

**IN THE COURT OF APPEALS OF IOWA**

No. 1-064 / 10-1399  
Filed March 30, 2011

**GENA MARIE FRITZ and the  
ESTATE OF JOHN W. FRITZ,**  
Plaintiffs-Appellants,

**vs.**

**BETTY FRITZ, MARK FRITZ,  
and PATTI FRITZ,**  
Defendants-Appellees.

---

Appeal from the Iowa District Court for Lee County, William L. Dowell,  
Judge.

The plaintiffs appeal from the district court's grant of their petition seeking  
a declaratory judgment. **AFFIRMED.**

Timothy D. Roberts of Anderson, Roberts, Porth & Wallace, P.L.C.,  
Burlington, for appellants.

Thomas T. Skewes of Johnson & Skewes, Fort Madison, for appellee  
Betty Fritz.

Steven J. Havercamp and Eric M. Knoernschild of Stanley, Lande &  
Hunter, Davenport and Muscatine, for appellees Mark and Patti Fritz.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

**VOGEL, P.J.**

This litigation began in June 2007, when Gena Fritz, individually and as the personal representative of the Estate of John W. Fritz, filed a petition seeking a declaratory judgment that she and/or the Estate were the equitable title holders of an eighty acre tract of land referred to as Roseland. Trial was held in April 2008. On May 23, 2008, the district court found that the transfer of Roseland to John Fritz by his parents, Betty and Richard Fritz, was a conditional gift rather than an installment contract. It further found that the eventual delivery of the deed was conditioned on John meeting certain conditions of the five-year contract, including that he make payments on the mortgage, help care for the property, and refrain from drinking alcohol; John did not meet the conditions. Gena appealed and our court found that although we did not dispute the district court's factual findings, the parties had entered into a contract for the transfer of Roseland but Betty had failed to effectuate a valid forfeiture of the contract pursuant to Iowa Code chapter 656 (2007). See *Fritz v. Fritz*, No. 08-1088 (Iowa Ct. App. March 26, 2009). The case was reversed and remanded. *Id.*

On remand, the case was submitted on the original record. On July 27, 2010, the district court entered its ruling. It found that when John entered into the contract with Betty and Richard, John became the equitable title holder and Betty and Richard remained the legal title holders. It further found the terms of the contract included that John make payments on the mortgage, maintain the property in good repair, and comply with the oral agreement to quit drinking alcohol. The court held that John did not comply with the terms of the contract and was therefore in breach of the contract at the time of his death.

Consequently, legal title did not pass to Gena and the Estate. The district court declared that the plaintiffs were equitable title holders with the right of possession of Roseland but the defendants continued to hold legal title to the property. Gena appeals. Our review is for correction of errors at law. Iowa R. App. P. 6.904.<sup>1</sup>

We first address Gena's claim that because Judge Dowell's original ruling was reversed, he should not have ruled on the case on remand. The defendants respond that this issue is not preserved. On February 9, 2010, Judge Dowell issued an order instructing the parties to either file a written authorization or objection to his further involvement in the case. On February 11, 2010, Betty filed an authorization, consenting to Judge Dowell continuing as the presiding judge. Gena did not immediately respond and the proceedings continued—a pretrial conference was held on April 23, 2010, the district court issued an order on May 7, 2010. Gena requested the court reconsider that order on May 7, 2010. On May 19, 2010, Gena then filed a response stating, "Plaintiffs do not consent or authorize Judge William L. Dowell to continue as presiding judge nor do the Plaintiffs believe they have any facts to object to his continued

---

<sup>1</sup> We set forth the standard of review in our prior decision,

This case was tried at law; thus, our review is for correction of errors at law. Iowa R. App. P. [6.904]; see *Harrington v. Univ. of N. Iowa*, 726 N.W.2d 363, 365 (Iowa 2007) ("We review declaratory judgment actions according to the manner [in which] the case was tried in the district court."); *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 712 (Iowa 2005) ("A declaratory judgment action tried at law limits our review to correction of errors at law."). We are bound by the trial court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 6.14(6)(a); *Harrington*, 726 N.W.2d at 365. *Fritz v. Fritz*, No. 08-1088 (Iowa Ct. App. March 26, 2009). On this appeal, Gena states this "is an equity issue and appellate review of facts and law is de novo," but makes no argument as to why a case tried at law should now be considered an equity case. We again find the correct standard of review is for errors at law.

involvement as the presiding judge.” The district court did not rule on this motion, nor did Gena request a ruling. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”). We find this issue is not preserved for appeal.

Next, Gena asserts that the district court’s factual findings regarding the terms of the oral contract were not supported by substantial evidence. In our previous decision we stated, “Betty’s testimony makes clear that the various covenants were obtained from John in return for transferring property to him.” Additionally, we found that we did not dispute the district court’s factual findings, which included that the delivery of the deed was conditioned on John meeting certain conditions of the five-year contract, including that he make payments on the mortgage, help care for the property, and refrain from drinking alcohol. On remand, the district court once again found the oral agreement required John to quit drinking alcohol and driving intoxicated and to help with the farm. Essentially, Gena attacks Betty’s credibility. The district court noted that it considered the factors set forth in Iowa Criminal Jury Instruction 100.7 (Credibility of Witnesses)<sup>2</sup> in evaluating and determining the credibility of the witnesses, and

---

<sup>2</sup> This jury instruction provides,

Decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. Try to reconcile any conflicts in the evidence; but if you cannot, accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness’s testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe.

it attempted to resolve conflicts in evidence by relying on its observations, common sense, and experience. The district court had a superior vantage point to make credibility determinations due to its ability to observe the witnesses. *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). Upon our review of the record, we give deference to the district court's credibility assessments and find there is sufficient evidence to support the district court's findings and affirm.

Finally, Gena states the district court should have granted her motion for further relief, but it appears she is simply attacking the district court's fact findings. She cites no authority in support of this argument. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). We find this argument waived.

**AFFIRMED.**

- 
2. Whether a witness has made inconsistent statements.
  3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
  4. The witness's interest in the trial, their motive, candor, bias and prejudice.

This instruction is substantially similar to Iowa Civil Jury Instruction 100.9 (Credibility of Witnesses).