

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0787**

Khalif Jama, et al.,
Respondents,

vs.

Saleban Garbiye,
Appellant,

Amal Money Wire, LLC d/b/a Amal Express, et al.,
Respondents,

and Jamal Jama, et al.,
Plaintiffs,

Alex Jerome,
Respondent,

vs.

Saleban Garbiye,
Appellant,

Amal Money Wire, LLC d/b/a Amal Express, et al.,
Respondents,

and Mohamed Ali Muse,
Plaintiff,

vs.

Saleban Garbiye,
Appellant,

Amal Money Wire, LLC d/b/a Amal Express, et al.,
Respondents.

Filed March 29, 2021
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CV-17-16547

Andrew Carlson, Carlson Law Office, LLC, St. Louis Park, Minnesota (for respondents Khalif Jama, Mursal Egal, Abukar Musse, Alex Jerome and Sahra Hassan)

Matthew L. Fling, St. Louis Park, Minnesota (for appellant)

Daniel L. Kennedy, Kennedy & Cain, PLLC, Minneapolis, Minnesota (for respondent Amal Money Wire, LLC)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Respondent-customers sued respondent-money-wiring company and appellant-agent for breach of contract. The company and agent filed cross-claims against one another for indemnification and attorney fees and costs. After the customers settled with the company, the district court held a court trial on the customers' claims against agent and on the cross-claims. On appeal, agent argues that the district court (1) abused its discretion by relying on testimonial evidence instead of documentary evidence on the customers' breach-of-contract claims, (2) erred in granting the company's indemnification cross-claim, and (3) erred in awarding attorney fees and costs to the company. We affirm.

FACTS

Defendant-respondent Amal Money Wire, LLC d/b/a Amal Express, et al. (the company) is a licensed money transmitter in Minnesota. In October 2003, defendant-appellant Saleban Garbiye (agent) began serving as an agent with the company. An agent agreement governed the relationship and contained provisions related to agent's duties and the company's right to seek indemnification and recover attorney fees. Agent and the company agreed to "indemnify and defend the other party from claims that result or are alleged to result from the acts of the first party." Agent also agreed to "reimburse the [c]ompany for any costs or disbursement related to the enforcement of this agreement, including but not limited to reasonable attorneys' fees."

In March 2017, the company contracted with an independent company to perform an audit of its agents' files. Agent refused to hand over his files to the independent auditor. The company terminated the agent agreement with 60 days' notice in March 2017, when agent refused to turn over his files.

Shortly after terminating the agreement, the company began receiving complaints from agent's customers, including plaintiff-respondents Yusuf Aburahman, Khalif Jama, Mursal Egal, Abukar Musse, Jamal Jama, Alex Jerome, Sardiyo Ali, Mohamed Ali Musse, and Sahra Hassan. The customers stated that they each gave money to agent, but that agent never submitted their money to the company for transmission to their intended recipients. Additionally, the company and the customers alleged that while agent was working for the company, he also conducted a personal "money holding" practice, meaning that he held onto money until the customer requested that the money be sent or returned. Agent

admitted that he had been holding money for some of his own personal customers, and that he did not report those payments to the company “and [they] were not intended for money transmission for [the company].”

In April 2017, the company and agent executed an agreement formalizing the termination of the agent agreement (the termination agreement). The termination agreement stated that “[d]uring the same period of time that [agent] worked as [the company’s] agent, [he] accepted payments from individuals that were not reported to [the company] and were not intended for money transmission by [the company].” Agent agreed that if anyone “makes a claim against [the company] alleging that money was given to [agent] for a purpose other than money transmission through [the company’s] normal money transmission system, [agent] will defend and indemnify [the company] against such claim.” Agent also agreed “that the prevailing Party in any such litigation shall be entitled to recover its reasonable attorneys’ fees.”

The customers filed breach-of-contract actions against the company and agent in three separate court cases, which the district court later companioned. Before trial, agent and the company filed cross-claims against each other for indemnification and attorney fees. In September 2019, the district court granted partial summary judgment and dismissed the claims asserted by one of the customers. A month later, all of the remaining customers settled their claims with the company under confidential settlement agreements.

The district court conducted a court trial in October 2019. The customers sought to collect the portion of damages from agent that they did not recover from the company. And

the company sought indemnification from agent for the money it paid to settle with the customers, along with attorney fees and costs incurred in the litigation.

The district court issued its findings of fact, conclusions of law, and order for judgment. The district court dismissed the customers' claims against the company based on the testimony that each customer reached a full settlement with the company and had no other claims against it. The district court awarded judgment for each customer and against agent for the individual amounts owed. The district court dismissed agent's cross-claim against the company, but granted the company's indemnification cross-claim against agent. The district court entered judgment for \$61,845 for indemnification based on the company's settlement with the customers, \$88,487.50 in attorney fees, and \$9,037.50 in disbursements.

Agent appeals.

DECISION

I. The district court did not abuse its discretion by considering testimonial evidence of the settlement agreements between the customers and the company.

Agent challenges the district court's evidentiary ruling. A district court has "broad discretion over the admission and exclusion of evidence and the [district] court's rulings should not be disturbed by a reviewing court unless the rulings constitute a clear abuse of discretion or are based on an erroneous view of the law." *Bergh & Misson Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997). "In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or

contrary to legal usage, the appellate court is bound by the result.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

The company settled its claims with the customers before trial. They recorded these settlements in confidential settlement agreements. At trial, the parties informed the district court that the written settlement agreements between the customers and the company were confidential, and could not be entered into evidence as exhibits. Agent did not object. The district court heard direct testimony from the customers about the actual settlement amounts. After the customers completed their testimony and the attorney rested, agent asked to see the confidential settlement agreements. The district court declined the request because it was untimely and agent had not objected to the witness testimony about the settlement amounts. The district court stated in the findings of fact, conclusions of law, and order that the customers had settled with the company in the amounts testified to at trial. On appeal, agent claims that the district court’s reliance on witness testimony violated the rules of evidence.

We determine that agent forfeited consideration of this issue for two reasons.¹

First, agent failed to timely object at trial. An error may not rest on a ruling that admits evidence unless “a timely objection or motion to strike appears of record, stating

¹ We recognize that agent appeared as a self-represented litigant at trial and that courts typically afford some leeway to self-represented litigants. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). That said, “this court has repeatedly emphasized that [self-represented litigants] are generally held to the same standards as attorneys and must comply with court rules.” *Id.*; see also *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976) (cautioning courts against modifying rules and procedures because self-represented litigant lacks skills or expertise of an attorney).

the specific ground of objection” Minn. R. Evid. 103(a)(1). “A party is not only bound to make specific objections at the time the evidence is offered, but he is also limited on appeal to the objections he raised below.” *Becker Cty. Nat’l Bank v. Davis*, 284 N.W. 789, 792 (Minn. 1939) (quotation and citation omitted). While the parties did not enter the confidential settlement agreements into evidence, the parties openly discussed the settlement amounts in court and agreed that the district court could state the settlement amounts in its findings of fact. The customers also testified about their individual settlements with the company. Agent did not object to the witness testimony related to the settlement amounts, and only asked to see the confidential settlement agreements after the close of testimony. When no objection to an alleged error is raised before the district court, the alleged error cannot be considered on appeal. *Park Hill Apartments v. Anderson*, 409 N.W.2d 924, 925 (Minn. App. 1987). Because agent did not timely object to testimony about the settlement amounts, he forfeited his arguments.

Second, agent did not bring a motion for new trial challenging the district court’s evidentiary rulings. “Matters of trial procedure, evidentiary rulings, and jury instructions occurring at trial are subject to appellate review only if they are assigned as error in a motion for a new trial.” *County of Hennepin v. Bhakta*, 922 N.W.2d 194, 197 (Minn. 2019); *see also Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003) (clarifying that only substantive questions of law properly raised and considered by district court are subject to appellate review without making a motion for new trial); *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986) (same).

Furthermore, even if we reach the merits of agent's argument, we discern no abuse of discretion in the district court's admission of the evidence. The district court's factual findings about the settlement amounts stemmed from unobjected-to oral testimony presented by the customers themselves. The district court heard testimony from the customers and from the company's corporate officer that the company settled its claims with the customers. Each customer testified about the amount of his or her settlement with the company. Agent had a chance to cross-examine each of these witnesses. The district court, sitting as finder-of-fact, determined that the settlement amounts were established by direct witness testimony. *See Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (noting that appellate courts defer to district court's opportunity to weigh and evaluate witness credibility); *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992) (recognizing that "the existence and terms of a contract are questions for the fact finder").

We also reject agent's argument that the district court violated the best-evidence rule by denying his request to compel production of the confidential settlement agreements. The best-evidence rule provides that "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required." Minn. R. Evid. 1002. Agent did not present the best-evidence argument to the district court, and therefore we need not address it on appeal. Moreover, the best-evidence rule is inapplicable because the witnesses testified to their own firsthand knowledge of their individual settlements with the company, rather than the contents of the written settlement agreements. And a witness with firsthand knowledge may permissibly testify to that knowledge. *See Buffalo Ins. Co. v. United Parking Stations, Inc.*, 152 N.W.2d 81, 84 (Minn. 1967) (noting that the best-

evidence rule “is merely a name for the rule which requires the contents of a writing to be proved by the writing itself if it is available” and “is not a broad, general principle applicable throughout the law of evidence”).

In sum, even though appellant failed to preserve this issue, we determine that the district court did not abuse its discretion in admitting the testimony and its factual findings are not clearly erroneous.

II. The district court did not err in granting judgment in the company’s favor on its indemnification cross-claim.

Agent argues that the district court erred in granting indemnification to the company. In a court trial, “findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. We apply a de novo standard of review to a district court’s interpretation of a contract and its conclusions of law. *Valspar Refinish, Inc. v. Gaylord’s, Inc.* 764 N.W.2d 359, 364 (Minn. 2009). On review, this court will “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted).

We determine as an initial matter that agent forfeited this argument by raising it for the first time on appeal. See *Vaughn v. Nw. Airlines, Inc.*, 558 N.W.2d 736, 745 n.9 (Minn. 1997) (declining to address untimely arguments); *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957) (“litigants are bound [on appeal] by the theory or theories, however erroneous

or improvident, upon which the action was actually tried below”). This court generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Thus, we find agent’s argument forfeited.²

Moreover, even if agent had not forfeited his argument, we determine that it is meritless. An indemnity clause is “[a] contractual provision in which one party agrees to answer for any specified or unspecified liability or harm that the other party might incur.” *Black’s Law Dictionary* 887 (10th ed. 2014). The agent agreement and the termination agreement govern the company’s indemnity claim against agent. “[P]arties [to a contract] are generally free to allocate rights, duties, and risks.” *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 545 (Minn. 2014). Further, “parties are free to contract to whatever terms they agree, provided that those terms are not prohibited by law.” *Persigehl v. Ridgebrook Inv. Ltd. P’ship*, 858 N.W.2d 824, 832 (Minn. App. 2015). We determine the parties’ intent based on the contract’s language. *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). If the language is unambiguous, we enforce the plain language of the contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010).

The agent agreement contained an indemnity clause in which “The Agent and the Company agree that each party is responsible for its own acts, and agree that each party

² Agent argues that (1) the company failed to tender defense of the claim, (2) the record lacks evidence that judgment was entered against the company by the customers, (3) the district court failed to make a sua sponte finding that the employment termination agreement was reasonable and prudent, (4) the company’s reliance on the parties’ agreement is analogous to an attempt at novation, and (5) the judgment lacked a sufficient factual basis. We deem these arguments forfeited.

shall indemnify and defend the other party from claims that result or are alleged to result from the acts of the first party.” The termination agreement similarly provides:

Repayment. [Agent] shall pay full compensation to each person or entity from whom he accepted money or other forms of payment that was not transmitted by [the company] to a recipient pursuant to [the company]’s normal money transmission system. Such compensation shall be completely paid with[in] five (5) days of the date this Agreement is signed.

(a) If any person or entity makes a claim against [the company] alleging that money was given to [agent] for a purpose other than money transmission through [the company]’s normal money transmission system, [agent] will defend and indemnify [the company] against such claim.

The district court cited the relevant portions of the two agreements and noted that “[agent] has twice agreed to indemnify the company against claims resulting from [his] actions.” The district court noted that those agreements “state that [agent] must indemnify [the company] for his actions” because he took money from customers and did not immediately transfer the money, as required by the company’s “normal money transmission system.” The district court determined that agent “has not challenged the agency agreement nor the [termination agreement].” The record supports the district court’s determination that agent is obligated, under the clear and unambiguous terms of the two agreements, to indemnify the company for its damages.

Based on the district court’s findings about the indemnification clause, and our own review of the record, we conclude that the district court did not err in granting judgment in the company’s favor on its indemnification cross-claim against agent.

III. The district court did not err in awarding attorney fees and costs to the company.

Agent challenges the district court's award of attorney fees and costs. Minnesota follows the American rule "that attorney fees are not recoverable in litigation unless there is a specific contract permitting or a statute authorizing such recovery." *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 554 (Minn. 2008) (quotation omitted). "We will not reverse the district court's decision on attorney fees absent an abuse of discretion." *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007).

Contract interpretation is a question of law that we review de novo. *Storms*, 883 N.W.2d at 776. "Because the intent of the parties is typically determined from the plain language of a written contract we generally enforce the agreement of the parties as expressed in the language of the contract." *St. Jude Medical, Inc. v. Carter*, 913 N.W.2d 678, 683 (Minn. 2018) (citation and quotation omitted). If the contract's language is unambiguous, we enforce the agreement as written. *Dykes*, 781 N.W.2d at 582.

The agent agreement and the termination agreement provide for an award of attorney fees and costs. In the agent agreement, agent agreed "that if the Company must enforce this agreement against the Agent for any reason, the Agent will reimburse the Company for any costs or disbursement related to the enforcement of this agreement, including but not limited to reasonable attorneys' fees." The termination agreement also contained an attorney-fee provision stating that "The Parties hereto hereby . . . agree that

the prevailing Party in any such litigation shall be entitled to recover its reasonable attorneys' fees." Agent did not challenge the provisions of these agreements at trial.

The right to seek attorney fees and costs is clearly and unambiguously provided for in the parties' agreements, and agent does not contest them. Thus, the district court did not err in awarding attorney fees and costs to the company under the parties' agreements.

Affirmed.