

*This opinion is nonprecedential except as provided by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
A21-1554**

Matthew Braith, et al.,
Respondents,

vs.

Laurie Ann Duban, et al.,
Respondents,

Aaron Todd Kasperek,
Appellant,

and

Nicole Lynn Campbell f/k/a Nicole Lynn Kasperek,
Defendant.

**Filed August 15, 2022
Affirmed
Wheelock, Judge**

Rice County District Court
File No. 66-CV-20-2729

Michael J. Orme, Dana K. Nyquist, Orme & Associates, Ltd., Eagan, Minnesota (for respondents Braith, et al.)

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Kimberly C. Woodgate, Anderson & Skubitz, PLLC, Le Sueur, Minnesota; and

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Considered and decided by Reyes, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

In this dispute over the enforceability of a right-of-first-refusal agreement for real property following the conveyance of that property to the owner's adult children through a transfer on death deed (TODD) and subsequent sale, appellant challenges the grant of summary judgment to respondent-purchasers. Appellant argues that an exception in the right-of-first-refusal agreement applies only to partial conveyances to the owner's children, and the district court misread the exception to include a conveyance of the entire property. Because the plain language of the agreement states that the right of first refusal does not apply to any conveyance of the property to the owner's children, and nothing in the agreement provides for the right-of-first-refusal obligation to transfer to the children, we affirm.

FACTS

In December 2002, appellant Aaron Kasperek entered into a contract with Lynn Fitzpatrick and Adolph Colwell that provided Kasperek with a right of first refusal to purchase an approximately 47-acre plot (the subject property) near Northfield, Minnesota. The contract was ancillary to a purchase agreement between Kasperek and Fitzpatrick for the neighboring homestead property Fitzpatrick owned. Colwell and Fitzpatrick were divorced in 1984, and, as part of the dissolution, Fitzpatrick became the owner of the homestead property, and Colwell became the owner of the subject property.

The right-of-first-refusal contract contained the following exception:

Such right of first refusal shall not apply for any sale or conveyance to any of Seller's children or other immediate family members of Seller or Seller's successor undersigned. If a portion of said additional property is sold or transferred to a Seller or Colwell family member, remaining lands shall remain subject to Purchasers' Right of First Refusal.

Throughout the contract, "Seller" refers to Fitzpatrick, and "successor owner" or "successor undersigned" refers to Colwell.

In July 2019, a few weeks before his death, Colwell executed a TODD conveying the subject property to his daughters—Laurie Duban, Lanae Eide, Leah Colwell, and Latitia Hostutler (the daughters)—who are respondents in this appeal. In May 2020, Kasperek learned that the subject property had been listed for sale. He had previously discussed his interest in purchasing the property and the right of first refusal with one of the daughters, and he initiated communications with the listing realtor, who was aware of the right-of-first-refusal contract. Kasperek contracted with the listing realtor to represent him as a dual agent in his purchase of the subject property in October 2020.

In October 2020, the daughters entered into a purchase agreement with respondents Matthew and Sarah Braith (the Braiths) for the subject property. The Braiths reside on other property that also borders the subject property. The purchase agreement between the daughters and the Braiths included terms that the agreement was subject to cancellation of the third-party right of first refusal and that the closing date be within 45 days of the cancellation of the third-party right of first refusal. Weeks later, the daughters entered into a purchase agreement with Kasperek. The purchase agreement between the daughters and

Kasperek included a term that the agreement was subject to cancellation of a previously written purchase agreement dated October 26, 2020, referring to the purchase agreement between the daughters and the Braiths.

In December 2020, the Braiths sought from the district court a declaratory judgment that Kasperek's right of first refusal had been terminated and an order for specific performance requiring the daughters to perform under the Braith purchase agreement. A notice of declaratory cancellation of residential property purchase agreement was served on Kasperek. The daughters and Kasperek filed answers and counterclaims, and the district court ordered the parties to enter into mediation.

All parties moved for summary judgment, and the district court held a hearing on the motions. The district court issued an order granting summary judgment to the Braiths, dismissing all counterclaims and cross-claims by all parties, and permitting the Braiths to close on the purchase of the subject property.

Kasperek appeals.

DECISION

"We review a grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). "Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011). "Questions of law are reviewed de novo." *Id.* Whether a contract is ambiguous is a question of law. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339,

346 (Minn. 2003). If a contract is unambiguous, its language “must be given its plain and ordinary meaning, and shall be enforced even if the result is harsh.” *Id.* at 346-47 (quotation omitted). A district court’s application of a contract to undisputed facts is reviewed de novo. *Cisar v. Slyter*, 812 N.W.2d 151, 153 (Minn. App. 2012), *rev. dismissed* (Minn. Apr. 17, 2012).

The district court granted the Braiths’ motion for summary judgment, determining that Kasperek’s right of first refusal terminated when Colwell conveyed the subject property to the daughters. The district court based its determination on the TODD and the plain and unambiguous exception language of the right-of-first-refusal agreement that Kasperek entered into with Colwell, reasoning:

The first sentence . . . makes it clear that if the property is conveyed to an immediate family member, the right of first refusal does not apply. The second sentence makes it clear that the right of first refusal no longer exists for property conveyed or transferred to family members, importantly noting that the right of first refusal remains only upon any portion of the property *not transferred* to a Colwell family member. Since all of the property was transferred to immediate Colwell family members, i.e. children, there is no property remaining to which the right of first refusal would attach.

The district court found nothing to support Kasperek’s contention that the right of first refusal survived the conveyance from Colwell to his children.

Kasperek’s argument that the district court erred relies on two theories: first, that the exception to the right of first refusal for conveyance to Colwell’s children does not apply under the language of the agreement because the TODD transferred the entire parcel and not a portion of the parcel; and second, that the right of first refusal is an encumbrance

on the property that the TODD did not extinguish and by which Colwell's daughters continue to be bound. We can find no support for either theory.

This appeal involves a question of contract interpretation. *See Park-Lake Car Wash, Inc., v. Springer*, 352 N.W.2d 409, 411 (Minn. 1984) (stating that a right of first refusal is similar to an option contract with a condition precedent). Courts recognize the right of parties to contract freely and will therefore enforce rights of first refusal as they enforce other contracts, according to their terms. *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 784 (Minn. 2004).

Kasperek argues that the district court erred in its interpretation of the exception in the right-of-first-refusal provision by improperly applying the exception for a transfer of a portion of the property to a family member to a transfer of the entire property. Kasperek claims that because the TODD conveyed the entire parcel rather than a portion of the parcel, the right of first refusal was not extinguished by the TODD. However, in claiming that the right of first refusal "did not carve out an exception for a transfer of the whole parcel," Kasperek fails to address how the first sentence of the exception, which provides that the right of first refusal shall not apply to *any* sale or conveyance to Colwell's children, would not cover a transfer of the entire parcel so long as the transfer was made to Colwell's children.

We agree with the district court's reading of the plain meaning of both sentences in the right-of-first-refusal exception because it is unambiguous. Reading both sentences together affords no means of concluding that the right of first refusal survived the conveyance of the parcel to the daughters. The right-of-first-refusal exception states that

if the property is sold or conveyed to children or immediate family members, then the right of first refusal does not apply; and if a portion of the property is transferred to children or immediate family members, the right of first refusal applies to any remaining portion not transferred. This necessarily means that the right of first refusal no longer exists for property conveyed or transferred to family members. Thus, the district court correctly determined that when the entire property is transferred to immediate family members, “there is no property remaining to which the right of first refusal would attach.”

Kasperek claims that the district court’s interpretation requires an impermissible inference applying the exception language about a partial transfer to a transfer of the entire parcel. To the contrary, we observe that Kasperek can point to no language or provision in the contract stating that the right of first refusal should survive a transfer to the seller’s immediate family when the exception language provides just the opposite.

Alternatively, any conclusion that the right of first refusal survived the transfer asks us to accept Kasperek’s assertion that a right of first refusal is a property right that runs with the land to bind a successive owner—an assertion not supported by our jurisprudence on rights of first refusal. We have held that a right of first refusal is not an interest in real estate; rather, a right of first refusal “only grants the holder the option of purchasing the property if the owner of the subject property receives an offer from a third-party purchaser.” *Hempel v. Creek House Tr.*, 743 N.W.2d 305, 313 (Minn. App. 2007) (*Hempel I*). “And even when a right of first refusal ripens into an option, this does not convey title.” *Id.* (citing *M.L. Gordon Sash & Door Co. v. Mormann*, 271 N.W.2d 436, 439 (Minn. 1978)).

Our conclusion that the contract language demonstrating the parties' intent controls the right of first refusal's transferability is consistent with our precedential and nonprecedential opinions in the *Hempel* line of cases and the nonprecedential *Stuart v. Stuart* case, which are cases that the parties addressed.¹ See *Hempel I*, 743 N.W.2d at 305; see also *Hempel v. Creek House Tr.*, No. A08-1288, 2009 WL 1919612, at *1 (Minn. App. July 7, 2009) (*Hempel II*) (“[A] right of first refusal is a contractual right, not an interest in land, and therefore does not run with the [subject property] to impose obligations on owners successive to [the owner who entered the agreement].”), *rev. denied* (Minn. Sept. 29, 2009); *Stuart v. Stuart*, No. A12-1044, 2013 WL 490825, at *7 (Minn. App. Feb. 11, 2013) (stating that a right of first refusal may be transferrable to a successive owner, but only where “the contract language and the facts establish that the parties intend that result”), *rev. dismissed* (Minn. Sept. 17, 2013). The cases from other jurisdictions that Kasperek cites as persuasive authority are factually dissimilar to the instant matter and do not support his argument that a right of first refusal is an encumbrance on the land.

We conclude that the district court did not err in granting summary judgment for the Braiths. We further agree with the district court's determination that all remaining issues hinge on the enforceability of the right-of-first-refusal agreement and that because the right

¹ Nonprecedential opinions are not binding and are only considered for their persuasive value. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993); *Dyrdal*, 672 N.W.2d at 586 n.1 (citing *Dynamic Air* for the principle that nonprecedential opinions have only persuasive value).

of first refusal was extinguished as a matter of law, no issues of material fact remain. We therefore need not reach the other issues Kasperek raises.

Affirmed.