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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1684**

Richard Adams,
Respondent,

vs.

Thomas M. Manion, et al.,
Appellants.

**Filed June 26, 2017
Affirmed in part and reversed in part
Hooten, Judge**

Fillmore County District Court
File No. 23-CV-14-857

Paul A. Sortland, Sortland Law Office, PLLC, Minneapolis, Minnesota (for respondent)

Peter C. Sandberg, Sandberg Law Office, Rochester, Minnesota (for appellants)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

This is an appeal following a jury trial of legal malpractice claims arising out of appellants attorney and law firm's advice to respondent regarding his mother's estate. Appellants challenge the district court's grant of additur regarding damages arising from respondent's gift of money to his nieces and nephews based on the mistaken belief that he

inherited his mother's home. In his related appeal, respondent asserts that the district court erred by granting judgment as a matter of law (JMOL) in relation to the jury's verdict awarding damages for the loss of the home. We affirm the district court's grant of judgment as a matter of law, but reverse its grant of additur.

FACTS

In 1994, Mildred Adams (decedent) conveyed her fee interest in her Lanesboro home to her three sons, Rodney Norby, Robert Norby, and respondent Richard Adams (Adams). Decedent reserved for herself a life estate. The warranty deed effectuating the transfer was prepared and notarized by Joseph Herrick, who was a partner of appellant Thomas M. Manion in the law office of Herrick & Manion.

In 2002, Adams conveyed his one-third remainder interest in the Lanesboro home to his brothers Rodney and Robert. The quitclaim deed effectuating this transfer was prepared by Manion.

Rodney and Robert Norby passed away in 2003 and 2006, respectively. Herrick passed away in 2007.

In 2008, decedent hired Manion to update decedent's will to reflect her intent that Adams have the Lanesboro home and that decedent's grandchildren share in the remains of her estate. In response to her request, Manion prepared a quitclaim deed that purported to transfer fee ownership of the home from decedent to Adams. Neither decedent nor Adams, who was present at the meeting, told Manion about the 1994 transfer divesting decedent of her ownership interest in the home, or mentioned that Adams had signed a quitclaim deed conveying his one-third interest in the home to his brothers in 2002.

Manion did not consult his office files or research the state of decedent's title at the county recorder's office before preparing the quitclaim deed.

Decedent passed away in 2009. Shortly thereafter, Adams hired Manion to handle decedent's estate in accordance with her 2008 will. Manion prepared an affidavit of identity and survivorship for Adams, which extinguished decedent's life estate, and identified Adams as being the sole remainderman in the home. Manion also assisted Adams by communicating with an attorney representing decedent's grandchildren relative to their possible interest in decedent's estate.

Decedent's estate consisted of personal property of marginal value. Decedent also held accounts totaling approximately \$110,000 in joint ownership with Adams. Against Manion's advice, and with the understanding that he now owned the home, Adams distributed \$80,000 from the joint accounts in equal payments to decedent's eight grandchildren.

Adams subsequently borrowed \$100,000, secured by a mortgage on the home.¹ Adams used approximately \$40,000 of those funds to make improvements on the home and the remaining funds for personal expenses. In 2013, Adams learned that, because the decedent had only a life estate in the home at the time of the 2008 quitclaim deed, he had no ownership interest in the home.

In 2014, Adams sued Manion and the Law Office of Thomas Manion for negligence, claiming damages in excess of \$50,000 due to Manion's legal malpractice, specifically his

¹ There is no evidence in the record to indicate that the lender performed a title search before extending Adams the mortgage loan.

negligent misrepresentation that Adams was the owner of the home after decedent's death. A jury found both Manion and Adams negligent and awarded Adams \$55,000 in damages for loss of the home, as well as \$20,000 in damages for amounts from the mortgage that Adams used for home improvement expenses. The jury awarded no damages for the distributions to decedent's grandchildren, or for amounts from the mortgage that Adams used for personal expenses. Due to Adams' negligence, his total recovery was reduced by 25% from \$75,000 to \$56,250.

Both parties made post-trial motions, Manion for a JMOL or for a new trial, and respondent for, inter alia, additur. The district court granted Manion's motion for JMOL, determining that Manion could not have been responsible for any damages related to Adams' loss of the home. The district court also granted Adams' motion for additur, determining that Adams suffered damages in the amount of \$80,000 for the distributions to decedent's grandchildren. Both parties now appeal.²

D E C I S I O N

To succeed on a claim of legal malpractice, a plaintiff must show “(1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff's damages; [and] (4) that but for defendant's conduct, the plaintiff would have been successful in the prosecution or defense of the action.” *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d

² Neither party challenged at the district court or on appeal the \$20,000 in damages found by the jury as the amount utilized by Adams from the mortgage loan for home improvement expenses.

811, 816 (Minn. 2006) (quotation omitted). When the legal malpractice claim arises out of a transactional matter, “the fourth element of the cause of action is modified to require a plaintiff to show that, but for defendant’s conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained.” *Id.* at 819.

I.

Adams appeals from the district court’s order granting Manion’s motion for JMOL with regard to damages stemming from his alleged loss of the home, arguing that the evidence supported the jury’s verdict. We disagree.

JMOL is appropriate where “a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” Minn. R. Civ. P. 50.01. Appellate courts review a district court’s grant of a motion for JMOL de novo, applying the same standard as used by the district court. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009).

On the special verdict form, the jury was asked to separate damages into four categories: those due to the loss of the home, those due to gifts made to decedent’s grandchildren, those attributable to the loan proceeds Adams used for home improvement, and those attributable to loan proceeds Adams used for his own personal expenses. The jury found that Adams suffered \$55,000 in damages due to “loss of house.”

The facts pertinent to Adams’ alleged loss of the home are not disputed. Decedent transferred her fee interest in the home to her three sons in equal parts in 1994, reserving a life estate for herself. In 2002, Adams signed a quitclaim deed transferring his entire one-third interest in the home to his brothers. Therefore, when decedent purported to transfer

her fee interest in the home to Adams in 2008, she had no fee interest to transfer as she only had a life estate in the home at that time.

Given these undisputed facts, upon decedent's death, Adams had no ownership interest in the home prior to Manion's negligence, and, likewise, had no interest in the home after Manion's negligence. "Loss" is defined as "the disappearance or diminution of value." *Black's Law Dictionary* 1087 (10th ed. 2014). Because there was no disappearance or diminution of value in Adams' ownership interest in the home that was caused by Manion's negligence, the district court correctly ruled that Manion was entitled to JMOL relative to the "loss of house" damages.

However, Adams argues on appeal that the district court erred by adopting too narrow a definition of "loss of home" and that this phrase should include "consequential damages" incurred by Adams after he was informed he owned the home, including "incurring bank loans, making gifts to [decedent's grandchildren], making improvements to the home, and other matters." Adams asserts that "[n]obody ever suggested that [Adams] 'lost' his house as a result of Manion's negligence." An examination of the record reveals that this assertion is without merit.

In his closing argument, Adams' attorney stated that Adams "should have received \$110,000, or a house worth \$110,000 at the time, had Mr. Manion's representations to him been accurate." In his post-trial motion, Adams argued that "it is clear that [Adams] and [decedent] intended for [Adams] to have the house. But-for [Manion's] negligent conduct, this would have been accomplished." Adams concluded that Manion's "negligence cost

[Adams] not only the house but substantially more.” These statements show that Adams presented a theory of the case that Adams lost the home because of Manion’s negligence.

Further, if the jury had wanted to award damages for the “consequential damages” of Manion’s negligence, as Adams argues, there was an adequate opportunity to do so. Bank loans, gifts, and improvements were all separate lines on the special verdict form. Adams’ argument that the jury meant the “loss of home” damages calculation to be an aggregation of all the other lines on the special verdict form is not supported by any evidence in the record, his closing arguments to the jury, or the special verdict form.

Therefore, we affirm the district court’s grant of JMOL to Manion with regard to any damages sustained by Adams for loss of the home.

II.

Manion argues that the district court erred by granting additur for damages stemming from Adams’ distributions to decedent’s grandchildren.³ Based upon this record, we agree that that the district court erred by granting additur.

Generally, a motion for a new trial under Minn. R. Civ. P. 59.01(e) will only be granted if the district court determines that the verdict was “so inadequate or excessive that it could only have been rendered on account of passion or prejudice.” *Rush v. Jostock*, 710 N.W.2d 570, 577 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. May 24, 2006). Once the district court determines that the damages are inadequate, it must either conditionally grant additur, giving the non-moving party the choice between accepting

³ We note that respondent did not make an accompanying motion for judgment as a matter of law under Minn. R. Civ. P. 50.02.

additur or a new trial, or grant a new trial outright on the issue of damages. See *Runia v. Marguth Agency, Inc.*, 437 N.W.2d 45, 49–50 (Minn. 1989) (conditional additur); *Hurr v. Johnston*, 242 Minn. 329, 336, 65 N.W.2d 193, 197 (1954) (district court may grant new trial on damages).⁴ Unconditional additur is not authorized. *Runia*, 437 N.W.2d at 50.

A district court “cannot grant additur unless grounds for a new trial on damages exist, since the court is, in effect, conditionally granting a new trial.” *Pulkrabek v. Johnson*, 418 N.W.2d 514, 516 (Minn. App. 1988), *review denied* (Minn. May 4, 1988). The district court “has the broadest possible discretion to determine whether a new trial should be granted based on an inadequate award of damages” and that decision “will not be reversed absent a clear abuse of that discretion and the existence of the most unusual circumstances.” *Rush*, 710 N.W.2d at 577 (quotation omitted). “Such discretion, however, has limits.” *Pulkrabek*, 418 N.W.2d at 516. This is because “[t]he question of damages is essentially an issue of fact for the jury to decide” and that decision “is entitled to wide deference as long as it is within the range of reasonable awards.” *Id.*

A district court may not “set aside a jury verdict whenever it is displeased or dissatisfied with the result of the jury’s deliberations.” *Koenig v. Ludowese*, 308 Minn. 380, 383, 243 N.W.2d 29, 30 (1976). This is especially true in cases where special verdict questions are presented to the jury:

⁴ The district court may also grant a new trial on all matters if it determines that the verdict was not the result of passion or prejudice, but instead the result of the jury improperly compromising between liability and damages. *Hurr*, 242 Minn. at 336–37, 65 N.W.2d at 197–98. Here, the district court made no findings of fact or conclusions of law to suggest that the jury improperly compromised between liability and damages.

[A]nswers to special verdict questions will not be set aside unless they are perverse and palpably contrary to the evidence or where the evidence is so clear to leave no room for differences among reasonable people. The evidence must be viewed in a light most favorable to the jury verdict. If the jury's special verdict finding can be reconciled *on any theory*, the verdict will not be disturbed.

Hanks v. Hubbard Broad., Inc., 493 N.W.2d 302, 309 (Minn. App. 1992) (emphasis added) (citations omitted), *review denied* (Minn. Feb. 12, 1993).

The special verdict form submitted to the jury contained the following two questions: “Was . . . Manion negligent in his representations to [Adams]?” and “Was [Adams] damaged as a result of his reliance on the representations of . . . Manion?” The jury answered “Yes” to both questions. The jury was also asked “What sum of money will fairly and adequately compensate [Adams] for *those damages caused ‘but/for’* . . . Manion’s negligence?” (emphasis added). On the line to indicate damages “due to gifts,” the jury entered \$0.

At trial, it was undisputed that Adams distributed \$80,000 to the decedent’s grandchildren out of the joint accounts that he shared with decedent, even though he knew that he was under no legal obligation to do so. Adams testified that he made the distributions because he knew decedent “wanted the grandkids to have something” and he thought he owned decedent’s home at the time that he made the distributions. Manion testified that when Adams informed him that he was planning to make distributions to decedent’s grandchildren from the joint accounts, Manion advised him, “Don’t do it.” There is also evidence of contemporaneous communications between Manion and the

attorney representing decedent's grandchildren, indicating that Manion had advised Adams "that it was a mistake on his part to distribute what passed to him by joint ownership."

Viewing this evidence in the light most favorable to the jury verdict, and conscious of our duty to attempt to reconcile the jury's answers on the special verdict form on any theory supported by the evidence, we conclude that the jury determined Manion's negligent representation of Adams was not the "but/for" cause of any damages incurred by respondent's decision to distribute funds to decedent's grandchildren. We cannot say that such an interpretation is perverse or palpably contrary to the evidence.

Because the jury permissibly found that Manion's negligence was not the "but/for" cause of any damages incurred as a result of Adams' distributions to the grandchildren, the district court abused its discretion by substituting its own judgment on this causation question by granting Adams' motion for additur. We therefore reverse the district court's grant of additur.

Affirmed in part and reversed in part.