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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1474**

Patrick Takuanyi,  
Appellant,

PET Enterprises, et al.,  
Plaintiffs,

vs.

Copart Inc.,  
of Connecticut d/b/a Copart Dealer Services,  
Respondent.

**Filed July 1, 2019  
Affirmed  
Reyes, Judge**

Anoka County District Court  
File No. 02-CV-16-3656

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

**UNPUBLISHED OPINION**

**REYES, Judge**

Following a court trial on his breach-of-contract action, appellant challenges the  
district court's judgment on respondent's counterclaim and its award of attorney fees to

respondent. Appellant argues that the district court abused its discretion by (1) conditioning voluntary dismissal of his action without prejudice on the payment of respondent's attorney fees; (2) denying a continuance of trial; and (3) admitting certain evidence and in making credibility determinations. We affirm.

## **FACTS**

Appellant Patrick Takuanyi conducts business as a used-car dealer and has been in the auto-dealership business since 2002. Takuanyi began working with Copart, Inc. of Connecticut (Copart), an automotive auctioneer, in 2010. Copart sold Takuanyi's cars through its auctions. Takuanyi executed an agreement with Copart entitled "Copart Dealer Services Seller Consignment Terms and Conditions" (the agreement). It contained information about, among other things, fees, the auction process, ancillary charges, and Takuanyi's obligations as they relate to unsold vehicles. Through his own testimony, Takuanyi demonstrated familiarity with the agreement.

At various times, Takuanyi consigned several vehicles to Copart to sell by auction. Copart sold some of Takuanyi's vehicles, and the unsold vehicles remained on Copart's premises for subsequent rounds of auctions. Pursuant to the agreement, Copart sent Takuanyi at least two certified letters when Takuanyi failed to pick up his unsold vehicles from its lot. Takuanyi claimed that "he went to Copart several times to retrieve [the] vehicles but was not able to." Takuanyi accumulated \$2,095 in storage fees for the unsold vehicles that remained on Copart's premises. After several failed attempts to contact Takuanyi, Copart began "abandonment procedures" for the unsold vehicles, such as publishing notices in the newspaper and then trying to sell or dispose of them through

sheriff's sales. Copart used the proceeds of the sales to satisfy Takuanyi's outstanding fees.

In July 2016, Takuanyi sued Copart, alleging conversion, civil liability for theft, breach of contract, and loss of business opportunity. Copart filed an answer and a counterclaim against Takuanyi for unpaid seller's fees. Takuanyi failed to answer Copart's requests for discovery. In a December 2016 order, the district court noted that, although discovery was ongoing until mid-March, Takuanyi had yet to initiate discovery. Copart informed the district court that it made multiple unsuccessful attempts to arrange mediation with Takuanyi.

On May 16, 2017, the parties appeared for a jury trial. The district court noted in a June 2017 order that Takuanyi's counsel "showed up for trial wholly unprepared to proceed." Takuanyi claimed that he was unable to obtain the needed information to prove the claims in his complaint and alleged that Copart surprised him with a previously undisclosed document. After the district court found Takuanyi's explanation to be meritless, Takuanyi requested a continuance.<sup>1</sup> Takuanyi then moved the district court for a voluntary dismissal of his action without prejudice. The district court stated that it would grant the dismissal, but would order Takuanyi to pay Copart's attorney fees in an amount to be determined upon submissions from Copart. The district court conditionally granted Takuanyi's motion for voluntary dismissal without prejudice, noting that, should Takuanyi fail to pay Copart's attorney fees, the matter would be dismissed with prejudice. The

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<sup>1</sup> Although the district court states in its order that it denied appellant's request for a continuance, the June trial transcript shows no indication of an express denial.

district court did not address Copart's counterclaim. Takuanyi failed to timely pay Copart's attorney fees. On August 21, 2017, the district court dismissed Takuanyi's claim with prejudice, and entered a judgment against Takuanyi in the amount of \$8,631.01, representing attorney fees and costs. In October 2017, Takuanyi filed an appeal from the August 21, 2017 judgment. This court dismissed the matter as a premature appeal.

On February 6, 2018, the parties appeared in district court for a court trial on Copart's counterclaim for unpaid seller's fees. The sole issue for decision was whether Takuanyi breached Copart's agreement by not paying the outstanding seller's fees. Copart claimed that Takuanyi owed a total of \$2,120 in fees for at least seven vehicles, plus attorney fees and costs pursuant to the agreement. Takuanyi testified that he had no notice, did not authorize additional rounds of auctions, and that he tried to retrieve his vehicles. The district court found Takuanyi, a "savvy businessman of many years" who had an extensive work relationship with Copart, "wholly not credible." In its May 30, 2018 order, the district court ruled in favor of Copart, holding Takuanyi liable for damages in the amount of \$2,095, "directly resulting from [Takuanyi's] breach of contract." Takuanyi sought appellate review of the orders filed on August 21, 2017, and May 30, 2018, but this court dismissed his appeal as premature because final judgment had not been entered on Copart's counterclaim. On July 9, 2018, the district court entered a notice of judgment on Copart's counterclaim. This appeal follows.

## DECISION

**I. The district court did not abuse its discretion when it conditioned the voluntary dismissal of Takunayi's action, without prejudice, on the payment of Copart's attorney fees.**

Takuanyi argues that the district court abused its discretion because neither the Minnesota Rules of Civil Procedure, caselaw, nor an applicable statute permit the district court to grant attorney fees under the circumstances. We disagree.

We will not reverse a district court's decision on a plaintiff's motion for voluntary dismissal unless it abused its discretion. *Butts ex rel. Iverson v. Evan. Lutheran Good Samaritan Soc'y*, 802 N.W.2d 839, 841 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). Nor will we "interfere with a district court's award of attorney fees absent an abuse of discretion." *In re Stisser Grantor Trust*, 818 N.W.2d 495, 509-10 (Minn. 2012). Under Minnesota law, attorney fees are generally not recoverable unless they are expressly authorized by a specific contract or by statute. *Dewey v. Henry's Drive-Ins of Minn., Inc.*, 222 N.W.2d 553, 556 (Minn. 1974). However, in ordering the dismissal of an action at the plaintiff's request, a district court may impose on a litigant "such *terms and conditions* as the court deems proper." Minn. R. Civ. P. 41.01(b) (emphasis added).

The district court initially granted Takuanyi's motion for voluntary dismissal under rule 41.01(b). The language of rule 41.01(b) is broad, and Takuanyi cites no authority that indicates that such "terms and conditions" may not include attorney fees. Takuanyi notes that there are instances when the rules provide for attorney fees, and other instances when they do not. For example, Takuanyi explains, Minn. R. Civ. P. 41.04 ("Costs of Previously Dismissed Action") provides that only costs may be levied upon a litigant, while rules 37

(“Failure to Make Disclosures or to Cooperate in Discovery: Sanctions”) and 11 (“Signing of Pleadings, Motions, and Other Documents; Representations to Court; Sanctions”) expressly allow for attorney fees. But Takuanyi’s reference to other rules fails to take into account the plain language of rule 41.01(b).

Takuanyi further contends that the Supreme Court has rejected the argument that “costs” in Federal Rule of Civil Procedure 41(d), the federal counterpart to Minnesota Rule of Civil Procedure 41.04, include attorney fees. But the Supreme Court cases that he cites<sup>2</sup> are inapplicable because neither case discusses rule 41(d) or an award of costs.

According to Takuanyi, “Minnesota case law [sic] does not support an award of attorney[ ] fees for a voluntary dismissal unless there is a statutory mandate,” citing *N. States Power Co. v. City of Sunfish Lake*, 659 N.W.2d 271 (Minn. App. 2003) and *Vegemast v. DuBois*, 498 N.W.2d 763 (Minn. App. 1993). However, *Northern States* does not discuss the issue of attorney fees for a voluntary dismissal. And *Vegemast* is adverse to Takuanyi’s position because it stands for the proposition that district courts may award attorney fees under rule 11 even after a plaintiff has dismissed the complaint under rule 41.01(a). 498 N.W.2d at 766.

Contrary to Takuanyi’s argument, Minnesota caselaw supports the district court’s rulings. In *Firoved v. General Motors Corp.*, the district court dismissed a plaintiff’s cause of action with prejudice immediately following the denial of the plaintiff’s motion for

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<sup>2</sup>*Alyeska Pipeline Serv. Co. v. The Wilderness Soc’y*, 421 U.S. 240, 240, 95 S. Ct. 1612, 1612 (1975) and *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718, 87 S. Ct. 1404, 1407 (1967).

voluntary dismissal without prejudice. 152 N.W.2d 364, 366 (Minn. 1967). In determining that the district court should have granted plaintiff's motion for voluntary dismissal "upon appropriate conditions," the supreme court reversed with directions to enter a dismissal of plaintiff's cause of action without prejudice, and "grant[ed] leave to defendants to apply to the court for an allowance of costs *and attorney[ ] fees.*" *Id.* at 370 (emphasis added). *Firoved* is instructive because, similar to the district court in Takuanyi's case, the supreme court permitted litigants to pursue costs and attorney fees post court-ordered dismissal. While we note that the outcome in *Firoved* involved a voluntary dismissal without prejudice, this is the motion the district court first granted in Takuanyi's case.

Furthermore, an award of attorney fees is authorized by paragraph eight of the agreement Takuanyi signed. It provides that the "[s]eller agrees to pay any cost of collection (including collection agency fees and/or court cost and *attorney's fees*) in the event of Seller's failure to pay all fees." (Emphasis added.) Therefore, we conclude that the district court did not abuse its discretion when it conditioned the voluntary dismissal of Takuanyi's action, without prejudice, on the payment of Copart's attorney fees.

## **II. Takuanyi's argument regarding a request for a continuance is waived.**

The sum of Takuanyi's argument as it relates to the denial of a continuance is that "[Takuanyi] had not requested a continuance at any time in the matter. This remedy would have been fair." But Takuanyi's counsel did request a continuance on the first day of trial. Nevertheless, because Takuanyi's argument contains a mere assertion, and cites no relevant facts, legal authority, or analysis, it is forfeited. *In re Estate of Grote*, 766 N.W.2d 82, 88 (Minn. App. 2009).

**III. The district court appropriately relied on admissible and sufficient evidence in making its findings of fact on Copart's counterclaim.**

Takuanyi argues that the district court erroneously relied on evidence that “was largely hearsay and not the best evidence that could be proffered” on Copart's counterclaim. We disagree.

Because Takuanyi appealed from a judgment without moving for a new trial, the only questions for our review “are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976). A district court has broad discretion in its evidentiary rulings and its decision will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (citation omitted).

Takuanyi first argues that Copart failed to enter into the record true physical copies (the “best evidence”) of certified-letter receipts, newspaper notices, and “purchase and sale records.”<sup>3</sup> The best-evidence rule provides that an original document is required to prove its contents. Minn. R. Evid. 1002. Copart offered evidence to prove that the certified letters were sent and attempts were made to sell the vehicles in the newspaper, not to prove

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<sup>3</sup> It is unclear to which purchase and sale records Takuanyi is referring. Takuanyi raised a best-evidence objection to the admission of a summary of Copart's lot notes, created by Copart in a color-coded spreadsheet. The district court overruled the objection and advised Takuanyi that Copart is allowed to make exhibits that are helpful to the jury or the district court. See Minn. R. Evid. 1006 (“The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation.”).



the contents of the letters or notices. Therefore, the district court did not abuse its discretion by relying on Copart's evidence.

Second, Takuanyi argues that the district court's order of May 30, 2018, "looked to be drafted by [Copart's] attorney" and it identified evidence not in the record. Takuanyi's allegation that Copart's attorney may have drafted the order lacks merit. Upon careful review of the record, we conclude that each of the district court's findings of fact are supported by the record.

Finally, Takuanyi argues that Copart's employees were unable to testify as to the whereabouts of the alleged "abandoned vehicles." In essence, he argues that they were not credible. But we give great deference to the district court's credibility determinations. *Pellowski v. Pellowski*, 265 N.W. 440, 441 (Minn. 1936).

**Affirmed.**