

IN THE COURT OF APPEALS OF IOWA

No. 6-909 / 05-1969
Filed March 28, 2007

ALEX BATINICH,
Plaintiff-Appellant,

vs.

ARTHUR W. RENANDER, ZARA RENANDER
and RAI, L.L.C.,
Defendants-Appellees.

Appeal from the Iowa District Court for Johnson County, Denver D. Dillard,
Judge.

Plaintiff appeals from the district court order establishing his ownership
interest in a real estate venture. **AFFIRMED.**

David Brown and Alison Smith of Hayek, Hayek, Brown, Moreland &
Hayek, L.L.P., Iowa City, and Gregory McEwen of McEwen Law Firm, Inver
Grove Heights, Minnesota, for appellant.

Eric D. Tindal of Nidey Peterson Erdahl & Tindal, Williamsburg, and Karl J.
Yeager of Meagher & Greer, P.L.L.P., Minneapolis, Minnesota, for appellees.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

PER CURIAM

Plaintiff-appellant, Alex Batinich, filed this declaratory judgment action seeking to establish his ownership interest in a real estate venture known as RAI, L.L.C. He contends (1) he has shown that he should have an eighty-three percent interest in the venture, and the district court erred in establishing it at only thirty-four percent, (2) the defendant-appellee, Arthur Renander, misled him concerning the nature of the investment, and (3) Renander made fraudulent and material misrepresentations. We affirm.

Batinich contends Renander solicited money from him during a three-year period between 2001 and 2003 to invest in the venture. Batinich says he gave Renander some \$330,000, but he was misled as to the nature and the structure of the venture and his investment in it. Batinich further contends Renander represented that he and an outside investor would be infusing substantial cash into the investment, which did not transpire.

Batinich subsequently brought this declaratory judgment action contending that he should have a larger share of the investment than Renander was willing to give him. The case was tried to the district court. The court found there was a substantial disagreement between Batinich and Renander concerning representations made by Renander; however, ultimately an agreement was struck and reduced to a written memorandum of agreement. The court found the memorandum represented the agreement made between Batinich and Renander and it accurately represented the agreement for which Batinich bargained. The court further found that Batinich had failed to meet his burden to show the memorandum should be reformed or to show the elements necessary to prove

misrepresentation. Noting that “it is easy to see why Batinich was misled and believed Renander had more of an actual monetary investment in the project than he did,” the court went on to conclude the evidence did not support a finding that Renander gave false information to Batinich. Rather, the court found Batinich got the percentage of the investment he bargained for, and the admission of Renander supported a finding that Batinich should have a thirty-four percent interest in RAI, L.L.C. The district court then declared this percentage as Batinich’s interest in the venture.

We review declaratory judgment actions according to the manner in which the case was tried in the district court. *Smith v. Bertram*, 603 N.W.2d 568, 570 (Iowa 1999). This action was tried in equity, and the parties agree that our review is de novo. See Iowa R. App. P. 6.4. While we are not bound by the trial court’s findings of fact, we give weight to those findings, especially with respect to the credibility of witnesses. *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000).

Giving the required weight to the district court’s credibility findings, we determine that Batinich has failed to show by a preponderance of the evidence that Renander knowingly made a material false representation intending to deceive Batinich or that Batinich acted on such a representation and was justified in doing so. See *Midwest Home Distrib, Inc., v. Domoco Indus. Ltd.*, 585 N.W.2d 735, 738 (Iowa 1998) (setting forth the necessary elements for a finding of misrepresentation based upon fraud); see also *First Nat’l Bank v. Brown*, 181 N.W.2d 178, 181 (Iowa 1970) (noting that in equity actions fraud may be “constructed from circumstances” and neither scienter nor damages must be

shown). We also conclude that Batinich failed to show he is entitled to a larger percentage of RAI, L.L.C. than a thirty-four percent interest. See *Kufer v. Carson*, 230 N.W.2d 500, 503 (Iowa 1976) (setting forth requirements for reformation of a written agreement).

AFFIRMED.