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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0860**

Olimpia Onofre Cedillo, et al.,
Respondents,

vs.

Herbert Azubuike Igbanugo, et al.,
Appellants.

**Filed May 20, 2019
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-16-7603

Michael Gavigan, Matthew Lawlyes, Wilson Law Group, Minneapolis, Minnesota (for respondents)

Herbert A. Igbanugo, Jason A. Nielson, Igbanugo Partners Int'l Law Firm, PLLC, Minneapolis, Minnesota (for appellants)

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

UNPUBLISHED OPINION

HOOTEN, Judge

Respondents brought claims against appellants for malpractice, consumer fraud, and breach of contract arising out of appellants' legal representation of them in immigration matters and won monetary judgments at trial. Appellants present a number of arguments

on appeal relating to their motions for a new trial and judgment as a matter of law (JMOL), and respondents cross-appeal. We affirm.

FACTS

Appellants Herbert Igbanugo and Igbanugo Partners International Law Firm represented respondents Olimpia Onofre Cedillo, Maria Delgado, and Alejandra Catano Galvan individually in immigration matters. Respondents were all born in Mexico, and they each have daughters who are United States citizens. Respondents claimed that with the assistance of their daughters, who served as interpreters, they hired appellants to help them with their ultimate goal of obtaining green cards through their daughters' status as citizens. As part of that process, respondents signed contracts with appellants to submit I-130 and I-601A forms in order to obtain provisional unlawful presence waivers. Using the I-601A form, a person is able to obtain a provisional waiver if he or she has a qualifying relative who is a United States citizen. It was respondents' understanding, based upon their conversations with appellants, that they would be able to obtain these waivers because their daughters are United States citizens.

However, after paying for appellants' services, respondents later learned that the only qualifying relatives on the I-601A form are spouses and parents—not children—and that the form itself, in a section titled "Information About Your Qualifying Relative," gives only four options for qualifying relatives: U.S. Citizen Spouse, U.S. Citizen Parent, LPR Spouse, and LPR Parent (LPR meaning lawful permanent resident). None of the respondents had qualifying relatives under the I-601A form.

Although appellants eventually informed respondents that they could not use the I-601A waiver, they did not refund respondents the money they had paid. Respondents testified that appellants had given them a great deal of hope about the potential to fix their residency status, but when they found out that appellants could not help them, they lost all hope, felt “destroyed,” lived with the day-to-day fear of being found by immigration, and worried about being separated from family.

Respondents sued appellants for, inter alia, legal malpractice, breach of contract, and violation of the Minnesota Consumer Fraud Act. Respondents claimed that the fact that only spouses and parents counted as qualifying relatives on the I-601A form was considered to be generally known in the legal community at the time that respondents entered into their contracts with appellants and that appellants had misrepresented that their daughters would be qualifying relatives under the I-601A form.

A jury trial was held in late 2017. The jury found appellants liable to respondents for legal malpractice, breach of contract, and violation of the Consumer Fraud Act and that respondents were entitled to judgments for damages. Appellants moved for JMOL or a new trial. The district court denied both motions. Respondents moved for additional findings and attorney fees. The district court denied those motions as well.

This appeal follows.

D E C I S I O N

Appellants make several arguments. Broadly, they argue that the district court erred in denying their motions for JMOL or a new trial and that their attorney was improperly disqualified as a necessary witness. Respondents argue on cross-appeal that the district

court erred in denying their motions for amended findings and attorney fees. We address each argument in turn.

We also note that appellants argued extensively regarding their version of the facts, both in their briefs and at oral argument. But as a reviewing court, we are not permitted “to engage in fact-finding anew.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013); *see also In re Welfare of M.D.O.*, 462 N.W.2d 370, 374–75 (Minn. 1990) (holding that the role of the court of appeals is to correct errors, not to find facts). Instead, we are limited by our standard of review to determining whether the findings of fact are clearly erroneous. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018); *see also* Minn. R. Civ. P. 52.01. This involves examining the record to see if the findings are supported by reasonable evidence and viewing the evidence in the light most favorable to the verdict. *Rasmussen*, 832 N.W.2d at 797. To conclude that a finding of fact is clearly erroneous, “we must be left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). Appellants do not identify any specific findings of fact that were clearly erroneous. And viewing the evidence in the light most favorable to the verdict, we conclude that appellants have failed to meet their burden of showing clear error.

And to the extent that they would like to retry the case before us, we note that as an appellate court we are not permitted to usurp “the role of the trial court by reweighing the evidence.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Rather, “Deference must be given to the opportunity of the [finder of fact] to assess the credibility of the witnesses.” *Id.* Having made that clear, we now turn to appellants’ legal arguments.

I. Judgment as a Matter of Law

Appellants attack the district court's decision on their motion for JMOL from several different angles. They make specific arguments regarding JMOL on respondents' Consumer Fraud Act, malpractice, and emotional-distress-damages claims. A party may move for JMOL during a trial, and to succeed they must show that "there is no legally sufficient evidentiary basis for a reasonable jury to find" against them on an issue. Minn. R. Civ. P. 50.01(a). A party may also move for JMOL after the trial, as appellants did here. Minn. R. Civ. P. 50.02. We review a district court's decision to deny a motion for JMOL de novo. *In re Estate of Butler*, 803 N.W.2d 393, 399 (Minn. 2011). In doing so, "we apply the same standard as the district court and view the evidence in the light most favorable to the nonmoving party." *Id.*

i. Consumer Fraud Act

Appellants argue that the district court erred in denying their motion for JMOL on respondents' Consumer Fraud Act claim. Under the Consumer Fraud Act, the "act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon . . . is enjoined." Minn. Stat. § 325F.69, subd. 1 (2018). While section 325F.69 is generally enforced by the attorney general or a county attorney, respondents invoked the private attorney general statute, which allows a person injured under the Act to "bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court." Minn. Stat. § 8.31, subds. 1, 3a (2018).

Appellants assert that applying the Consumer Fraud Act to attorneys would violate the separation of powers doctrine. Specifically, they argue that the Minnesota Supreme Court and the Office of Lawyers Professional Responsibility are the only entities with the power to regulate attorney conduct, and to allow either “the attorney general or any county attorney to obtain an injunction against a party who violates the [Act]” would give the executive branch “the power to regulate the practice of law,” which “goes against the Separation of Powers doctrine.”

But appellants’ argument is moot. The mootness doctrine “requires that we decide only actual controversies and avoid advisory opinions.” *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). The jury found that appellants had violated the Consumer Fraud Act and the district court awarded respondents damages, but the district court denied respondents’ motion to enjoin appellants from further violating the Act. Because appellants’ argument was limited to asserting that a district court’s imposition of an injunction would violate the separation of powers, and the district court specifically denied respondents’ motion to impose an injunction, appellants’ separation of powers argument is moot and we decline to address it.¹

Appellants next argue that there was no causal connection between their allegedly fraudulent statements and respondents’ claimed injuries. This is based on their assertion that the only deceptive practices identified by respondents were that appellants guaranteed

¹ Because of the limited scope of appellants’ argument before the district court and on appeal, and because there is no district court ruling for our review, we do not address the broader question of whether an attorney’s legal services are the type of service covered by the Consumer Fraud Act.

respondents an outcome in their cases and guaranteed it within a specific time frame. But appellants frame the question too narrowly. The real issue was appellants' representation that respondents would be eligible for an I-601A provisional waiver by virtue of their children being United States citizens while in actuality respondents did not qualify for the provisional waiver. There is support in the record for the idea that each respondent hired appellants under the belief that appellants could secure residency for respondents through this provisional waiver. But the form itself does not designate children as qualifying relatives supporting a provisional waiver, and there was testimony from an expert witness that respondents did not otherwise qualify for this waiver. Therefore, we reject appellants' causation argument.

And finally, appellants argue that the district court erred by allowing respondents to introduce hearsay evidence relating to the claim under the Consumer Fraud Act. We review evidentiary rulings for an abuse of discretion. *State v. Taylor*, 910 N.W.2d 60, 67 (Minn. App. 2018), *review denied* (Minn. June 19, 2018).

During the meetings between appellants and respondents, each respondent had a daughter translate at least portions of the conversations from English to Spanish. Appellants, respondents, and respondents' daughters all testified at trial about those conversations. Appellants object to respondents' testimonies about what their daughters translated to them on the basis that they constitute hearsay. But binding precedent holds that the testimony of what a person heard through their interpreter is not hearsay. *Miller v. Lathrop*, 52 N.W. 274, 274 (Minn. 1892). And appellants cite to no authority that supports their position.

ii. *Malpractice*

Appellants argue that the district court erred in denying their motion for JMOL on respondents' malpractice claim, asserting that respondents' expert witness did not establish an applicable standard of care at trial.² In attorney-malpractice cases, expert testimony is typically "required to establish a standard of care applicable to an attorney whose conduct is alleged to have been negligent, and further to establish whether the conduct deviated from that standard." *Guzick v. Kimball*, 869 N.W.2d 42, 49 (Minn. 2015) (quotation omitted). Here, the expert witness's testimony established standards of care for many aspects of appellants' work with respondents and demonstrated that appellants had violated those standards of care. Notably, the expert witness testified that he reviewed the contracts of all three respondents and none of them qualified for residency through these forms and that appellants had breached the standard of care by accepting payment for those services.³ Based upon this record, we conclude that appellants' malpractice arguments fail.

² Appellants also appear to argue that even if a standard of care had been established, no causation was shown between the breach of the standard of care and the injury to the respondents. But appellants do not cite to any law for this argument, so it is forfeited. See *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred."). And the argument would fail on its merits anyway because appellants' breach of the standard of care caused respondents to pay for services that were useless to them.

³ Appellants also argue that the district court erred by concluding that the damages awarded by the jury for malpractice were not excessive. A new trial may be granted if a party is awarded "[e]xcessive or insufficient damages, appearing to have been given under the influence of passion or prejudice." Minn. R. Civ. P. 59.01(e). Appellants forfeited this argument by not citing to any law in support of it. See *Bursch*, 905 N.W.2d at 889. But it fails on its merits anyway because there is nothing in the record to indicate that the jury awarded damages under the influence of passion or prejudice.

iii. *Emotional Distress Damages*

Appellants challenge the district court's denial of their JMOL motion on respondents' claim for emotional-distress damages. They first argue that these damages were not available to respondents because there was no evidence of willful, wanton, or malicious conduct on their part. Emotional-distress damages are available in attorney malpractice cases when there is "a direct violation of the plaintiff's rights by willful, wanton or malicious conduct; mere negligence is not sufficient." *Lickteig v. Alderson*, 556 N.W.2d 557, 562 (Minn. 1996). The jury found appellants liable under the Consumer Fraud Act—i.e., appellants were found to have defrauded clients—and that finding was supported by testimony that appellants took respondents' money despite it being obvious that they would not qualify for the provisional waiver. This is sufficient support in the record to affirm the district court's conclusion that appellants' conduct was "willful, wanton or malicious."

Second, appellants argue that respondents were required to provide medical evidence to support their claims for emotional-distress damages. In *Navarre v. South Washington Cty. Schools*, the Minnesota Supreme Court held that medical testimony is not required in order to substantiate claims for emotional-distress damages so long as the plaintiffs are able to "prove that emotional injury occurred under circumstances tending to guarantee its genuineness." 652 N.W.2d 9, 30 (Minn. 2002) (quotation omitted).

Appellants contend that the district court erred in relying upon *Navarre* in denying their JMOL motion on emotional-distress damages. They argue that their case is distinguishable because "*Navarre* occurred in the context where there was a violation of a

statutory right, the Minnesota Government Data Practices Act.” But this distinction is irrelevant. In *Navarre*, the Minnesota Government Data Practices Act was significant to the supreme court’s analysis in deciding whether emotional-distress damages were *available*. *Id.* But that Act was not relevant to the discussion of what proof is necessary in order to *recover* emotional-distress damages. *Id.* And the supreme court was clear that medical testimony is not necessary. *Id.* Appellants’ arguments about emotional-distress damages fail.

Based upon these arguments, we conclude that appellants have failed to show that the district court erred in denying their motion for JMOL. After reviewing the record, and viewing the evidence in the light most favorable to respondents, we conclude that there was a sufficient evidentiary basis for a reasonable jury to find for respondents on their Consumer Fraud Act, malpractice, and emotional-distress-damages claims.

II. Motion for a New Trial

Appellants challenge the district court’s denial of their motion for a new trial based on respondents’ misconduct and the denial of their motions on respondents’ breach-of-contract claims. “We review a district court’s decision to grant or deny a new trial for an abuse of discretion.” *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). “A district court may grant a new trial for ‘[e]rrors of law occurring at the trial’ or when ‘[t]he verdict . . . is not justified by the evidence, or is contrary to law.’” *Id.* (quoting Minn. R. Civ. P. 59.01).

i. *Misconduct*

Appellants argue that the district court erred in denying their motion for a new trial based on the misconduct of respondents' attorney. "The decision to grant a new trial based on claimed attorney misconduct rests wholly within the district court's discretion." *Lake Superior Ctr. Auth. v. Hammel*, 715 N.W.2d 458, 479 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). "The paramount consideration in determining whether a new trial is required in cases alleging misconduct is whether prejudice occurred . . . such that it affected the outcome of the case." *Id.* (citation omitted).

Appellants argue that the district court erred in denying their motion for a new trial because one of respondents' witnesses violated a pre-trial order. Specifically, they refer to the district court's order excluding evidence of past professional discipline. At trial, one of respondents' witnesses testified about a case that she had with appellants and stated, "We received that letter in the mail that his license was --." Appellants assert that even though the witness never said that the license of one of the appellants was suspended, her testimony "and the momentary but stunning silence that followed undoubtedly biased the jury against Appellants."

Appellants assert that the jury became biased against them because of this comment. But they provide no further evidence of or argument for prejudice, which must be shown in order to be granted a new trial. And, even if we were to assume that this testimony was a violation of the district court's pre-trial order, then it would be the district court that was in the best position to determine whether the testimony prejudiced appellants. *See id.* ("The

district court judge is best positioned to determine whether an attorney's misconduct has tainted the jury's verdict.'').

Appellants also argue that the district court erred by not granting them a *Schwartz* hearing on juror misconduct.⁴ “The decision of whether to grant a *Schwartz* hearing is within the district court's discretion.” *Blatz v. Allina Health System*, 622 N.W.2d 376, 393 (Minn. App. 2001), *review denied* (Minn. May 16, 2001). Juror misconduct “may not be raised for the first time on a motion for a new trial.” *Tupper v. Dirks*, 193 N.W.2d 800, 801 (Minn. 1972). And that is precisely what appellants did here. Accordingly, this argument is procedurally barred. But even if it were not, it would fail on its merits because the “misconduct” that appellants refer to were innocuous social media posts from one of the jurors made about jury duty generally prior to being sworn in as a juror for the trial.⁵ We conclude that appellants' misconduct arguments fail.

⁴ In a *Schwartz* hearing, the district court is able to inquire into whether improper considerations affected the jury's verdict. *See Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).

⁵ Appellants make two additional arguments that are forfeited for lack of legal support. *See Bursch*, 905 N.W.2d at 889. First, they argue that respondents used confidential attorney-client information while impeaching appellants' expert witness. Even if this argument were not forfeited, it would fail because appellants do not explain how they were prejudiced by this misconduct, or that the prejudice was so great that it affected the outcome of the case. *See Hammel*, 715 N.W.2d at 479. Second, appellants assert that the district court erred by excluding evidence of the bad relationship between appellants and respondents' counsel. Even if it were not forfeited, this argument would fail because the district court did not abuse its discretion in determining that this evidence was irrelevant, and that even if it were relevant, its relevance would be substantially outweighed by its prejudicial value. *See Minn. R. Evid.* 403.

ii. *Breach of contract*

Appellants argue that the district court erred in denying their motions for a new trial and for JMOL on respondents' breach-of-contract claims. They first argue that the district court erred by concluding that the damages awarded on respondents' breach-of-contract claims were not excessive. "A district court may grant a new trial because of excessive damages that appear to have been given under the influence of passion or prejudice or are not justified by the evidence." *Willis*, 790 N.W.2d at 187. But a new trial may not be awarded solely on speculation as to the possibility of prejudice. *Vadnais v. Am. Family Mut. Ins. Co.*, 243 N.W.2d 45, 49 (Minn. 1976). Appellants provide no real argument that the damages were given under influence of passion or prejudice. They simply state that the award does not take into account other legal services that were rendered. But it is not clear why this would prove that the award was excessive.

Appellants also argue that the district court erred in declining to give jury instructions on superseding causes and the duty of good faith and fair dealing. A district court has broad discretion in determining what jury instructions to use. *Christie*, 911 N.W.2d at 838. An appellate court "will not reverse where jury instructions overall fairly and correctly state the applicable law." *Id.* (quotation omitted). But a new trial should be granted "if the jury instruction was erroneous and such error was prejudicial . . . or if the instruction was erroneous and its effect cannot be determined." *Id.* (quotation omitted).

Appellants assert that respondents' breach of contract excused their performance and was a superseding cause to their own breach of contract.

For an intervening cause to be considered a superseding cause, the intervening cause must satisfy four elements: 1) its harmful effects must have occurred after the original negligence; 2) it must not have been brought about by the original negligence; 3) it must have actively worked to bring about a result which would not otherwise have followed from the original negligence; and 4) it must not have been reasonably foreseeable by the original wrongdoer.

Can. by Landy v. McCarthy, 567 N.W.2d 496, 507 (Minn. 1997). But superseding cause is a tort-law and criminal-law principle, not a contract-law principle. *See, e.g., id.* at 506–07 (discussing superseding cause in the context of a tort claim); *State v. Smith*, 819 N.W.2d 724, 729 (Minn. App. 2012) (discussing superseding cause in the context of a criminal case), *aff'd*, 835 N.W.2d 1 (Minn. 2013). Therefore, it does not apply to respondents’ breach-of-contract claims. Moreover, to the extent that appellants intended to argue for a superseding-cause instruction more broadly, and not just on the breach-of-contract claims, respondents’ termination of appellants as counsel does not satisfy the superseding-cause test anyway. There was testimony at trial that appellants entered into a contract with respondents for services that were useless. It is logical that respondents would terminate appellants as counsel upon learning that the services they were paying for would not benefit them in the way they expected. Thus, elements two and four of the superseding-cause test are not met, and there was no reason to instruct the jury on superseding causes.

“Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party’s performance of the contract.” *In re Hennepin Cty. 1986 Recycling Bond Litigation*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). But, there was testimony that the

contracts entered into between the parties were for services that would not benefit the respondents. And as the district court explained, respondents’ “failure to pay the full contract price was irrelevant to [appellants’] inability to perform because [appellants] knowingly entered into an agreement which it was impossible for them to perform.” We agree with this reasoning, so we conclude that the district court did not abuse its discretion with regard to jury instructions.

We also conclude that the district court did not abuse its discretion in denying appellants’ motion for a new trial on the basis of misconduct. Similarly, we agree with the district court’s ruling on appellants’ motion for JMOL or a new trial on respondents’ breach-of-contract claims.

III. Necessary Witness

Appellants argue that the district court erred by disqualifying Jason Nielson, an attorney at Igbanugo Law Partners, from acting as trial counsel because he was a necessary witness. Under Minn. R. Prof. Conduct 3.7, a lawyer is barred “from acting as an advocate in cases where the lawyer is likely to be a necessary witness.” *Woodruff v. State*, 608 N.W.2d 881, 887 (Minn. 2000). But it is not enough that the attorney will be called as a witness; the attorney’s testimony must be necessary. *Humphrey on Behalf of State v. McLaren*, 402 N.W.2d 535, 541 (Minn. 1987). If the evidence that the attorney is going to testify can be produced some other way, then “it may be that the attorney is not necessary as a witness.” *Id.* In other words, “If the lawyer’s testimony is merely cumulative, or quite peripheral, or already contained in a document admissible as an exhibit, ordinarily the lawyer is not a necessary witness and need not recuse as trial counsel.” *Id.* We review a

district court's decision to disqualify an attorney for an abuse of discretion. *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 816 (Minn. 2014).

Appellants merely argue that “there was nothing that Mr. Nielson testified to that Mr. Igbanugo could not.” This argument is conclusory. It does not explain *what* Nielson testified to or why it would have been sufficient to have Igbanugo provide this testimony instead of Nielson. In disqualifying Nielson from acting as trial counsel, the district court found that Nielson was “set to testify to matters for which only he [could] provide testimony,” making him a necessary witness. In coming to this decision, the district court specifically relied on emails contained in the record between Nielson and the daughter of one of the respondents in which Nielson gave the daughter advice that respondents asserted was wrong. Appellants do not address the district court's reasoning or explain to us why it was incorrect.⁶ Accordingly, we cannot find that the district court abused its discretion.⁷

IV. Respondents' Motions for Amended Findings and Attorney Fees

Respondents, as cross-appellants, make two arguments for relief under the Consumer Fraud Act. First, they argue that the district court erred by denying their request

⁶ Moreover, appellants previously appealed the district court's order disqualifying Igbanugo and Nielson from acting as trial counsel, and a special term panel from our court dismissed the appeal as untimely in an order opinion, so it would appear that they are barred from raising this issue. *Cedillo v. Igbanugo*, No. A17-1428 (Minn. App. Oct. 3, 2017).

⁷ Appellants also argue that the jury verdict was “manifestly and palpably contrary to the evidence.” This argument is forfeited because it was made without legal citations or references to facts in the record. See *Bursch*, 905 N.W.2d at 889. But it also fails on its merits because there was ample evidence supporting the jury's verdict, as we have discussed.

for injunctive relief. Second, they argue that the district court erred in denying their motion for attorney fees. Both arguments fail for the same reason.

In its order on respondents' motion for attorney fees, the district court explained that it was denying the motion because respondents' lawsuit against appellants did not serve the public interest. This reasoning was anchored in a case that held "that the Private AG Statute applies only to those claimants who demonstrate that their cause of action benefits the public." *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000). The district court in this case read *Ly* to mean that "the Private AG Statute allows parties to recover their attorney's fees only when they step into the shoes of the Attorney General to protect the generalized interests of Minnesota consumers."⁸

In a thorough analysis, the district court reasoned that respondents failed to show that their lawsuit served to benefit the public, but only pertained to their private claims for compensation. As noted by the court, this was not a fraud that was perpetuated on the general public, as was alleged in *Collins v. Minn. Sch. of Bus., Inc.*, 655 N.W.2d 320, 329–

⁸ This requirement—that the respondents had to show that they were bringing the lawsuit to protect the generalized interests of Minnesota consumers—was only presented to and addressed by the district court in relation to respondents' post-trial motion for attorney fees and an injunction. Because this requirement was not otherwise raised by either party or addressed by the district court relative to appellants' motions for JMOL and a new trial, we only review it in the context that it was presented and ruled upon, i.e., respondents' motions for attorney fees and an injunction. See *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957) ("[L]itigants are bound [on appeal] by the theory or theories, however erroneous or improvident, upon which the action was actually tried below."); see also *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (holding that an appellate court generally will not consider matters not argued to and considered by the district court).

330 (Minn. 2003). In *Collins*, 18 students alleged that Minnesota School of Business misrepresented the nature of its program and brought an action under the Consumer Fraud Act. *Id.* at 322. In support of their claim that these misrepresentations harmed the general public, they showed that the school offered its program to the general public through misleading television advertisements and was licensed by a state agency which required the agency's approval to alter its curriculum. *Id.* at 322–23.

Unlike the factual situation in *Collins*, there was no showing here that appellants made generalized misleading claims to the public at large. Although there were three respondents in this case who were harmed, there is no evidence that appellants harmed others by their conduct. Based upon this record, the district court was correct in denying respondents' motions for attorney fees and an injunction because they failed to meet their burden of proof in showing that their action under the Consumer Fraud Act was for the benefit of the general public.

Affirmed.