IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

COX RIVER RANCH, LLC, a New Mexico Limited Liability Company,

Plaintiff-Appellee,

v.

No. A-1-CA-42429

SEAN PEREZ,

Defendant-Appellant,

and

ZIA AGRICULTURAL CONSULTING, LLC, a New Mexico Limited Liability Company, and NARCISO PEREZ,

Defendants.

Court of Appeals of New Mexico
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Mark Reynolds

APPEAL FROM THE DISTRICT COURT OF QUAY COUNTY
Drew D. Tatum, District Court Judge

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MEMORANDUM OPINION

WRAY, Judge.

{1} After a bench trial, the district court denied the motion to compel arbitration filed by Defendants Zia Agricultural Consulting, LLC, Sean Perez (Perez), and Narciso Perez (collectively, Defendants), based on the district courts' determination that the document containing the arbitration provision was obtained by fraud in the factum and therefore void. Perez appeals pursuant to the Uniform Arbitration Act, NMSA 1978, §§ 44-7A-1 to -32 (2001), and argues that the district court did not make findings that establish fraud in the factum as a matter of law and that the evidence did not show justifiable reliance, intentional misrepresentation, or the requisite deceptive conduct. We affirm.

BACKGROUND

{2} The parties do not contest the district court's findings of fact, and we therefore rely on those findings, as well as the evidence presented, to set forth the factual background. Plaintiff Cox River Ranch, LLC and Defendant Zia Agricultural Consulting, LLC (Zia), are both family businesses. Plaintiff's ranch business is conducted by Gene Cox Sr. (Cox Sr.) together with his son, Gene Cox Jr. (Cox Jr.), and two daughters, Tonya Cox Cone and Deborah Cox (collectively, the Cox children). Perez is the sole member of Zia, and his father, Defendant Narciso Perez, is a consultant for Zia. The parties began doing business together indirectly in 2015,

but in 2016, attorneys for the entities drafted four leases so that Zia could rent some of Plaintiff's properties directly (the original leases). The parties only signed one lease and left the remaining three unsigned, but Zia and Plaintiff conducted business according to the terms of all of the original leases.

{3} In 2021, Plaintiff filed suit against Defendants for an outstanding balance of almost two million dollars related to cattle that Plaintiff alleged Zia had purchased (the cattle claim). The parties agreed to toll the statute of limitations on the cattle claim and dismiss the lawsuit in order to try to settle the dispute, but in 2023, Plaintiff filed the complaint at issue in the present case to recover on the cattle claim.

{4} In response, Defendants alleged that Plaintiff's complaint was barred by a document titled, the "Grazing Lease," which Defendants claimed contained a release of the cattle claim and an arbitration agreement. Defendants moved to compel arbitration under the Grazing Lease, and in response, Plaintiff argued that the Grazing Lease was fraudulent and therefore not a valid, enforceable contract. The parties stipulated that a bench trial was necessary to determine the validity of the Grazing Lease and whether to compel arbitration.

{5} Even though Cox Sr. signed the Grazing Lease, he did not testify. Before the bench trial, Plaintiff asserted that Cox. Sr. was incapacitated and did not make him available for a deposition. As a result, the parties stipulated that he would not testify, although the district court made no findings about Cox Sr.'s competency.

{6} At the bench trial, Plaintiff presented evidence that (1) neither the Cox children nor Plaintiff's advisors were aware of the Grazing Lease's existence until after the second complaint was filed; (2) neither the Cox children nor the advisors believed that Cox Sr. would have knowingly agreed to the terms contained in the Grazing Lease; and (3) neither the Cox children nor the advisors would themselves have agreed to the terms or advised Cox Sr. to agree to the terms. Perez and Narciso Perez each testified about their knowledge of the cattle claim, the terms of the Grazing Lease, and their recollection of the formation and signing of the Grazing Lease. Multiple witnesses testified that Cox Sr. and Narciso Perez had a very close relationship and talked almost daily. Despite this relationship, Cox Sr. was deeply concerned about getting paid for the cattle claim.

{7} The district court found that all of "[t]he circumstances surrounding the alleged signing of the disputed Grazing Lease [we]re relevant," determined that the lease "was obtained by fraud in the factum," and concluded that the Grazing Lease was void making "all provisions therein, including the arbitration provision, . . . unenforceable." The district court did not decide "[t]he merits of the parties' substantive claims and counterclaims" and only denied Defendants' motion to compel arbitration. Perez appeals.

DISCUSSION

{8} Perez argues that (1) "the district court misapplied the law because the established facts fail to satisfy the elements of fraud in the factum"; and (2) "the district court's conclusion also fails under substantial evidence review."[1] For the first argument, Perez mounts a legal challenge based on the lack of specific findings that directly correlate to particular legal elements of fraud. The district court, however, found that Plaintiff established by clear and convincing evidence that the Grazing Lease was obtained by fraud in the factum, "[b]ased on the parties' histories, the surrounding circumstances, and the evidence presented at trial." We construe that finding liberally with respect to the elements of fraud in the factum. *See Robey v. Parnell*, 2017-NMCA-038, ¶ 10, 392 P.3d 642. To do this, we evaluate the evidence in the light most favorable to the decision, to determine whether the district court's findings were supported. *See Golden Cone Concepts, Inc. v. Villa Linda Mall, Ltd*., 1991-NMSC-097, ¶ 15, 113 N.M. 9, 820 P.2d 1323 ("Though each element of fraud must be shown by clear and convincing evidence, if disputed, a reviewing court will resolve all conflicting evidence in favor of the prevailing party."). In this context, we therefore consider together whether the findings support the legal elements and whether the evidence was sufficient.

[1]Perez also argues that he may compel arbitration even though he did not sign the Grazing Lease. Because we affirm the district court's denial of Defendants' motion to compel arbitration, we need not address this separate argument.

{9} But first, a threshold issue. Plaintiff contends that this Court does not have jurisdiction. "An appeal may be taken from . . . an order denying a motion to compel arbitration." Section 44-7A-29(a)(1). In the district court, Plaintiff argued that because the Grazing Lease, which contained the arbitration clause, was obtained by fraud, the entire agreement, including the arbitration clause, was invalid. *See Flemma v. Halliburton Energy Servs., Inc.*, 2013-NMSC-022, ¶ 28, 303 P.3d 814 ("The existence of a valid agreement to arbitrate is required to compel arbitration."). Despite this attack on the validity of the agreement containing the arbitration clause, Plaintiff argues on appeal that "[h]istorically, all civil cases regarding fraud had to meet finality requirements before this Court had jurisdiction" and that this case is about the validity of the Grazing Lease, not the arbitration clause in particular. We disagree. Plaintiff cites only a fraud case that did not involve the denial of a motion to compel arbitration. *See B.L. Goldberg & Assocs., Inc. v. Uptown, Inc.*, 1985-NMSC-084, ¶ 2, 103 N.M. 277, 705 P.2d 683. Because the district court denied Defendants' motion to compel arbitration, under Section 44-7A-29(a)(1), we have jurisdiction to review that decision. *See Martinez v. Melloy Bros., Inc.*, 2026-NMCA-018, ¶ 20, 584 P.3d 1147 (observing that "an order denying a motion to compel arbitration is a final order").

{10} We review the denial of a motion to compel arbitration de novo. *Martinez v. Galles Chevrolet Co.*, 2024-NMCA-051, ¶ 13, 551 P.3d 862. We agree with Perez

that generally, we review a district court's factual findings for substantial evidence and the application of law to the district court's findings of facts de novo. *See McDonald v. Zimmer Inc.*, 2020-NMCA-020, ¶ 23, 461 P.3d 930 ("We review de novo the district court's application of law to the facts . . . . We review a district court's factual findings as we would the verdict of a jury—for substantial evidence."). We note, however, that Perez does not challenge the evidence supporting the district court's individual fact findings. *See* Rule 12-318(A)(4) NMRA (requiring a "specific attack on any finding" that a party contends is not supported by the evidence). Instead, Perez contests whether the evidence as a whole supported the required elements of fraud.

{11} Generally, "fraud in the factum exists where an instrument in writing is drawn up and signed by one party under a false belief as to its contents, due to the fraud of the adversary party." *Curtis v. Curtis*, 1952-NMSC-082, ¶ 18, 56 N.M. 695, 248 P.2d 683 (internal quotation marks and citation omitted). To demonstrate "fraud" by Defendants, Plaintiff had to show "a false representation, knowingly or recklessly made, with the intent to deceive, on which [they] acted to [their] detriment." *See Rodriguez v. Horton*, 1980-NMCA-098, ¶ 5, 95 N.M. 356, 622 P.2d 261. We conclude that the evidence supported the district court's conclusion that Cox Sr. signed the Grazing Lease under a mistaken belief about the agreement based on Defendants' fraud. *See McLean v. Paddock*, 1967-NMSC-165, ¶ 10, 78 N.M. 234,

430 P.2d 392 ("Fraud in the execution of the instrument exists where the instrument was signed under a mistaken belief as to its contents, due to fraud."), *overruled on other grounds by Duke City Lumber Co. v. Terrel*, 1975-NMSC-041, ¶ 7, 88 N.M. 299, 540 P.2d 229.

{12} As we have set forth, the district court concluded that "[b]ased on the parties' history, the surrounding circumstances, and the evidence presented at trial, Mr. Cox, Sr. would not have knowingly, willingly, or intentionally signed the disputed Grazing Lease. This is further supported by the markedly different terms of the disputed Grazing Lease from other leases between the parties." We consider the evidence to support this finding in two parts—evidence that Cox Sr. would not have knowingly signed the lease and evidence that Cox. Sr. signed the lease due to fraud.

{13} The evidence showed that the terms of the Grazing Lease differed significantly from the original leases and from Cox Sr.'s behavior. The original leases were drafted by Defendants' lawyers and sent back and forth for review with Plaintiff's lawyer. Plaintiff's lawyer was not, however, aware of the Grazing Lease and had he seen it, he would not have advised Cox Sr. to sign. The original leases contemplated that Plaintiff would reimburse Defendants for improvements made by Defendants to the Plaintiff's land only if Cox Sr. sold the land, while the Grazing Lease permitted Defendants to subtract improvement amounts from the monthly rent (improvement offsets). Multiple witnesses testified that Cox Sr. had never

reimbursed lessees for improvements. The Grazing Lease charges a lower rent per animal head than the original leases, despite testimony that Cox Sr. was frugal and set in his ways. Unlike the original leases, the Grazing Lease contains an arbitration provision. Importantly, the Grazing Lease contained a mutual release of claims, which included "any alleged agreement to purchase cattle"—the cattle claim. Multiple witnesses testified that Cox Sr. had been—for years—intent on receiving payment for the cattle claim. All of this evidence supports a conclusion that Cox Sr. would not knowingly have signed the Grazing Lease.

{14} Perez argues that these findings are insufficient to establish that Cox Sr. signed the Grazing Lease due to fraud. *See McLean*, 1967-NMSC-165, ¶ 10. Perez contends that the findings of fact are deficient in three ways with respect to fraud. First, Perez argues that because the Grazing Lease was signed while the tolling agreement was in effect and litigation was threatened, Cox Sr. could not "justifiably rely on any representations by Defendants." *See Rodriguez*, 1980-NMCA-098, ¶ 5 (requiring that the defrauded party show that they relied to their detriment on a false representation). Second, Perez maintains that no finding establishes a "fraudulent misrepresentation about the document's contents." *See id.* Third, Perez asserts that because the district court did not adopt Plaintiff's requested finding regarding trickery, the district court made a "binding determination against fraud" and

deceptive conduct by Defendants. *See id.* ¶ 5 (requiring an "intent to deceive"). We address each of the asserted deficiencies in turn.

{15} The evidence showed that based on the parties' ongoing relationship, Cox Sr. signed the Grazing Lease in reliance on Narciso Perez's continued assurances of payment. All of the Cox children testified that Cox Sr. trusted Narciso. The evidence demonstrated that Cox Sr. wanted the money that he believed was owed but also wanted to resolve things with Defendants, to continue receiving lease payments, and to avoid paying improvement offsets. The Cox children and Plaintiff's advisors each testified that in the years before the initial lawsuit, they had urged Cox Sr. to take legal action but he repeatedly refused because he was adamant that Defendants would pay the alleged debt, based on Narciso Perez's continued promises to pay.

{16} Perez argues that the tolling agreement preserved claims that could be litigated and therefore Cox Sr. could not reasonably rely on Narciso Perez's representations. For support, Perez cites *Garcia v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*, 1988-NMSC-014, 106 N.M. 757, 750 P.2d 118. In that case, the plaintiff brought suit against the defendant's attorneys for negligent misrepresentation because the lawyers had raised an argument on appeal that they had explicitly abandoned during litigation. *Id.* ¶¶ 2, 4-6. In this context, the *Garcia* court observed that "[t]he very nature of the adversary process precludes justifiable reliance by an opposing party." *Id.* ¶ 17. Perez argues that the same is true in the present case—the ongoing threat

of litigation posed by the tolling agreement precluded any reliance by Cox Sr. on Narciso Perez's statements. The *Garcia* Court, however, concluded that a litigant cannot justifiably rely on their adversary's attorney because that "attorney owes no legal duty to [their] client's adversary when acting on behalf of [their] client." *Id.* The present case involves communications between individuals who had a longstanding relationship. This Court has explained that "negligent reliance may be justified when there is a relation of trust and confidence between the parties or the defendant has made successful efforts to win the confidence of the plaintiff and then takes advantage of it to deceive [them]." *Jones v. Auge*, 2015-NMCA-016, ¶ 32, 344 P.3d 989 (internal quotation marks and citation omitted). We are therefore unpersuaded that the tolling agreement precluded Cox Sr. from justifiably relying on Narciso Perez's assurances at the time the Grazing Lease was signed.

{17} Nevertheless, Perez argues that Cox Sr. had a duty to read the Grazing Lease and understand its terms. In these circumstances, we disagree that the duty to read the contract resolves the matter. "[W]here a party acts in good faith and in accordance with reasonable standards of fair dealing, failure [to read] does not automatically preclude a finding of justifiable reliance." *Id.* (alteration, internal quotation marks, and citations omitted). Justifiable reliance is a fact-specific inquiry, that "includes consideration of the conduct of both parties." *Id.* ¶ 33 (internal quotation marks and citation omitted). And importantly for the present case, the duty

to read impacts a party's justifiable reliance "absent fraud, misrepresentation or some other wrongful conduct." *Murken v. Deutsche Morgan Grenfell, Inc.*, 2006-NMCA-080, ¶ 27, 140 N.M. 68, 139 P.3d 864. Fraud is exactly what the district court determined that Plaintiff proved. The district court found that Cox Sr. signed the Grazing Lease, which is not inconsistent with Cox Sr. having justifiably relied on Narciso Perez's assurances. Narciso Perez testified that he told Cox Sr. that if the cattle claim was waived, Defendants would waive the claims for improvement offsets. The fact-finder could reasonably infer that while Cox Sr. gave up his claim—the threat of the lawsuit—in reliance on Narciso Perez's prior assurances about payment and purported waiver of improvement offsets, the other evidence showed that he did not give up his expectation that he would also be paid.

{18} These assurances, contrary to Perez's argument, could reasonably be construed as misrepresentations. Plaintiff's witnesses testified that Cox Sr. believed that Narciso Perez would pay the cattle claim debt. Even after the Grazing Lease was signed, Tonya Cox reached out to Narciso Perez on behalf of her father to once again ask about whether the disputed cattle claim would be paid, but rather than let Tonya know the claim had been released, Narciso Perez said, "Yes ma'am." When Plaintiff's banker met with Cox Sr. and Cox Jr. in July 2022, they discussed that the disputed cattle claim debt was still owed and the Grazing Lease was not brought to the banker's attention. But Narciso Perez testified that at the same time, he believed

there was a dispute about the price of the cattle and existence of the cattle claim and that Cox Sr. knew Narciso's thoughts about the payment. Based on this evidence, the fact-finder could conclude that Defendants misrepresented to Plaintiff that the disputed cattle claim debt would be paid.

{19} Perez contends that the evidence showed no more than that Cox Sr. had a mistaken understanding of the Grazing Lease and that the district court rejected Plaintiff's position that Defendants engaged in trickery. But a mistaken or false belief—if procured by fraud—is a feature of fraud in the factum. *See McLean*, 1967-NMSC-165, ¶ 10 ("Fraud in the execution of the instrument exists where the instrument was signed under a mistaken belief as to its contents, due to fraud."). And although the district court did not adopt Plaintiff's proposed finding that Defendants engaged in trickery, trickery is but one way to establish fraud. Rather than adopting Plaintiff's proposed finding, the district court quoted *Curtis*, which required that the contract was signed "due to the fraud of the adversary party," *see* 1952-NMSC-082, ¶ 18 (internal quotation marks and citation omitted), and found that the parties' history and the circumstances of the agreement showed that the "Grazing Lease was obtained by fraud in the factum." As we have explained, the evidence established that Cox Sr. wanted to be paid. Narciso Perez's testimony demonstrated that he knew that he was not going to pay the disputed cattle claim debt at the time the Grazing Lease was signed, despite other testimony that he had repeatedly indicated he would

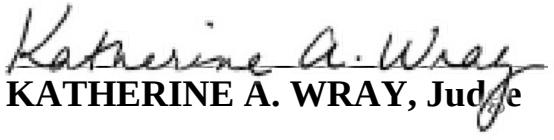
pay—even after the Grazing Lease was signed. In light of the findings that the district court did make and the evidence of fraud, the rejection of Plaintiff's proposed finding about trickery did not amount to a rejection that Defendants engaged in fraud. *Cf. Padilla v. Lawrence*, 1984-NMCA-064, ¶ 29, 101 N.M. 556, 685 P.2d 964 ("The failure by the trial court to find a *material* fact must be regarded as a finding against the party having the burden of establishing such a fact." (emphasis added)).

{20} Viewed in the light most favorable to the prevailing party, the district court's findings were sufficient to support each of the elements of fraud in the factum and those findings were supported by clear and convincing evidence. *See Rodriguez*, 1980-NMCA-098, ¶ 5 ("Fraud must be established by clear and convincing evidence, but it is for the fact[-]finder, not the appellate court, to weigh the evidence." (citation omitted)).

CONCLUSION

{21} We affirm.

{22} **IT IS SO ORDERED.**



KATHERINE A. WRAY, Judge

WE CONCUR:

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SHAMMARA H. HENDERSON, Judge

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GERALD E. BACA, Judge