STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1914
A20-0480

Mork and Associates, Inc., et al., Plaintiffs (A19-1914),
Co-Appellants (A20-0480),

vs.

Willow Run Partners, et al.,
Respondents,

Rodney Vlach, et al.,
Respondents,

Florence Francis,
Appellant.

Filed March 1, 2021
Affirmed in part, reversed in part, and remanded
Bryan, Judge

Hennepin County District Court
File No. 27-CV-16-13631

Scott D. Hillstrom, Guardian Law Group, Northfield, Minnesota (for co-appellants Mork and Associates, et al.)

Thomas J. Radio, Felhaber Larson, Minneapolis, Minnesota (for respondents Willow Run Partners, et al.)

Daniel M. Mohs, Daniel Mohs, Esq., Ltd., Minneapolis, Minnesota (for respondents Rodney Vlach, et al.)

Paul W. Chamberlain, Ryan R. Kuhlmann, Chamberlain Law Firm, Wayzata, Minnesota (for appellant Florence Francis)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this partnership-distribution dispute, appellant asserts that the district court made the following errors: (1) the district court misinterpreted the provisions of the limited partnership agreement regarding distribution of liquidated assets; (2) the district court made erroneous findings of fact concerning the managing general partner's alleged liability regarding required disclosures and overseeing co-respondents; (3) the district court made erroneous findings of fact regarding the validity of co-respondents' purchase of a limited partnership interest; (4) the district court awarded costs and disbursements against her; and (5) the district court denied her motion to show cause for an order requiring the managing general partner to carry out the distributions. Co-appellants also assert that the district court abused its discretion in taxing costs against them. Finally, respondent/cross-appellant Willow Run Partnership asserts that the district court abused its discretion when it declined to award the full amount of its expert-witness fees.

First, we address the primary dispute: the interpretation of the limited partnership agreement. We conclude that because no distributions had been made as of the time of dissolution, the plain language of the partnership agreement requires that the limited partners receive an amount equal to their initial contributions before calculating the amount available for remaining distributions. We reverse the district court's order on that basis and remand for entry of judgment and distribution of proceeds consistent with this opinion. Second, we conclude that the district court did not clearly err in making its findings of fact regarding the managing general partner's alleged liability. Third, we conclude that the district court did not clearly err in making its findings of fact regarding the validity of co-respondents' partnership interest. Finally, we conclude that because appellant prevails on the first issue, respondents are not the prevailing parties, and we reverse the taxation of costs and disbursements. Given these conclusions, we need not address the remaining issues presented.

FACTS

In 1973, the parties to this action formed a limited partnership called Willow Run Partners (WRP). Respondent Dempsey Mork[1] was the managing general partner for respondent WRP. WRP's sole purpose was to develop and operate a 78-unit residential apartment building in Wilmar, Minnesota (the project). The project operated under Housing and Urban Development (HUD) guidelines to provide low-income housing to qualifying tenants. In October 2016, WRP sold the project for $3,265,000, yielding net proceeds of $2,090,710 and triggering the liquidation provisions of the Limited Partnership Agreement (LPA).

After the sale of the project, co-appellant and general partner M&A brought suit against respondents WRP, Rodney and Diane Vlach (the Vlachs), Dempsey Mork, and an entity controlled by Dempsey Mork which was substituted for M&A as a general partner (collectively respondents). Among other allegations, M&A accused the Vlachs of embezzling money from the project. M&A pleaded the following four counts: (1) a claim for breach of contract for failing to pay distributions in accordance with the liquidation

[1] To distinguish respondent Dempsey Mork from Mork and Associates, Inc. (M&A) and other members of the Mork family, we refer to him by his first and last name.

provisions of the LPA; (2) a request for judicial intervention to require dissolution and equitable distributions pursuant to Minnesota Statutes section 302A.751, subdivisions 2, 3 (2020); (3) a claim for breach of the managing general partner's fiduciary duty; and (4) a request for an order requiring a forensic audit and an accounting of all property, funds, distributions, transfers, and profits from WRP.[2] M&A also sought a temporary restraining order (TRO) to prevent Dempsey Mork from handling proceeds from the sale.

Soon after, appellant Florence Francis, a limited partner in WRP, intervened in the action, joining claims one, three, and four of M&A's complaint.[3] Francis and M&A sought appointment of a receiver to replace Dempsey Mork as managing general partner, distribute the sale proceeds, and dissolve the partnership. Respondents raised a counterclaim for tortious interference with a prospective business relationship against M&A. The district court granted the request to appoint a receiver to take control of the project proceeds, pay creditor claims, and determine the amount of distributions each class of partners should receive under the LPA. Based on the appointment, the parties waived all claims against

---

[2] The district court addressed claims for breach of the implied duty of good faith and fair dealing; that Dempsey Mork violated Minnesota Statutes section 321.0408, subdivisions (b)(2), (d) (2020); and that Dempsey Mork breached the LPA by allowing the Vlachs to purchase a limited partnership interest. None of these is raised on appeal, and we decline to address them. We also decline to address factual assertions that may have occurred after the district court issued the order, such as allegations raised during oral argument. *See Mitterhauser v. Mitterhauser*, 399 N.W.2d 664, 667 (Minn. App. 1987) (concluding that this court "cannot base its decision on matters outside the record on appeal").

[3] In Francis's intervention pleading, she stated her intent to join counts one, three, and four, but then appears to have inadvertently stated that she did not join count three. Given Francis's argument regarding breach of fiduciary duty before the district court and this court, we construe her intervention pleading as joining counts one, three, and four.

each other and agreed to limit their legal dispute to the distributions of the project sale proceeds recommended by the receiver.

The receiver conducted an investigation into WRP's records and reviewed the LPA. Ultimately, the receiver concluded that under the LPA, the limited partners were entitled to distribution of their original capital contribution of $188,000 before the sale proceeds were split with the general partners. The receiver also concluded that Dempsey Mork was grossly negligent in his management of WRP and should be personally liable for the embezzlement by the Vlachs. The parties disputed the receiver's conclusions and the district court held an evidentiary hearing scheduled over several months to determine whether to accept the receiver's recommended distributions.

The district court issued an order interpreting the LPA and accepting some, but not all of the receiver's recommended distributions. The district court disagreed with the receiver regarding the interpretation of the LPA and concluded that the proceeds should be equally distributed to the limited and general partnership classes. The district court also determined that Dempsey Mork was not liable for his management of WRP or his oversight of the Vlachs. Further, the district court determined that the Vlachs obtained a valid partnership interest in WRP when they purchased the partnership interest from a previous limited partner.

Given the issues raised on appeal, we first summarize the legal dispute regarding the parties' competing interpretations of the liquidation provisions of the LPA. Second, we describe the evidence presented and the district court's findings regarding the management of WRP and the Vlachs' embezzlement. Third, we outline the trial evidence and the district court's findings regarding the transfer of a limited partnership interest to the Vlachs. Finally, we briefly summarize the procedural developments leading up to this appeal.

A. Liquidation under the LPA

The LPA defined two classes of partners: limited partners and general partners. The limited partners provided initial funding to WRP with capital contributions, totaling $188,000, and took a passive role in WRP operations. The general partners contributed $166.66 each, and were tasked with managing WRP and the project. Section 7.6 of the LPA governs distribution of the sale proceeds and provides a specific process to be followed:

> Liquidation. Unless the assets and liabilities of the Partnership are transferred to a successor Entity pursuant to Section 7.4, upon dissolution of the Partnership, after adequate provision shall be made for the payment of the debts and obligations of the Partnership, excluding all Residual Receipts Notes issued by the Partnership, the remaining assets of the Partnership shall be distributed as follows:
>
> First, such assets shall be distributed to the class comprised of the Limited Partners up to the amount, if any, by which the aggregate capital contributions of such Partners exceed the aggregate distributions made to such Partners pursuant to this Agreement.
>
> Second, any balance of such assets shall be applied to the payment of Residual Receipts Notes up to an amount equal to the aggregate unpaid amount thereof.
>
> Third, any balance of such assets shall be distributed to the General Partner[4] up to the amount, if any, by which the

[4] While the reference is singular, the LPA defined the term "General Partner" to include multiple general partners, in the event that the partnership should ever have more than one.

> aggregate capital contributions of such Partner exceed the aggregate distributions made to such Partner pursuant to this Agreement.
>
> Fourth, any balance of such assets shall be distributed 50% to the class comprised of the Limited Partners, and 50% to the General Partner.

The receiver concluded that under the first step, the limited partners should receive their capital contributions, $188,000, because there had been no prior distributions made to them. After proceeding with steps two and three, the receiver then recommended an equal distribution of the remaining amount to the limited and general partnership classes.

After the close of the evidentiary hearing, the district court disagreed with the receiver's interpretation. The district court concluded that the multi-step priority-distribution schedule in the LPA was "moot" because the sale proceeds more than covered the limited partners' initial capital contributions. The district court split the sale proceeds equally between the limited and general partnership classes. M&A and Francis disagree with the district court and respondents' interpretation. They agree with the receiver and believe that because no distributions had been made as of the time of dissolution, the plain language of the LPA requires that the limited partners receive an amount equal to their initial contributions before determining the amount leftover for the equal distributions to the two classes of partners.

B. Evidence Presented Regarding Management of WRP

At the evidentiary hearing, the district court received extensive testimony and documentary evidence regarding the management of WRP. The evidence presented established that Dempsey Mork was the managing general partner of WRP, and had "exclusive management and control of the business of the Partnership." The LPA authorized Dempsey Mork to delegate his powers and obligations to others under his supervision. For the first few years, Dempsey Mork managed the project himself. In June 1977, however, Dempsey Mork hired and delegated the day-to-day management of WRP's project to the Vlachs. Dempsey Mork also hired an accountant to assist him.

The accountant maintained records and filed mandatory annual audits with HUD for 29 years on WRP's behalf. Meanwhile, Rodney Vlach performed property maintenance, showed apartments, rented apartments, and executed leases while Diane Vlach performed "bookkeeper" duties. The Vlachs were also responsible for communications with HUD and faxed monthly reports to HUD to ensure the project was in compliance. The Vlachs worked for Dempsey Mork for 39 years. Throughout that time, Rodney Vlach testified that Dempsey Mork had "[v]ery little" role in managing the building and only visited the project three times. Dempsey Mork testified that during the 39 years that he worked with the Vlachs he thought "they were terrific" and he "couldn't be more pleased" because they were "very, very good" at managing the property and "they did everything [he] asked without reservation." Dempsey Mork also testified that the accountant they used for 29 years never found an irregularity or impropriety in the financial documents.

In 2005, the project underwent an extensive renovation. According to Dempsey Mork, the Vlachs were "instrumental" in securing funding and renovating the project. During the renovation, Diane purchased items for the project using a WRP credit card that she would then pay from the WRP checking account. Some larger purchases, such as dishwashers for the units, were supposedly made through Diane's personal credit card and then paid by WRP. Dempsey Mork testified that he did not see credit card statements or bills for the dishwashers, but that he asked the Vlachs about any discrepancies that he saw and their descriptions seemed in order. In addition, Dempsey Mork explained that, while he saw "smaller amounts" being taken out of WRP's funds, the auditors and HUD said it seemed to be appropriate.

During the renovation, the accountant took "an exceptional number of records" to his office to complete the annual audit. The accountant failed to file the audit and retained the documents. Dempsey Mork asked for the documents several times, but the accountant never complied and could not be found. Dempsey Mork even went to the accountant's home to search for the missing records, but did not find them. After the accountant died, WRP was unable to locate the records. Because the accountant disappeared with the financial records, Dempsey Mork and the Vlachs were unable to file timely annual audits with HUD for several years. Throughout the project, Dempsey Mork ensured that the partners received their annual K-1 tax forms.

In 2009, HUD initiated a lawsuit against WRP and the Vlachs for late filings between 2003 and 2007—the filings missed due to the accountant's disappearance. HUD eventually determined that it was impossible to get the records to refile, in part based on the accountant's passing. But the government requested to be repaid for excess rents[5] that

[5] HUD projects require excess rents, which is the amount of income collected greater than the basic gross rent potential, be returned to HUD on a monthly basis unless HUD authorizes the retention of that income. 24 C.F.R. § 236.60(a)-(c).

WRP owed for the years between 2005 and 2010. The investigation also unveiled that the Vlachs personally embezzled over $100,000 from WRP between 2005 and 2011. As a result, the federal government also filed suit against the Vlachs for using project funds for personal purchases and for making payments on their personal credit cards. Once the embezzlement was discovered in June 2016, Dempsey Mork fired the Vlachs. In August 2016, the HUD lawsuit settled, and WRP and the Vlachs agreed to pay $510,000 to the United States.

Based on the evidence presented, the district court found that Dempsey Mork performed his duties in good faith, was not liable for breaching any duties owed to the limited partners, and was not guilty of misconduct. The district court explained that it had seen "no evidence or even an allegation that Dempsey [Mork] was in league" with the Vlachs. In addition, the Vlachs had been "trusted employees who provided good service to WRP for decades, and [Dempsey Mork] had no reason to suspect them." The district court also rejected the characterization that Dempsey Mork was stealing from the company and denied the limited partners access to financial information. Instead, the district court determined that there was no claim that any limited partners were denied access to financial information, no evidence that Dempsey Mork misappropriated funds, and no basis to find that Dempsey Mork deliberately covered up the underlying theft. The district court concluded that "no link has been established between specific decisions or action by Dempsey [Mork] and identifiable damages."

The district court then addressed each allegation of wrongdoing made against Dempsey Mork, determining that Dempsey Mork reasonably believed that the HUD settlement was advantageous to WRP, that none of the payments made at closing relating to operating deficits was improper, and that the decision to set aside proceeds from the sale to pay trade debt and attorney fees was reasonable and in good faith. While the district court acknowledged evidence that Dempsey Mork's 40-year performance "was not perfect," the district court saw no evidence that Dempsey Mork failed to meet the duties that he owed to the partnership and that no specific decision or conduct by Dempsey Mork could be considered misconduct.

C. Evidence Presented Regarding the Krelitz Transfer

Section 8.2 of the LPA outlines the limited partners' right of first refusal when selling an interest:

> (a) Except as otherwise provided in this Agreement, no Limited Partner shall transfer, sell, assign, give or otherwise dispose of his Partnership Interest or a part thereof, whether voluntarily or by operation of law, or at judicial sale or otherwise, to any Person, unless such Limited Partner first (i) obtains the consent of the General Partner to do so; and (ii) notifies all the Partners of his intention to do so and offers to sell in writing such Partnership Interest or such part thereof to the General and Limited Partners at a price and upon terms, specified in such offer, which are no less favorable to such Partners than those upon which such Limited Partner certifies he is willing to sell a third party whose name and address shall be specified in such offer. . . .
>
> (b) The provisions of Section 8.2(a) shall not apply to the transfer or assignment by a Limited Partner of all or a part of his Partnership Interest to a Person who is otherwise a Partner.

In 2002, a limited partner, Philip Krelitz, sought to sell his partnership interest in WRP. Krelitz's attorney wrote to Dempsey Mork that the "Krelitz family has decided that, since it is unable to sell its interest to another partner, it wishes to abandon its interest." The Vlachs received a copy of this letter and reached out to Dempsey Mork and Krelitz's attorney to express their interest in purchasing a share of the partnership. A month later, the Vlachs entered into a sales agreement with Krelitz to purchase their 11.875% limited partner interest for $750 (Krelitz Transfer Agreement).[6] The Krelitz Transfer Agreement stated that a letter was sent on May 28, 2002, notifying all WRP partners of Krelitz's intention to sell his interest and that no partners had responded to the letter to exercise their right of first refusal:

> By letter dated May 28, 2002, and in accordance with Section 8.2 of the Partnership Agreement, the General Partner notified all of the Partners of the Partnership of the Selling Partner's intention to sell the Transferred Interest, and of the Transferred Interest's availability for purchase. As no Partners have responded to this notification, the undersigned General Partner hereby waives on behalf of the Partnership any further right of first refusal under Section 8.2 of the Partnership Agreement, and the General Partner hereby consents to the terms of the sale of the Transferred Interest in accordance with Section 8.2 of the Partnership Agreement.

Francis, who inherited her husband's interest when he passed, testified that she never received the letter referenced in the Krelitz Transfer Agreement, and that she would have purchased Krelitz's interest for $750 if she had received notice of his intent to sell.

---

[6] Two years later, the Vlachs purchased additional interests in WRP. On September 13, 2004, the Vlachs purchased the limited partner interest of D.B., a limited partner at WRP. Through this purchase, the Vlachs acquired an additional 5.9375% interest in WRP for $900. Two days later the Vlachs entered into another sale agreement with V.O. for a 5.9375% interest in WRP for $900. The validity of these interests are not contested on appeal, because, as stated in section 8.2(b) the notice provisions of the LPA do not apply to transfers of a partnership interest to a person who is already a partner.

The district court found that the plain language of the Krelitz Transfer Agreement was sufficient evidence that "Dempsey [Mork] gave written notice to the partners in May 2002." The district court balanced this evidence against Francis's testimony that she received no notice. Ultimately, the district court discounted Francis's testimony and gave greater weight to the Krelitz Transfer Agreement: "faced with documentary evidence of notice versus the unsupported recollection of a witness that something did not happen 16 years ago, the Court finds that the documentary evidence of notice to be more persuasive." The district court concluded that the Krelitz transfer was valid, and the Vlachs were entitled to distributions under the receivership. The district court also concluded that the Vlachs' distributions were to be paid directly to the federal government pursuant to the settlement agreement.

D. Post-Hearing Motions and Appeal

Francis moved for amended findings, or a new trial, disputing the findings and conclusions regarding the interpretation of the LPA, the validity of the Vlachs' interest in WRP, and Dempsey Mork's alleged breach of fiduciary duties. M&A moved for further proceedings regarding the general partners' interests. The district court denied the motions. Meanwhile, WRP applied for taxation of costs and disbursements as the prevailing party, including expert-witness fees. Francis also subsequently moved the court for an order to show cause given Dempsey Mork's failure to distribute proceeds. After a hearing, the district court issued an order concluding that respondents were the prevailing party and entitled to taxation of costs and disbursements including a portion of its requested expert-witness fees. The district court also denied Francis's motion to show cause.

Francis and M&A appeal from the resulting judgment, contesting the district court's interpretation of the LPA, the factual findings regarding Dempsey Mork's conduct, the factual findings regarding the Vlachs' partnership interest, and the taxation of costs and disbursements against them. WRP appeals from the district court's order awarding less than one-half of the requested expert-witness fees.

DECISION

I. Interpretation of the LPA

The primary issue on appeal is the interpretation of the LPA regarding distribution of sale proceeds owed to each class of partners under the LPA. Francis argues that the district court erred by ignoring the unambiguous contractual language requiring the sequence of calculations. Because the LPA unambiguously outlines a priority repayment process, we agree with Francis and reverse.

When the language of a contract "is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). "[W]hen a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction." *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 364-65 (Minn. 2009). We interpret contractual language de novo. *Id.* at 364.

Here, the parties disagree over the interpretation of section 7.6 of the LPA which provides that a specific sequence of four calculations be followed, starting with a distribution to the limited partners equal to the amount of their initial contributions: "First, such assets shall be distributed to the class comprised of the Limited Partners up to the amount, if any, by which the aggregate capital contributions of such Partners exceed the aggregate distributions made to such Partners pursuant to this Agreement." In the fourth and final calculation, the LPA provides for an equal division of assets between the limited and general partners: "Fourth, any balance of such assets shall be distributed 50% to the class comprised of the Limited Partners, and 50% to the General Partner." The district court interpreted Section 7.6 to mean that the repayment priority was "moot" because the total sale proceeds exceeded the initial contributions. The district court, therefore, equally distributed the sale proceeds to the limited and general partners. Francis argues that the district court's interpretation "contradicts LPA Section 7.6's plain language and modifies its effect."

We agree with Francis for four reasons. First, the language in step one states that "assets shall be distributed to the . . . Limited Partners up to the amount, if any, by which the aggregate capital contributions of such Partners exceed the *aggregate distributions made* to such Partners pursuant to this Agreement." (Emphasis added.) The use of the past tense in the verb "made" unambiguously refers to past distributions already made to the limited partners under the LPA; the language does not include sale proceeds that were not yet distributed.[7] Second, the clause sets forth a numerical order of distributions that are to occur first, second, third, and fourth. The use of a numerical order unambiguously requires distributions and calculations to occur in a specific sequence. Third, each step is to be paid from "any balance" remaining from the previous step. Such language clearly states that

[7] It is undisputed that the limited partners never received a distribution prior to this action.

the prior step must be fully completed before the remaining balance can be calculated and used for the next distribution. Fourth, the provisions in step one are not moot. Under the district court's interpretation, the class of general partners receive a windfall at the expense of the limited partners. Because the competing interpretations yield different distribution amounts paid to each partnership class, the specific calculation sequence is not moot.

Accordingly, because the plain language of the contract requires that the limited partners receive their initial capital contributions before other distributions are made, we reverse the district court's interpretation of the LPA. In addition, we remand to the district court to enter judgment and order distributions consistent with this opinion.

II. Findings of Fact Regarding Dempsey Mork's Liability

Francis argues that the district court erred when it found that Dempsey Mork was not liable for breaching any fiduciary duty owed to the limited partners. Because the record supports the district court's findings, the findings are not clearly erroneous.

Minnesota recognizes statutory, common law, and contractual fiduciary duties. A general partner's statutory fiduciary duty to the limited partnership and the other partners "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." Minn. Stat. § 321.0408(c) (2020). The LPA also limited Dempsey Mork's liability to conduct that constituted gross negligence. *See* Minn. Stat. § 321.0110(a) (2020) (establishing that subject to certain limitations, "the partnership agreement governs relations among the partners and between the partners and the partnership"). Section 11.2 of the LPA provides that no "Partner shall have any claim against the General Partner by reason of any act or omission of the General Partner, provided that such acts or omissions were performed in good faith and that the General Partner was not grossly negligent or guilty of misconduct." Under section 4.1(v), the general partner will "indemnify and hold the Partnership harmless from any loss, damage or liability due to, or arising out of, the General Partner's fraud or gross negligence."

The parties do not dispute whether Dempsey Mork owed a fiduciary duty to the limited partners.[8] Instead, the parties dispute the district court's findings. Specifically, Francis argues that contrary to the district court's findings, the evidence established the following facts: (1) Dempsey Mork failed to exercise sufficient oversight over the Vlachs; (2) Dempsey Mork failed to maintain financial records; and (3) Dempsey Mork failed to disclose Krelitz's intention to sell his limited partnership interest. These arguments present questions of fact reviewed for clear error. *Pedro v. Pedro*, 489 N.W.2d 798, 801 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992). Findings of fact are clearly erroneous

[8] The parties did not make any legal arguments distinguishing the various sources of fiduciary duties under Minnesota law or individually analyzing the elements of a claim for breach of a contractual fiduciary duty as separate from claims for breaches of statutory or common law fiduciary duties. Nor did the parties present arguments regarding the extent to which parties can limit certain common law duties by contract, such as the duty to disclose material facts. *See Appletree Square I Ltd. P'ship v. Investmark, Inc.*, 494 N.W.2d 889, 892-93 (Minn. App. 1993) (concluding that a partnership can limit their duties of disclosure in the partnership agreement), *review denied* (Minn. Mar. 16, 1993); *see also* Minn. Stat. § 321.0110 (2020) (discussing waivable and nonwaivable statutory partnership protections). We need not determine the specific contours of each type of legal claim here because the parties in this case dispute the district court's factual findings regarding what Dempsey Mork did and knew. In addition, we note that the parties waived all pleaded claims and agreed to limit their dispute to the fairness of the distributions made under the receivership. Although the district court addressed each element of each claim and counterclaim raised in the pleadings, we limit our review to the issue that survived the parties' waiver: the fairness of the distributions recommended by the receiver. The district court's findings regarding Dempsey Mork's conduct relates to this issue.

only if the reviewing court is "left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

We find no clear error in the district court's findings regarding Dempsey Mork's supervision of the Vlachs. Dempsey Mork testified that he worked with the Vlachs for 39 years and that he had no reason to suspect wrongdoing. Dempsey Mork thought that the Vlachs were "very, very good" at managing the property and explained that the accountant used by WRP for 29 years never found an irregularity or impropriety in the financial documents. Similarly, Dempsey Mork stated that while he observed "smaller amounts" being taken out of WRP's funds, the auditors and HUD said it seemed to be appropriate. Dempsey Mork testified that when he asked the Vlachs about payments going to their credit cards, they told him it was for material related to the project's renovation and he believed everything was in order. This evidence supports the district court's findings that Dempsey Mork was not in league with the Vlachs, who had been trusted employees and who provided good service to WRP for decades. Dempsey Mork took the accountant, auditors, and HUD at their word, and the district court concluded that Dempsey Mork had no reason to suspect the Vlachs.

We also find no clear error in the district court's findings regarding Dempsey Mork's maintenance of financial records. Dempsey Mork testified that he delegated his bookkeeping duties to an accountant who properly filed records for 29 years. And when the accountant "disappeared," Dempsey Mork asked for the records back, went to the accountant's home to search for records, and inquired with HUD to attempt to remedy the missing records. Dempsey Mork also testified that while a few annual reports could not be recovered, he and the Vlachs continued to submit monthly documents to HUD and annual notices to the partners as required. Dempsey Mork also provided annual K-1s to the partners. Based on this evidence, the district court did not err in finding that Dempsey Mork did not fail in any duty to maintain financial records.

Finally, regarding the argument that Dempsey Mork failed to disclose Krelitz's intention to sell his interest, we conclude that the evidence supports the district court's finding that the limited partners received due notice of Krelitz's intention to sell. The district court considered evidence of timely notice, including the plain language of the Krelitz Transfer Agreement, which declared that written notice to the limited partners occurred in May 2002. The district court balanced this evidence against Francis's testimony to the contrary, and found the "documentary evidence of notice to be more persuasive" than "the unsupported recollection of a witness that something did not happen 16 years ago." We do not reweigh conflicting evidence on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

After reviewing the evidence presented, we are not left with the firm conviction that the district court made a mistake in its factual findings regarding Dempsey Mork's liability.

III. Findings of Fact Regarding the Validity of the Krelitz Transfer

Next, Francis argues that because Dempsey Mork did not notify the limited partners of Krelitz's intention to sell his partnership interest, the district court erred in concluding that the Krelitz transfer was valid. For the reasons noted above, we find no error in the district court's findings that proper notice was provided to the limited partners.

In addition, Francis's argument misconstrues the LPA. Francis contends that because Dempsey Mork or the Vlachs bear some responsibility for the alleged invalid transfer, the district court should reduce the amount of their distribution and increase the amount of the distribution to be made to Francis. Section 8.2(a) of the LPA, however, requires the selling limited partner—not Dempsey Mork—to provide notice:

> (a) Except as otherwise provided in this Agreement, no Limited Partner shall transfer, sell, assign, give or otherwise dispose of his Partnership Interest or a part thereof, whether voluntarily or by operation of law, or at judicial sale or otherwise, to any Person, unless such Limited Partner first (i) obtains the consent of the General Partner to do so; and (ii) notifies all the Partners of his intention to do so and offers to sell in writing such Partnership Interest or such part thereof to the General and Limited Partners at a price and upon terms, specified in such offer, which are no less favorable to such Partners than those upon which such Limited Partner certifies he is willing to sell a third party whose name and address shall be specified in such offer.

Without conferring upon the Vlachs or Dempsey Mork a contractual duty to provide notice, the amount of their distribution should be unaffected by compliance or breach of Section 8.2(a). Francis has not brought a breach of contract claim against Krelitz for failing to provide notice. Given this contractual language, we are not persuaded by Francis's argument on this issue.[9]

[9] Francis also argues that the language of the Krelitz Transfer Agreement shows improper notice. Section 11.1 of the LPA requires that all notices be "deemed properly given only if sent by registered or certified United States mail." The Krelitz Transfer Agreement declares that notice was made "[b]y letter dated May 28, 2002," without reference to how the letter was delivered. In the absence of such a reference, Francis argues that the Krelitz Transfer Agreement cannot establish proper notice. Because there is no claim for breach of contract against Krelitz, we need not determine whether substantial performance applies, or whether the Krelitz Transfer Agreement demonstrates substantial performance. In

IV. Determination of Prevailing Party and Remaining Issues

Francis, M&A, and WRP each appeal from the district court's order taxing costs and disbursements. We conclude that because the primary issue in the receivership is the distribution of proceeds under the LPA, and because Francis prevailed on that issue on appeal, the respondents are not the prevailing party. *See Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998) (noting that to determine the prevailing party, "the general result should be considered, and inquiry made as to who has, in the view of the law, succeeded in the action" (quotation omitted)). Because respondents are not the prevailing party, we reverse the decision to tax costs against appellants, including the award for WRP's expert-witness fees. *See* Minn. Stat. § 549.04 (2020) (allowing "reasonable disbursements," including fees, to the *prevailing party* in an action).

In light of our reversal of the district court's order taxing costs and disbursements, we decline to address the parties' arguments regarding the applicability of section 549.04 to a proceeding involving the appointment of a receiver and regarding WRP's cross-appeal of the district court's decision to reduce respondents' claimed expert-witness fees. Similarly, our decision to reverse and remand the distribution calculations under the LPA renders moot the district court's decision to deny Francis's motion to show cause against

---

addition, we are concerned that Francis lacks standing to bring such a challenge. The consequences of invalidating the Krelitz transfer could require unwinding the sale and reverting the interest back to Krelitz, not to the limited partnership generally or to Francis specifically. We need not determine standing, however, because the district court's findings are not clearly erroneous.

respondents for failing to carry out the improperly calculated distributions, and we decline to address arguments relating to that decision.

Affirmed in part, reversed in part, and remanded.