bar Juliann's claim. The Schierschmidts again cite *Boulevard Plaza Corp.*, which is distinguishable because it concerns a buyer who abandoned a contract for deed. *See* 94 N.W.2d at 282-83. The Schierschmidts also cite two other opinions, but neither mentions the statute of frauds. *See Miller*, 101 N.W.2d at 220; *Edina Dev. Corp.*, 670 N.W.2d at 598.

Thus, the district court did not err by concluding that the statute of limitations and the statute of frauds do not preclude the application of the cure provisions of the contract-for-deed statute.

4. Juliann's Claim

The Schierschmidts also argue that the district court erred by granting relief to Juliann even though, the Schierschmidts assert, she did not prevail on any claim pleaded in her complaint. Specifically, the Schierschmidts contend that Juliann alleged a breach-of-contract claim but did not prove that claim because the district court found that she committed a material breach of the contract for deed by not making the balloon payment in April 2011.

This argument apparently is based on a clause in Juliann's complaint in which she alleged that she "has been in compliance with the terms of the contract." The Schierschmidts ignore other allegations in Juliann's complaint, including her prayer for relief, which specifically requested an order requiring the Schierschmidts to provide her with a payment history, requiring her to pay the Schierschmidts the balance due on the contract for deed less the costs and fees she incurred in the action, and requiring the Schierschmidts to convey to her a warranty deed upon receiving her payment. Juliann's prayer for relief implicitly concedes that she had not paid the entire purchase price and, thus, had not performed all of her contractual obligations. Juliann's prayer for relief put the Schierschmidts on notice that she intended to prove that she is entitled to an opportunity to cure the default and to obtain title to the property after paying off the contract for deed. The district court concluded that Juliann proved the facts necessary to establish that she is entitled to an opportunity to cure the default and conditionally entitled to title to the property.

Thus, the district court did not err by awarding relief to Juliann despite finding that she committed a material breach by not paying off the contract for deed in April 2011.

5. Motion for Judgment as a Matter of Law

The Schierschmidts next argue that the district court erred by denying their motion for judgment as a matter of law. *See* Minn. R. Civ. P. 50.02. The Schierschmidts refer back to their argument that Juliann is not entitled to relief on the ground that she did not prove any claim pleaded in her complaint. The Schierschmidts argue that they are entitled to judgment as a matter of law for the same reason. We have concluded that the Schierschmidts' underlying argument is without merit. *See supra* B.4. Thus, the district court did not err by denying the Schierschmidts' motion for judgment as a matter of law.

6. Motion for Amended Findings or New Trial

The Schierschmidts last argue that the district court erred by denying their motion for amended findings or a new trial. *See* Minn. R. Civ. P. 59.01(g).

The Schierschmidts refer back to their argument that the district court clearly erred in making certain findings of fact. The Schierschmidts argue that, for the same reasons asserted there, the district court erred by denying their motion for amended findings. We have concluded that the district court did not clearly err in any of its findings of fact. *See supra* B.1. Thus, the district court did not err by denying the Schierschmidts' motion for amended findings.

The Schierschmidts also argue that the district court erred by denying their motion for a new trial. They contend that they were prejudiced by the conduct of Juliann and her attorney. The Schierschmidts complain that they did not have an opportunity to cross-examine Juliann's non-testifying expert and that Juliann presented evidence that was not disclosed during discovery. The district court did not have an opportunity to consider these issues because the Schierschmidts did not mention them in their memorandum supporting their post-trial motion. Because the Schierschmidts did not present this argument to the district court, the argument is forfeited. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.