This opinion is nonprecedential except as provided by Minn.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
A21-1615

Hodan Dualeh,
Respondent,

vs.

Mohamed Abdulle, et al.,
Appellants.

Filed August 22, 2022
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-18-8103

Daniel L. M. Kennedy, Kennedy & Cain PLLC, Minneapolis, Minnesota (for respondent)

Brian N. Niemczyk, Joseph M. Barnett, Hellmuth & Johnson, Edina, Minnesota (for appellants)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Halbrooks, Judge.[*]

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellants challenge the judgment granting respondent a buy-out of appellant limited liability company member's business interest following a court trial, arguing that

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

the district court (1) erred in determining on summary judgment that respondent held a 50% interest in appellant limited liability company, (2) abused its discretion in setting the valuation date and method, and (3) abused its discretion by denying appellants' motion to dismiss respondent's claims as a discovery sanction. We affirm.

FACTS

This appeal arises from a dispute between respondent Hodan Dualeh and appellant Mohamed Abdulle over ownership and management of appellant Byro Consulting LLC (Byro), which provides nonemergency medical transportation services. Byro's main client is UCare Minnesota and its primary asset is its UCare contract. David Byro organized Byro, d/b/a Dave's Provide A Ride, in 2004. In late 2017, Abdulle began negotiations to purchase the company. Dualeh was then part-owner of Best Care, a company providing the same services as Byro, and had other experience in the industry. It is undisputed that Abdulle and Dualeh intended to operate Byro together, but the specifics of their roles and whether Dualeh would participate as an individual or through Best Care were unsettled.

On March 6, 2018, Abdulle and Dualeh signed an agreement titled, "Operating Agreement of Byro Consulting, LLC, DBA: Dave's Provide a Ride a Member-Managed Limited Liability Company" (operating agreement). The operating agreement identifies "Mohamed A Abdulle" and "Hodan A Dualeh" as the two members of Byro and states that each shall contribute $60,000 cash on or by March 1, 2018. On the day Abdulle and Dualeh signed the operating agreement, an associate of Dualeh deposited $60,000 in David Byro's bank account. Abdulle deposited an additional $50,000. On March 16, Abdulle and David Byro signed a purchase agreement for David Byro's 100% interest in Byro at a price of

$110,000. The purchase agreement identifies Abdulle as the purchaser. UCare and Byro entered into a new contract effective that day, with Abdulle signing on behalf of Byro as its manager.

Less than one year later, in December 2018, Dualeh commenced this action against Abdulle and Byro (collectively appellants) seeking, in relevant part, control of Byro, a buy-out of Abdulle's interest or dissolution, and damages. The district court granted Dualeh's motions for temporary injunctive relief, enjoining Abdulle from exercising control over and managing Byro, granting Dualeh sole authority to act for the company, and requiring Dualeh to make certain business records available to Abdulle.[1] Abdulle counterclaimed, seeking control of Byro, damages for unjust enrichment and conversion, or in the alterative a buy-out of his own interest and damages for breach of fiduciary duty by Dualeh. Following a hearing on discovery motions, the district court directed the parties to comply with certain discovery requests, expressed concern about the resources already spent on a relatively small matter, and declined to award attorney fees. It did not file a written order.

Appellants then moved for summary judgment on Dualeh's claims and default judgment on their counterclaims. The district court held a hearing addressing these motions as well as the parties' cross-motions to compel discovery and for sanctions. At the end of the hearing, the district court ordered supplemental briefing on the "transfer of membership or ownership in an LLC through an oral contract."

[1] Abdulle did not appeal the temporary injunctive relief.

Following supplemental briefing, the district court denied appellants' dispositive motions. But the court granted summary judgment in Dualeh's favor on the question raised in appellants' summary-judgment motion, "whether Plaintiff Hodan Dualeh ('Dualeh') is a current owner of any member interest of Byro," determining that Dualeh held a 50% interest.[2] The district court reserved rulings on the discovery motions, and later denied appellants' request for leave to seek reconsideration on the grant of summary judgment.

A three-day court trial followed. After receiving the parties' written arguments, the district court granted Dualeh's claim for control of Byro; ordered a buy-out of Abdulle's interest in Byro; set the valuation date as March 6, 2018; valued Abdulle's interest on that date as $50,000; and deducted amounts the district court found Abdulle had spent on personal expenses not benefiting Byro. The district court also denied appellants' counterclaims, finding no evidence to support them. Appellants moved for amended findings or a new trial, which the district court denied. This appeal follows.

DECISION

I. The district court did not err in determining at the summary-judgment stage that Dualeh held a 50% interest in Byro.

A. Appellants were not entitled to summary judgment in their favor.

Summary judgment is appropriate when the moving party demonstrates there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. We review summary-judgment decisions and questions of law de novo.

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[2] The district court also dismissed with prejudice Dualeh's claims for dissolution and securities fraud and limited her damages claim. These rulings are not at issue on appeal.

Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC, 790 N.W.2d 167, 170 (Minn. 2010); *cf. Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff & Hobbs, Ltd.*, 783 N.W.2d 733, 744 (Minn. App. 2010) (holding denial of summary judgment based on question of law is within scope of review on appeal following jury trial), *rev. denied* (Minn. Sept. 21, 2010).

Appellants argue that the district court erred by denying their motion because, as a matter of law, Dualeh was never a member of Byro. Resolution of this argument turns on construction of the district court's decision as well as appellants' burden to prove error on appeal. Contrary to appellants' suggestion, the district court did not conclude that the execution of the operating agreement on March 6, 2018, immediately transferred ownership of Byro to Abdulle and Dualeh. Rather, the district court concluded that the operating agreement is a contract between Abdulle and Dualeh to purchase Byro together.

The district court determined that the operating agreement was enforceable, as between Abdulle and Dualeh, after David Byro transferred his 100% interest to Abdulle based on Abdulle and Dualeh's joint payment of the $110,000 purchase price. The district court also relied on evidence that Abdulle represented to the Internal Revenue Service and UCare that he and Dualeh were co-owners of Byro, and that Dualeh and David Byro represented to the Minnesota Department of Human Services that David Byro had transferred his interest in Byro to Dualeh. The district court further cited Minn. Stat. § 322C.0401, subd. 4(1), (3) (2020), which provides for the addition of members to an existing limited liability company "as provided in the operating agreement" or by consent of all members.

Appellants' contention that the district court committed legal error is largely unsupported by legal authority. We understand appellants' argument to be that neither Minn. Stat. § 332C.0111, subd. 3 (2020) (which the district court did not rely on), nor Minn. Stat. § 322C.0401, subd. 4 (2020) (which the district court relied on in part), supports the district court's decision. We are not persuaded.

It is settled law that appellants bear the burden of proving error on appeal. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it."). Appellants' brief does not address the district court's reliance on contract principles to determine that Dualeh held an interest in Byro. Nor does it address the district court's implicit determination that Abdulle accepted the transfer of David Byro's interest in furtherance of the operating agreement, not in his individual capacity. In view of the district court's unchallenged reliance on contract principles, appellants have not shown legal error in the district court's determination that Dualeh became a member for purposes of Minn. Stat. § 332C.0401, subd. 4, "as provided in the operating agreement" and by consent. Accordingly, appellants have not shown that the district court erred in denying their motion for summary judgment.

B. Dualeh was entitled to judgment that she is an owner of Byro as a matter of law.

A district court may grant summary judgment if the movant shows there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. But a district court may also grant summary judgment on its own initiative or in favor of a nonmovant so long as the court provides notice to the parties and affords them a reasonable time to respond. Minn. R. Civ. P. 56.06. In that instance, we will not reverse summary judgment unless the appellant shows prejudice from lack of notice, procedural irregularity, or the lack of a meaningful opportunity to oppose summary judgment. *Fed. Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988), *rev. denied* (Minn. Oct. 26, 1988).

Appellants argue that the district court improperly granted summary judgment sua sponte in favor of Dualeh. We are unpersuaded for two reasons. First, as the district court observed, appellants specifically asked the court to decide "whether Plaintiff Hodan Dualeh ('Dualeh') is a current owner of any member interest of Byro." Appellants' summary-judgment memorandum went on to argue:

- "[T]he undisputed material facts on the record show that Dualeh is not a member of Byro and her Complaint must be dismissed as a matter of law."
- "There is simply no genuine issue of material fact that precludes a dismissal of Dualeh's Complaint because she, individually, has never received an interest in Byro."
- "The undisputed facts on the record establish that Abdulle is currently the 100% owner of Byro."

Appellants do not explain why or how their submissions to the district court would have been different if Dualeh had also moved for summary judgment. Dualeh included the operating agreement and other documents supporting her theory of ownership in response to appellants' summary-judgment motion. In short, appellants asked the district court to decide that Dualeh had no ownership in Byro, and the parties provided the court with the record evidence needed to make this decision.

Second, the district court advised the parties that it was considering the ownership issue and gave them a reasonable time to submit written argument addressing the issue. Near the close of the summary-judgment hearing, the district court directed Dualeh's counsel to submit supplemental briefing on "transfer of membership or ownership in an LLC through an oral contract" and allowed appellants' counsel an opportunity to file a response.[3] The district court highlighted the importance of that legal question, observing, "I think when I'm looking at issues of law that's the first one that I have to decide." On this record, we are satisfied appellants had notice and an opportunity to present their position on the issue of Dualeh's ownership interest in Byro. They have not shown prejudice from lack of notice, procedural irregularities, or the lack of a meaningful opportunity to oppose summary judgment. *See Obermoller*, 429 N.W.2d at 255.

Appellants next assert that genuine issues of material fact preclude summary judgment in favor of Dualeh. In determining whether genuine issues of material fact exist, we view the evidence in the light most favorable to "the party against whom summary judgment was granted." *Sampair v. Village of Birchwood*, 784 N.W.2d 65, 68 (Minn. 2010). To defeat summary judgment based on a factual dispute, a party "must extract *specific*, admissible facts from the voluminous record and particularize them." *Kletschka*

[3] The district court allowed Dualeh two weeks to file her supplemental brief and appellants one week (four days more than counsel requested) to respond.

v. Abbott-Nw. Hosp., Inc., 417 N.W.2d 752, 754 (Minn. App. 1988), *rev. denied* (Minn. Mar. 30, 1988).

Appellants argue that there were material fact issues as to whether (1) Dualeh or Best Care was Abdulle's "proper partner in Byro," (2) the operating agreement was revoked, and (3) Abdulle sent a March 21, 2018 email to UCare identifying Dualeh as an owner. Notably absent from appellants' brief is any citation to competent evidence creating a genuine fact dispute on these three points. With respect to the first, the district court concluded that Abdulle and Dualeh originally intended to have Best Care partner with Abdulle to purchase Byro, but that their original intent was irrelevant to the summary-judgment analysis. Appellants assert in their appellate brief that there was a "clear and agreed-upon existence of a question of fact" as to Dualeh's ownership. But they point to no supporting record evidence, instead citing arguments of counsel at the summary-judgment hearing, which are not evidence. *State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004) ("[T]he questions and arguments of attorneys are not evidence." (quotation omitted)). Similarly, appellants reference a "sharp factual dispute over whether the operating agreement had been revoked," but cite only documents identifying Abdulle and Dualeh as the members of Byro.

The contention that there is a material fact issue as to whether Abdulle sent a March 21, 2018 email to UCare identifying Dualeh as an owner of Byro likewise fails. As noted above, the district court cited this email in its summary-judgment order. But the district court also relied on evidence of Abdulle and David Byro's respective representations to the Internal Revenue Service and the Minnesota Department of Human Services regarding ownership of Byro, and appellants do not challenge that reliance. Accordingly, appellants have not shown that there is a genuine issue of material fact, or that the outcome would be different, if the UCare email were disregarded. By failing to identify record evidence showing a genuine issue of material fact, appellants have failed to show error on appeal. *See Waters*, 13 N.W.2d at 464-65. The district court did not err in granting summary judgment to Dualeh regarding her ownership interest in Byro.

II. The district court did not abuse its discretion in setting the valuation date or method.

After a court trial on the remaining issues, the district court granted Dualeh a buy-out of Abdulle's interest under Minn. Stat. § 322C.0701, subds. 1(5)(ii), 2 (2020), which allow "the sale for fair value of all membership interests a member owns in a limited liability company" on the ground of "oppressive" conduct. The district court set March 6, 2018—the date the parties signed the operating agreement—as the valuation date and determined Abdulle's interest on that date was $50,000. Appellants do not challenge the grant of the buy-out itself. Rather, they argue that the district court erred "in refusing to follow the valuation provision of the Operating Agreement in setting the date and method of valuation" and "selecting an arbitrary valuation date intended to minimize the value of" Abdulle's interest based on clearly erroneous factual findings regarding Dualeh's stewardship of the company.

Under the related corporate buy-out statute as well as the prior version of the act governing limited liability companies, the determination of valuation date is expressly a matter of equity entrusted to the district court's discretion in the absence of an applicable, reasonable provision in the business entity's governing documents. Minn. Stat. § 302A.751, subd. 2 (2020) (corporate buy-out statute); Minn. Stat. § 322B.833, subd. 2 (2014) (prior version of limited liability company buy-out statute). In 2014, the Minnesota Revised Uniform Limited Liability Company Act (MRULLC Act), Minn. Stat. §§ 322C.0101-.1205 (2020), replaced Minn. Stat. §§ 322B.01-.975 (2014). 2014 Minn. Laws ch. 157, art. 1, at 122-85.

The MRULLC Act contains no explicit provision regarding the valuation date for a court-ordered buy-out. *See* Minn. Stat. § 322C.0701, subd. 2. We nevertheless conclude that the determination of valuation date remains a matter of equity and discretion, in the absence of an applicable, reasonable provision in a limited liability company's governing documents. Minn. Stat. § 322C.0110, subd. 1 (stating subject to certain exceptions, including court's power to decree dissolution based on oppressive conduct, operating agreement governs relations among members); *see also Lund v. Lund*, 924 N.W.2d 274, 282-83 (Minn. App. 2019) (interpreting Minn. Stat. § 302A.751, subd. 2 (2014), and determining valuation date is a matter of equity entrusted to the district court's discretion), *rev. denied* (Minn. Mar. 27, 2019); *Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 486 (Minn. App. 2007) (relying on corporate statutory provisions to the extent "a chapter 322B provision resembles a chapter 302A provision in substance").

Against this backdrop, we address appellants' argument that the district court erred as a matter of law by failing to set the valuation date and method as provided in the operating agreement. Contract interpretation presents questions of law that we review de novo. *Glacier Park Iron Ore Props., LLC v. U.S. Steel Corp.*, 961 N.W.2d 766, 769

(Minn. 2021). Appellants argue that the valuation method is governed by the operating agreement and the proper valuation date is August 9, 2021—the date the district court ordered the buy-out. They base this argument on the following operating-agreement provision:

> A member *may withdraw from this LLC by giving written notice to all other members at least 30 days before the date the withdrawal* is to be effective. *In the event of such withdrawal*, *the LLC shall pay* the departing member the fair value of his or her LLC interest, less any amounts owed by the member to the LLC. The departing and remaining members *shall agree at the time of departure* on the *fair value* of the departing member's interest and the schedule of payments to be made by the LLC to the departing member, who shall receive payment for his or her interest within a reasonable time after departure from the LLC. If the departing and remaining members cannot agree on the value of departing member's interest, *they shall select an appraiser, who shall determine the current value* of the departing member's interest. This appraised amount shall be fair value of the departing member's interest, and shall form the basis of the amount to be paid to the departing member.

(Emphasis added.) The district court rejected appellants' argument, concluding that "this provision is applicable to voluntary withdrawal and not equitable buy-out." We agree.[4] By its plain language, this provision governs a voluntary withdrawal following 30 days' notice, not a court-ordered buy-out following years of litigation and injunctive relief affecting operations. Accordingly, the operating agreement does not determine the valuation date or method here.

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[4] Appellants cite a single nonprecedential case in support of their argument that the district court erred in this regard. Nonprecedential opinions are not binding authority. Minn. R. Civ. App. P. 136.01, subd. 1(c); *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004). Moreover, the case cited by appellants is unpersuasive in this context.

We next address appellants' argument that the district court abused its discretion by "selecting an arbitrary valuation date intended to minimize the value of" Abdulle's interest based on clearly erroneous factual findings regarding Dualeh's management of the company. On appeal following a court trial, we "give the district court's factual findings great deference and do not set them aside unless clearly erroneous." *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *rev. denied* (Minn. June 26, 2002). Findings are clearly erroneous "when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted).

The thrust of appellants' argument is that the district court clearly erred in finding that Dualeh managed Byro well while this litigation was pending and that her stewardship may have increased its value. They do not challenge any of the "findings of fact" labeled as such in the district court's order; they challenge purported factual findings contained in the "conclusions of law." Although "the mislabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item," *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006), *rev. denied* (Minn. May 16, 2006), we observe that most of the challenged "findings" are not factual in nature or are premised on credibility determinations. For example, appellants challenge as erroneous fact-finding the district court's determination that Abdulle "should not benefit from the work Dualeh has done to improve the company."[5] We discern this, and the other challenged "findings" to be in the nature of conclusions drawn from the district court's credibility determinations and assessments of the evidence.

The clear-error standard does not allow this court to reweigh the evidence by reevaluating credibility determinations. *Kenney*, 963 N.W.2d at 223. In view of the standard reiterated in *Kenney*, the only challenged "finding" susceptible to review is the district court's finding that "Dualeh provided Abdulle with real-time access to Byro's . . . scheduling and billing system." In its earlier orders granting injunctive relief, the district court required Dualeh to give Abdulle access to these systems "for viewing and perhaps downloading" but "not to make changes." At trial, Abdulle agreed on cross-examination that he had password-enabled access to Byro's scheduling and billing system (albeit not full access) and a direct contact at the vendor to report any access problems. Because Abdulle's testimony supports the district court's finding that Abdulle had access to the system, it is not clearly erroneous. And because appellants do not otherwise challenge the district court's equitable decision to set March 6, 2018, as the valuation date, they have not shown abuse of discretion by the district court.

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[5] The district court's statement reads in full: "That is, after squandering Byro assets and attempting to deceptively remove Dualeh's membership interest and being removed by this Court from having any authority or oversight of Byro, he should not benefit from the work Dualeh has done to improve the company."

III. The district court did not abuse its discretion by declining to dismiss Dualeh's claims as a discovery sanction.

Rule 37.02 of the Minnesota Rules of Civil Procedure permits a district court to impose sanctions—including dismissal of an action—against a party that fails to comply with a discovery order. Minn. R. Civ. P. 37.02(b)(3). Appellants correctly identify the factors relevant to determining whether to dismiss an action under Minn. R. Civ. P. 37.02:

> Appellate courts have examined the following factors in determining whether a district court has abused its discretion in imposing discovery sanctions: (1) if the court set a date certain by which compliance was required, (2) if the court gave a warning of potential sanctions for non-compliance, (3) if the failure to cooperate with discovery was an isolated event or part of a pattern, (4) if the failure to comply was willful or without justification, and (5) if the moving party has demonstrated prejudice.

Frontier Ins. Co. v. Frontline Processing Corp., 788 N.W.2d 917, 923 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010).

Appellants concede that two of the five factors are absent: "the district court did not set a date certain by which [Dualeh] was required to produce documents pursuant to the court's verbal July 31, 2019 order" and "did not provide warning of potential sanctions for non-compliance prior to [appellants'] motion" for sanctions. Under these circumstances, we cannot conclude that the district court would have been within its discretion in granting appellants' motion for sanctions, much less that it abused its discretion in declining to do so.

In sum, the district court did not err by determining on summary judgment that Dualeh owned 50% of Byro. And the court did not abuse its discretion in setting the valuation date and method and denying appellants' motion to dismiss this action as a discovery sanction.

Affirmed.