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IN THE
COURT OF APPEALS OF INDIANA

THERESA G. CAPPELLETTI, deceased, by her Successor in Interest, ESTATE OF THERESA G. CAPPELLETTI,	)	
Appellant-Defendant,	)	
vs.	)	No. 20A05-0810-CV-572
GEORGE F. PETRIELLA AND PALMA M. PETRIELLA,	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable James W. Rieckhoff, Judge
Cause No. 20D05-0010-CP-606

June 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

The Estate of Theresa Cappelletti ("Cappelletti")[1] appeals the trial court's judgment granting possession of real estate to George and Palma Petriella ("Petriella"). For our review, Cappelletti raises two issues, which we consolidate and restate as whether the trial court erred when it failed to enforce an alleged settlement agreement between the parties. Petriella raises a single issue on cross-appeal, whether the trial court erred when it failed to award Petriella damages for unpaid rent. Concluding the evidence supports the trial court's judgment on both issues, we affirm the trial court's judgment. However, we remand for the trial court to correct a finding of fact not supported by the evidence.

Facts and Procedural History

Following the death of her husband, Cappelletti had difficulty meeting her financial obligations and was facing a foreclosure action on her home. She sought the assistance of her brother, Petriella. Petriella agreed to save Cappelletti's home from foreclosure by paying off one mortgage and assuming the payments on a second. Petriella also paid the unpaid taxes, unpaid medical bills, and the attorney fees and costs associated with the foreclosure.[2] In return, Cappelletti executed a warranty deed transferring ownership of the real estate to Petriella on October 25, 1989, and Petriella leased the home back to Cappelletti.

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[1] Theresa Capelletti passed away subsequent to the trial of this case and the litigation has continued in the name of her estate.

[2] All together, Petriella paid approximately $94,869.40, consisting of $66,352.60 to pay the first mortgage and unpaid bills and $28,516.80 in installments to pay off the second mortgage.

Cappelletti signed a five-year lease with monthly payments of $475.00. The lease also contained an option to purchase the real estate within five years. In 1991, after Cappelletti had missed three months of payments, Petriella and Cappelletti entered into an amended lease with a six-month term, continuing on a month-to-month basis thereafter. This lease had monthly payments of $500.00, which included the $475.00 rent payment and a $25.00 payment toward the three-month arrearage. On February 9, 1995, Petriella, through his attorney, sent Cappelletti a notice to vacate the premises by April 20, 1995. As of April 30, 1995, Cappelletti had not moved out and she continued to reside in the home when Petriella filed the underlying lawsuit. Cappelletti testified that after the lease was amended, she made all of her payments on time until January or February of 2000 when Petriella refused to accept a rent check. Petriella testified that he received no payments from Cappelletti after November of 1999, but agreed that he refused to accept her tendered rent check.

Over time, disputes arose between Cappelletti and Petriella regarding the real estate. In 1999, Petriella offered to settle the disputes and avoid litigation by executing a quit-claim deed transferring the real estate back to Cappelletti in exchange for Cappelletti executing a general release of all potential claims against Petriella. Around November 4, 1999, Petriella executed a quit-claim deed and gave it to his attorney, J. Richard Ransel. Ransel then notified Cappelletti's attorney, Stephen Bowers, that he had the deed and once Cappelletti executed the release, they could exchange documents and complete the agreement. On November, 22, 1999, Ransel sent a second letter to Bowers inquiring about the release. That

same day, Cappelletti went to Bowers's office with her son[3] and executed a general release in Bowers's office.

At this point, the timeline becomes murky. On November 23, 1999, Bowers sent Cappelletti a letter stating that in the late afternoon of November 22, Ransel had advised him that Petriella had "changed his mind and would not let Mr. Ransel give the deed to [Cappelletti] so that this matter could be closed." Appellant's Appendix at 136. Petriella testified that "soon after" receiving a copy of Ransel's November 22, 1999, letter he fired Ransel and withdrew the offer. Transcript at 68. Petriella also testified that he never knew Cappelletti had signed the general release. Cappelletti's son testified that he phoned Petriella to thank him for agreeing to the settlement "[t]he next day [after Cappelletti signed the release] or the day after that." Tr. at 130. Neither attorney testified at the trial.

On October 6, 2000, Petriella filed a complaint against Cappelletti for possession of the real estate. On November 8, 2000, Cappelletti filed an answer and counter-claim asking the trial court to enforce the settlement agreement and order Petriella to deliver the quit-claim deed. The trial court held a bench trial on July 11, 2002, after which the parties each submitted proposed findings of fact and conclusions of law. The trial court entered its judgment on May 5, 2008, awarding possession of the real estate to Petriella but finding Cappelletti not liable for any damages. Cappelletti filed a motion to correct error on June 4,

[3] Cappelletti and her son both testified that Cappelletti routinely seeks out her son's advice on legal and financial matters. In addition, Cappelletti's son apparently holds a power-of-attorney for Cappelletti. However, the record does not contain the power-of-attorney and is otherwise unclear regarding the extent of the son's authority to act on Cappelletti's behalf.

2008, which the trial court denied after a hearing on August 27, 2008. Cappelletti now appeals.

Discussion and Decision

I. Standard of Review

Where, as here, the trial court enters findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we employ a two-step review.

> [W]e must first determine whether the evidence supports the findings and second, whether the findings support the judgment. The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We neither reweigh the evidence [n]or assess the credibility of witnesses, but consider only the evidence most favorable to the judgment.

Webb v. Webb, 868 N.E.2d 589, 592 (Ind. Ct. App. 2007) (citations omitted). We review questions of law de novo. Bowyer v. Ind. Dep't of Natural Res., 882 N.E.2d 754, 761 (Ind. Ct. App. 2008).

II. Settlement Agreement

With respect to the settlement agreement, the trial court made the following findings of fact and conclusions of law:[4]

> 7. Prior to November 4, 1999, Petriella and Cappelletti engaged in discussions involving a transfer of Riverdale from Petriella to Cappelletti in return for Cappelletti's general release of Petriella;
> 8. By letter dated November 4, 1999, J.R. Ransel, Petriella's lawyer, wrote to S.R. Bowers, Cappelletti's lawyer, that he had in hand a signed deed and proposed that Bowers prepare a general release so that "we can swap documents and conclude this matter"; [sic]

[4] Throughout its written judgment, the trial court refers to the real estate in question as "Riverdale." Appellant's App. at 7.

> 9. By letter dated November 22, 1999, Ransel reminded Bowers that he had not heard from him and that "All we require for delivery of the deed is a general release";
> 10. Prior to November 23, Petriella notified Ransel that he would not complete the proposed transaction;
> 11. On November 22, 1999, Cappelletti signed a general release in favor of Petriella and left it in Bowers's Office;
> 12. Neither Cappelletti nor Bowers tendered the release to Petriella or Ransel;
> 13. By letter dated November 23, 1999, Bowers informed Cappelletti that he had "received word from [Ransel] late yesterday afternoon that Mr. Petriella had once again changed his mind and would not let Mr. Ransel deliver the deed to you";
> 14. Neither party presented evidence tending to show that Bowers had notified Ransel of the execution of the release until after Ransel had conveyed to Bowers Petriella's change of mind;
>
> * * *
>
> A. Because Petriella's offer to convey the real estate contained no explicit expiration date, Cappelletti had a reasonable time within which to accept it;
> B. Cappelletti did not accept Petriella's offer within a reasonable time;
> C. Because Cappelletti did not accept Patriella's offer timely, no enforceable contract between the parties came into existence;

Appellant's App. at 7-8.

A. Findings of Fact

The evidence supports the trial court's findings of fact. The November 4th letter indicates the terms of the agreement; Petriella will deliver the executed quit-claim deed in return for Cappelletti delivering a signed release. Although Cappelletti signed the release on November 22nd, there is no evidence the deed was ever delivered to Petriella before he revoked the offer. Rather, the November 23rd letter to Cappelletti from Bowers indicates Ransel notified Bowers of the revoked offer before he was able to deliver the signed release. The only other possible evidence that Cappelletti's acceptance of the offer was

communicated to Petriella is the phone call from her son. However, Cappelletti's son testified that he did not call Petriella until November 23rd or 24th, after Petriella had already revoked the offer.

B. Conclusions of Law

However, the trial court incorrectly concluded that no enforceable contract existed because Cappelletti failed to accept Petriella's offer within a reasonable time. Unless an offer specifically states a time within which acceptance must be received, the offer must be accepted within a reasonable time. Family Video Movie Club, Inc. v. Home Folks, Inc., 827 N.E.2d 582, 586 (Ind. Ct. App. 2005). How much time is reasonable depends on the facts of each case. Id. However, "an offer to buy or sell real estate might be expected to continue longer than an offer to sell personal property." 1 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 5:7 (4th ed. 2007).

Here, the formation of an agreement between Cappelletti and Petriella required each to execute a document with his or her respective attorney and exchange the documents. In addition, the evidence supports an inference that Petriella knew Cappelletti often consulted with her son on legal matters and her son was frequently out of the country. In light of these circumstances, we are hesitant to say it would be unreasonable for Cappelletti to take eighteen days to execute the general release.

However, whether or not eighteen days was reasonable is not the crux of the issue because the evidence supports an inference that Petriella revoked his offer prior to Cappelletti's acceptance. Offers may be revoked by the offeror at any time prior to

acceptance. Id. at § 5:8. Generally, any statement clearly indicating an offeror's unwillingness to contract according to the terms of the offer sufficiently communicates a revocation of the offer. Id. However, once an offeree has accepted an offer, "it is fundamental that revocation of the offer is no longer possible." Id.

In order to accept the offer, Cappelletti had to execute the release and exchange the release for the quit-claim deed. Although Cappelletti executed the release prior to receiving notice that Petriella had revoked the offer, Bowers was not able to accomplish delivery of the release. The evidence demonstrates that Ransel gave notice of the revocation to Bowers on the afternoon of November 22nd. In addition, Cappelletti's son did not communicate acceptance of the offer until November 23rd or 24th. Therefore, Cappelletti failed to complete her acceptance according to the terms of the offer, and her son failed to communicate her acceptance of the offer prior to Petriella revoking it. As a result, no enforceable contract existed between the parties.

III. Damages

With respect to the issue of damages, the trial court made the following findings of fact and conclusions of law:

> 2. By written contract dated December 1, 1989, [Petriella] leased Riverdale to Cappelletti and granted her an option to purchase Riverdale;
> 3. By written agreement dated August 1, 1991, Cappelletti and Petriella modified the lease to terminate the repurchase option and to limit the term of the lease to the next six months, with subsequent extensions to be on a month-to-month basis;
> 4. After the conclusion of the six-month period, Cappelletti continued to reside at Riverdale;
> 5. By letter dated February 9, 1995, Petriella notified Cappelletti that she must vacate Riverdale on or before April 30, 1995;

> 6. Cappelletti continued to reside in Riverdale after April 30, 1995, but failed to pay all rent which thereafter became due;
>
> * * *
>
> F. Petriella failed to prove the amount of any money damages which Cappelletti caused him to sustain and Cappelletti is therefore not liable for such damages.

Appellant's App. at 7-9.

A. Findings of Fact

The evidence does not support finding number six of the trial court's judgment. Cappelletti testified that after the amendment of the lease agreement on August 1, 1991, she made all payments on time until Petriella refused to accept her check in January or February of 2000. Petriella testified that he received no income on the property after November of 1999. Therefore, the evidence does not support a finding that Cappelletti has not made any rent payments since 1995. Rather, the evidence supports, at best, a finding that Cappelletti has made no rent payments since November, 1999. As a result, we remand this issue to the trial court to enter corrected findings of fact in light of this opinion.

B. Conclusions of Law

Despite the correction noted above, we agree with the trial court's conclusion that Petriella has failed to produce evidence of damages. Cappelletti did not refuse to pay her rent; rather, Petriella refused to accept Cappelletti's tendered rent payments because he "no longer wish[ed] to be her landlord." Tr. at 22. This refusal to accept payments coincided with Petriella's offer to convey the real estate back to Cappelletti by a quit-claim deed, and the evidence shows that Cappelletti intended to accept the offer, even if she ultimately failed

to do so before Petriella revoked it. In addition, Petriella did not present any evidence of other damages owed based on the condition of the property. Therefore, the evidence – and lack of evidence – supports the trial court's conclusion that Petriella failed to prove the amount of damages.

Conclusion

Petriella revoked his offer to exchange a quit-claim deed to the real estate for a general release from Cappelletti prior to Cappelletti accepting the offer by making the exchange. Therefore, we affirm the trial court's judgment that Petriella is entitled to possession of the real estate. However, the evidence does not support the trial court's finding that Cappelletti had made no rent payments since April 30, 1995 and we remand for the trial court to correct its findings in light of this opinion. Nonetheless, the evidence supports the trial court's conclusion that Petriella failed to prove the amount of damages and we affirm the trial court's judgment on that issue.

Affirmed and remanded with instructions.

DARDEN, J., and BAILEY, J. concur.