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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0854**

Robbie Nelson, et al.,
Respondents,

vs.

Dwight Ryks, et al.,
Appellants.

**Filed April 5, 2021
Affirmed in part, reversed in part, and remanded
Gaïtas, Judge**

Kandiyohi County District Court
File No. 34-CV-19-140

David T. Johnson, Amundson & Johnson, P.A., Paynesville, Minnesota (for respondents)

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Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

This appeal arises from a dispute regarding a purchase agreement for residential real property. The parties—appellant-sellers Dwight and Robin Ryks and respondent-buyers Robbie and Rebeka Nelson—arbitrated the dispute, and the arbitrator found in favor of buyers and awarded attorney fees. Sellers challenged the arbitrator’s award in the district

court. The district court denied sellers' motion to vacate the award, entered judgment, and granted buyers' motion for attorney fees. Sellers then moved for amended findings or a new trial; the district court denied sellers' motion and denied buyers' second motion for attorney fees.

Sellers now challenge the district court's confirmation of the award, arguing that the arbitrator exceeded his authority and committed misconduct by deciding in buyers' favor and improperly awarding attorney fees to buyers that were not authorized by the arbitration agreement. In a related appeal, buyers contest the district court's denial of their second motion for attorney fees. We affirm in part, reverse in part, and remand to the district court.

FACTS

Years ago, sellers bought multiple acres in Kandiyohi and built a home on the land. Seller Dwight Ryks personally installed a 600-foot sewer line extending from the home. To reach the city sewer system, he had to install a section of the sewer line on an adjacent property owned by a third party. At no point did sellers obtain an easement from the third party.

The sewer line demanded "an extreme amount of maintenance." Dwight Ryks regularly walked along the sewer line with a flashlight to check for obstructions, standing water, and sewage build-up. If needed, he would use a "special pipe tool" to clear any obstructions and restore the flow. And annually, he would use a fire truck to blast high-pressured water through the sewer line to clear obstructions. The sewer line also required repairs, and, at one point, a farmer cracked one of the standpipes.

Eventually, sellers tried to sell their home. They were unsuccessful and ultimately

took it off the market. But in 2018, buyers approached sellers directly about purchasing the home. Buyers and sellers reached an agreement without the assistance of counsel, real estate agents, or brokers. They memorialized their agreement using a purchase-agreement form that included standard contract language.¹ The purchase agreement included provisions on representations and warranties, disclosures of material defects, and methods of dispute resolution. The parties signed the agreement on February 6, 2018. Under the terms of the agreement, buyers agreed to purchase the property “as is.”²

Before closing, buyers had the property inspected and asked sellers to make various repairs, most notably to the roof. The inspection report made no mention of the sewer line. Sellers provided buyers with a disclosure document that also did not reference the sewer line. The disclosure document stated that the property had no material defects. It also stated there had never been a sewage backup on the land.

The sale closed in April 2018. When buyers moved into the home, they began to have sewage problems. They initially experienced a backup of “generally ‘clear’ water” in the basement and notified sellers. Dwight Ryks used his pipe tool to clear the obstruction

¹ Sellers have maintained, both in their filings to the district court and now on appeal, that buyers downloaded the form from the internet. Although not critical to the issues before us, this information provides at least some context as to the language and terms that were included in the purchase agreement.

² Notably though, buyers did not purchase the entire property from sellers. Because the sale was only for the portion of land surrounding the home, sellers retained a portion of land next to the home. The sewer line running from the home now runs through three parcels of land—buyers’ newly-acquired land, the land retained by sellers, and the lot owned by a third party. Sellers did not disclose these circumstances to buyers before closing and thus neglected to grant buyers an easement to access and maintain the sewer line.

and explained to buyers how to restore the flow. But only a short while later, buyers discovered that the flow of “raw sewage” had been obstructed and then experienced additional backups. Buyers again contacted sellers, but Dwight Ryks was initially out of town and then claimed that the city was responsible for maintenance of the sewer line. Seller Robin Ryks, a city council member, raised the issue during a city council meeting. The city chose not to be involved in the private dispute between sellers and buyers.

Buyers hired a plumber. The plumber scoped the sewer line using a video camera, identified the issue, and cleared the blockage. Later review of the footage revealed “significant portions of the pipe were submerged,” which “indicat[ed] sagging in the line.” Buyers later hired professionals to examine the sewer line and provide recommendations for long-term solutions for these ongoing issues. The recommendations included: installing a standalone septic system on the property, replacing the existing sewer line, or modifying the existing sewer line. Meanwhile, buyers tried other methods to prevent additional sewage issues but had limited success.

Buyers sought legal representation. Their attorney submitted a demand for arbitration to the American Arbitration Association (AAA), citing the arbitration clause of the purchase agreement. Buyers alleged that sellers had breached the terms of the purchase agreement by failing to disclose material facts and defects before closing—namely, the sewer line and its complex history. Sellers responded by sending a letter to the AAA, denying liability and generally objecting to arbitration proceedings.

After some preliminary proceedings, an evidentiary hearing was held before an arbitrator in November 2018. Sellers appeared without counsel and moved to stay the

arbitration, requesting mediation instead. Buyers' counsel objected. The arbitrator called for a recess and the parties independently discussed the prospect of mediation. Following the recess, the arbitrator found that "[t]he parties did not agree that mediation would be productive" and that "mediation was waived by the parties' conduct during the pre-hearing phases of the arbitration." The arbitrator also denied buyers' motion for a stay as untimely. Sellers did not raise any other objections to arbitrating the dispute and they participated in the ensuing evidentiary hearing before the arbitrator. During that hearing, multiple witnesses testified and the parties submitted additional evidence, including documents and video footage of the sewer line from buyers' plumber.

The arbitrator issued a written decision, which awarded buyers \$17,220 in damages, \$4,849.50 in attorney fees, and an easement appurtenant³ on the adjacent property still owned by sellers. Additionally, the arbitrator ordered sellers to pay all arbitration fees and expenses, which totaled \$2,245.85.

Sellers retained counsel, petitioned the district court for judicial review, and moved to vacate the arbitrator's award. They claimed that the arbitrator had no authority to consider the dispute, that the arbitrator went beyond the scope of his authority under the purchase agreement, that they were entitled to mediation as a prerequisite to arbitration, and that the purchase agreement did not authorize attorney fees for arbitration. Buyers

³ An "easement" is "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose." *Black's Law Dictionary* 644 (11th ed. 2019). Similarly, an "easement appurtenant" is "created to benefit another tract of land, the use of easement being incident to the ownership of that other tract." *Id.*

moved the district court to confirm the arbitrator's award and for post-arbitration attorney fees (first motion for attorney fees).

The district court denied sellers' motion to vacate the award, confirmed the arbitration award, awarded buyers an additional \$5,211.00 in attorney fees for the district court proceedings, and entered judgment accordingly. Sellers then moved the district court for amended findings of fact or a new trial. Buyers responded and moved for additional attorney fees (second motion for attorney fees). The district court issued amended findings, but denied sellers' motion for a new trial and did not modify the arbitration award. Additionally, the district court summarily denied buyers' second motion for attorney fees.

Sellers appealed from the district court's November 2019 judgment on the arbitration award. Buyers thereafter filed a related appeal contesting the district court's denial of their second motion for attorney fees.

DECISION

I. Sellers' Appeal

We first consider sellers' claims. Sellers contend that the arbitrator "committed misconduct and/or exceeded his authority" by (1) concluding that the parties' purchase agreement imposed obligations on sellers after closing, (2) deciding issues outside of the scope of the purchase agreement, (3) proceeding to arbitration before mediation in violation of the purchase agreement, and (4) awarding attorney fees to buyers in violation of the purchase agreement.

Whether an arbitrator committed misconduct or exceeded the scope of an arbitration agreement is reviewed de novo. *See Volkmann v. Volkmann*, 688 N.W.2d 347, 349 (Minn.

App. 2004) (reviewing de novo whether arbitrator's failure to hold adversarial hearing constituted misconduct); *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004) (reviewing district court's determination on whether arbitrator exceeded arbitrator's authority de novo). But judicial review of an arbitration award is extremely limited. *Phillips v. Dolphin*, 776 N.W.2d 755, 758 (Minn. App. 2009), *review denied* (Minn. Mar. 16, 2010). A reviewing court must exercise every reasonable presumption "in favor of the finality and validity of the arbitration award." *State Office of State Auditor v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 754-55 (Minn. 1993). Courts are not to overturn an award "merely because they may disagree with the arbitrator[']s decision on the merits"; awards are presumed final and valid unless proven otherwise. *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 761 (Minn. 2014); *see* Minn. Stat. § 572B.23 (2020) (listing permissible grounds for vacating an arbitration award). In the absence of an agreement limiting an arbitrator's authority, the arbitrator "is the final judge of both law and fact, including the interpretation of the terms of any contract," and an arbitrator's award "will not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying his own theory, misconduct, or other disregard of duty." *Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d at 754 (quotation omitted).

A. Sellers' obligations under the purchase agreement persisted even after closing because the purchase agreement contained a valid survival clause.

Sellers first argue that they were not bound by the disclosure requirements in the purchase agreement after closing because, under Minnesota law, the purchase agreement

“merged” with the deed. Thus, according to sellers, the arbitration itself was invalid because the terms of the purchase agreement, including the requirement to arbitrate, were not enforceable after closing.

The district court determined that the merger doctrine did not apply because a survival clause in the purchase agreement extended sellers’ contractual obligations to buyers beyond closing. We agree.

Minnesota courts have long recognized the merger doctrine. *Bruggeman v. Jerry’s Enters., Inc.*, 591 N.W.2d 705, 708 (Minn. 1999) (“Over a century ago, we announced our endorsement of the merger doctrine.” (citing *Whitney v. Smith*, 22 N.W. 181 (Minn. 1885); *Fritz v. McGill*, 18 N.W. 753 (Minn. 1884))). Under the merger doctrine, a purchase agreement merges with a deed upon closure of the sale; the merger then generally “precludes parties from asserting their rights under a purchase agreement after the deed has been executed and delivered.” *Id.* But this is not a doctrine of automatic application. The merger doctrine “merely creates a *presumption* of merger and that presumption can be presently overcome with sufficient evidence to the contrary.” *Id.* at 710. For instance, the presumption may be defeated when a dispute involves conditions subsequent, fraud, or when the underlying agreement contains a valid survival clause. *See id.* at 707-10 (discussing survival clauses and conditions subsequent); *JEM Acres, LLC v. Bruno*, 764 N.W.2d 77, 83 (Minn. App. 2009) (discussing fraud). Ultimately, “[i]n order to rebut the presumption, there must be some evidence that the complaining party reserved his or her contractual rights for future negotiations.” *Resolution Tr. Corp. v. Kahn*, 501 N.W.2d 703, 705 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993).

Here, the parties' purchase agreement includes two separate provisions regarding survival of portions of the agreement after closing. First, within a section entitled "Seller Representations and Warranties"—where sellers agreed to disclose any "known material facts and material defects affecting the Property"—there is a provision explicitly addressing the duration of sellers' warranties. That provision states that "Seller's warranties in this section will continue through and survive the Closing Date, the completion of this Agreement, and the delivery of the deed and possession of the Property to Buyer." Second, the purchase agreement later states that any terms that "impose an obligation on either Party after the delivery of the deed to Buyer will continue to survive until satisfied." The purchase agreement also requires arbitration of "[a]ll claims or disputes" pertaining to the interpretation and application of the terms under the agreement.

Given the survival clauses, we see no error in the district court's determination that the presumption of merger does not apply. *See Bruggeman v. Jerry's Enters., Inc.*, 583 N.W.2d 299, 302 (Minn. App. 1998) (concluding that language in the parties' agreement "create[d] an obligation that survived execution of the deed"), *aff'd*, 591 N.W.2d 705 (Minn. 1999). Together, the terms in the purchase agreement mean that sellers were obligated to disclose material facts and defects, those obligations persisted beyond closing, and any dispute related to those obligations was subject to arbitration.

We also note that sellers submitted to arbitration under the terms of the purchase agreement and never asserted during arbitration that the purchase agreement had merged. Those who participate in arbitration are "estopped . . . from later asserting that they had no contractual obligation to do so." *Twomey v. Durkee*, 291 N.W.2d 696, 698 (Minn. 1980);

see Helmerichs v. Bank of Minneapolis & Tr. Co., 349 N.W.2d 326, 328 (Minn. App. 1984) (“To allow a claim of no agreement to arbitrate after the hearing is over results in a waste of time and money.”), *review denied* (Minn. Dec. 20, 1984); *see also* Minn. Stat. §§ 572B.23(a)(5), .15(c) (collectively requiring an objection “not later than the commencement of the arbitration hearing”). Because sellers proceeded with the arbitration and never argued that their obligations under the purchase agreement had terminated, they are precluded from now claiming that the arbitration was invalid.

B. The arbitrator did not exceed the scope of the arbitration agreement.

Sellers next argue that the arbitrator exceeded the scope of the arbitration agreement by concluding that sellers were liable to buyers based on a Minnesota statute not referenced in the purchase agreement. The arbitrator determined that sellers’ failure to disclose information about the sewer line violated sellers’ obligations under both the purchase agreement and Minnesota Statutes section 513.55, subdivision 1(a) (2020). Section 513.55 (2020) requires sellers of residential real property to disclose in writing known material facts that could adversely impact a buyer’s use and enjoyment of the property. Minn. Stat. § 513.55, subd. 1(a). We disagree that the arbitrator’s consideration of section 513.55 went beyond the scope of the arbitration agreement.

An “[a]rbitrator cannot expand his authority beyond what could reasonably be interpreted from the arbitration agreement.” *Seagate Tech., LLC*, 854 N.W.2d at 762. The burden is on the party challenging the award to prove that the arbitrator exceeded his powers. *Hilltop Constr., Inc. v. Lou Park Apartments*, 324 N.W.2d 236, 239 (Minn. 1982). If a court later determines that the arbitrator exceeded the scope of the arbitration

agreement, the arbitrator's award must be vacated. Minn. Stat. § 572B.23(a)(4). To determine whether an arbitrator exceeded his authority, appellate courts consider “whether an award draws its essence from the parties’ agreement.” *Wolfer v. Microboards Mfg., LLC*, 654 N.W.2d 360, 366 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). When an award “is rationally derived from an agreement viewed in the light of the agreement’s language, content, and indicia of intent, it should be upheld.” *Id.*

Here, under the plain language of the purchase agreement, sellers were required to disclose “known material facts and material defects affecting the Property . . . *and make any and all other disclosures required by law* within 5 business days of this Agreement.” (Emphasis added.) The arbitrator concluded that sellers were required to disclose material facts regarding the sewer line—including that the main access points to the sewer line were on another’s property, that the sewer line required extreme maintenance, and that one of the standpipes was damaged—under the explicit terms of the purchase agreement and under section 513.55. Because the purchase agreement required sellers to make “all other disclosures required by law,” the arbitrator did not exceed the scope of his authority in considering sellers’ obligations under Minnesota law.

C. The arbitrator reasonably found that the parties waived mediation.

Next, sellers contend that because mediation was a precondition to arbitration under the terms of the purchase agreement, the arbitrator improperly denied their motion to stay the arbitration so they could pursue mediation. We disagree.

The purchase agreement contains both an agreement to mediate and an agreement to arbitrate. As sellers point out, the mediation provision suggests that mediation should

be the first step in resolving a dispute under the purchase agreement.⁴ But the arbitrator concluded that the parties implicitly waived any contractual right to mediation. The arbitrator noted that neither party requested mediation during the pre-hearing scheduling conference or at any other point during the arbitration schedule leading up to the evidentiary hearing. And the arbitrator observed that, after a recess for the parties to discuss whether mediation would be fruitful, “[t]he parties did not agree that mediation would be productive.”

“A person objecting to arbitration must timely raise the objection so a party seeking arbitration can make an informed choice whether to pursue arbitration with the risk that the dispute would be found nonarbitrable or to abandon arbitration and pursue other remedies.” *Helmerichs*, 349 N.W.2d at 328. Given sellers’ failure to request mediation until the day of the arbitration hearing, the arbitrator reasonably determined that sellers waived mediation.

We also note that after the arbitrator called a recess for the parties to discuss the likely success of mediation, sellers ultimately submitted to arbitration. “[B]y acquiescing in and participating in the proceeding,” the parties “in effect represented that the contract provision for arbitration was in force, that the dispute was arbitrable, and that the parties would be bound by the decision and award.” *Twomey*, 291 N.W.2d at 699; *see also Stern*

⁴ The mediation provision in the purchase agreement provides: “All claims or disputes related to the performances or interpretation of this Agreement that the Parties are unable to resolve themselves will first submitted [sic] to a mediation services provider mutually acceptable to both Parties or otherwise through a mediator with the American Arbitration Association.”

1011 First St. S., LLC v. Gere, 937 N.W.2d 173, 177 (Minn. App. 2020) (“Intent to waive arbitration may be inferred from the circumstances.”), *review denied* (Minn. Mar. 25, 2020). Because sellers ultimately acquiesced in the arbitration, they are now bound by the resulting decision and award despite the unfavorable result.

D. The district court erred in confirming the arbitrator’s award of attorney fees.

Finally, sellers argue that the arbitrator exceeded the scope of the arbitration agreement in awarding attorney fees to buyers for the arbitration. Sellers note that the purchase agreement does not authorize attorney fees for arbitration. Thus, according to sellers, the arbitrator had no authority to order attorney fees. We agree with sellers on this point.

In awarding buyers attorney fees for the arbitration, the arbitrator observed that the purchase agreement “entitles the prevailing party to ‘reasonable attorney fees and costs.’” The district court cited this same language and agreed with the arbitrator’s award of attorney fees.

The general rule on attorney fees is that such fees “are recoverable if specifically authorized by contract or statute.” *Horodenski v. Lyndale Green Townhome Ass’n, Inc.*, 804 N.W.2d 366, 371 (Minn. App. 2011) (quotation omitted). Buyers argue that the purchase agreement authorizes attorney fees for arbitration. We therefore turn our attention to the purchase agreement.

Initially, we note that neither the arbitrator nor the district court cited the *entire* provision concerning attorney fees. The complete provision states: “the prevailing Party

of *any action at law or in equity* brought to enforce or interpret this Agreement will be entitled to reasonable attorney[] fees and costs.” (Emphasis added.) Neither the arbitrator nor the district court considered whether the arbitration was an “action at law or in equity.”

The use of these terms indicates that the parties intended to authorize attorney fees for court proceedings but not for arbitration. An “action at law” is defined as “[a] civil suit stating a legal cause of action and seeking only a legal remedy.” *Black’s Law Dictionary* 37 (11th ed. 2019). And an “action in equity” is “[a]n action that seeks equitable relief, such as an injunction or specific performance, as opposed to damages.” *Id.* at 38. “Arbitration,” on the other hand, is “[a] dispute-resolution process in which the disputing parties choose one or more neutral third parties to make a final and binding decision resolving the dispute.” *Id.* at 129. There is a recognized distinction between “an action,” which is a lawsuit, and a “dispute-resolution process” such as arbitration. *See id.* at 37, 129.

The arbitration section of the parties’ agreement provides additional support for sellers’ argument that attorney fees were never contemplated. This section specifically addresses the costs of arbitration—“[b]oth Parties will share the costs of arbitration equally.” But it is silent about attorney fees. The omission of any reference to attorney fees in the arbitration section of the purchase agreement further indicates that attorney fees are not authorized for arbitration.

We accordingly conclude that under the terms of the parties’ agreement, attorney fees are only available for “an action at law or in equity,” and not for arbitration. The arbitrator exceeded his authority by awarding buyers attorney fees for the arbitration and

the district court erred in upholding this portion of the arbitrator's award. We reverse and remand to the district court to modify the award consistent with this opinion.

II. Buyers' Appeal

We now turn to buyers' related appeal. Buyers argue that the district court erred in summarily denying their motion for attorney fees for work performed in responding to sellers' motion for amended findings or a new trial (second motion for attorney fees).

A. The district court erred in summarily denying buyers' second motion for attorney fees without explaining its decision.

The district court granted buyers' first motion for attorney fees, awarding post-arbitration attorney fees for work performed in defending the arbitration award in the district court. According to the district court, attorney fees were warranted under Minnesota Statutes section 572B.25(c) (2020), which affords the district court discretion to grant post-arbitration attorney fees. But the district court denied buyers' second motion for attorney fees incurred in responding to sellers' "Motion for Amended Findings and/or New Trial." In denying buyers' second motion for attorney fees, the district court simply stated: "It is not unreasonable to deny an award of attorney fees to either party at this juncture of litigation. Neither party raised arguments in bad faith."

Buyers contend that the district court erred in summarily rejecting their second motion for attorney fees where they provided proper documentation of the fees incurred⁵

⁵ Buyers' attorney submitted a motion for attorney fees, an itemized list of attorney fees charged, and an affidavit describing the work performed, time spent, and hourly rate as required by Minnesota Rules of General Practice 119.01 and 119.02. *See also Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535-36 (Minn. 2015) (explaining that Minnesota courts use the "lodestar method" of determining the reasonableness of statutory attorney

and both the purchase agreement and section 572B.25(c) allowed for post-arbitration attorney fees. We agree that the district court erred in denying the request without providing a clear rationale for its decision and by possibly applying the wrong law.

We review a district court's decision on attorney fees for an abuse of discretion. *Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). A district court abuses its discretion by denying a motion for attorney fees without providing a rationale. *See Richard Knutson, Inc. v. Westchester, Inc.*, 374 N.W.2d 485, 490 (Minn. App. 1985). And a district court abuses its discretion when it applies the wrong standard in deciding whether to award attorney fees. *See Green*, 826 N.W.2d at 534-35 ("An abuse of discretion occurs when a district court errs as a matter of law in applying improper standards in an award of fees." (quotation omitted)).

Here, as previously discussed, the purchase agreement provides that "the prevailing Party of any action at law or in equity brought to enforce or interpret this Agreement will be entitled to reasonable attorney[] fees and costs." Moreover, "[o]n application of a prevailing party to a contested judicial proceeding under [statutes concerning challenges to arbitration awards], the court may add to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award, attorney fees" Minn. Stat. § 572B.25(c).

Although the district court's previous orders in the case reveal its familiarity with both the purchase agreement and the statute, the court did not cite either in denying buyers'

fees, which requires court to consider number of hours reasonably expended multiplied by a reasonable hourly rate).

second motion for attorney fees. Nor did the district court provide findings on the factors set forth in the purchase agreement or statute, including whether buyers' request was reasonable. Instead, the district court referenced "bad faith," which is not a factor under the purchase agreement or the statute. The reference to "bad faith" suggests that the district court applied the wrong standard.

Because the district court provided no rationale for its decision, and may have applied the wrong standard, we reverse the denial of buyers' second motion for attorney fees. We remand for the district court to consider the motion in light of the purchase agreement and section 572B.25(c), and to articulate a rationale for its ultimate decision.

Affirmed in part, reversed in part, and remanded.