STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0543
A22-0545
A22-0547

Brenda Legred, f/k/a Brenda Godlove,
Respondent,

vs.

Brent Legred,
Appellant (A22-0543),

and

The Estate of Darlene Legred, a/k/a Darlene I. Legred,
Respondent;

and

Estate of: Darlene Legred, a/k/a Darlene I. Legred,
Decedent (A22-0545);

and

In Re: Credit Shelter Trust Established pursuant to
the Last Will and Testament of Thilmer M. Legred
dated November 25, 1996 (A22-0547).

Filed April 24, 2023
Affirmed
Smith, Tracy M., Judge

Faribault County District Court
File Nos. 22-CV-20-675, 22-PR-18-444, 22-PR-20-413

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Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

These consolidated appeals arise out of a dispute between siblings appellant/cross-respondent Brent Legred and respondent/cross-appellant Brenda Legred about the effect of a rental option in their late mother's will. The will gave Brent[1] the option to rent farm property that, at the time of their mother's death, was owned in part by their mother and in part by a trust established by their father's will. Brenda brought actions to partition the property, to collect rent from Brent on behalf of their mother's estate, and to collect rent from Brent on behalf of the trust. After the district court granted in part and denied in part Brenda's motion for partial summary judgment, the actions were consolidated for a bench trial. Following trial, the district court issued an order and judgment for partition determining that their mother's will did not apply to the trust's interest in the property and an order requiring Brent to pay damages for rent owed to their mother's estate and the trust.

On appeal, Brent challenges (1) the determination that their mother's will did not create any encumbrance on the trust's interest in the property; (2) the finding that he did

[1] For clarity, we refer to members of the family by first names only.

not pay rent in 2018 and the award of damages for that rent; (3) the findings about the meaning of "average fair rental value" in their mother's will; and (4) the award of damages for additional rent owed for 2019, 2020, and 2021. In a related appeal, Brenda contends that (1) the rental option afforded to Brent in their mother's will is unconstitutional and void and (2) the amount of damages awarded to their mother's estate for additional rent for 2019, 2020, and 2021 is clearly erroneous and should be higher. We affirm.

FACTS

At issue are eight tracts of primarily agricultural land in Faribault County, totaling slightly over 800 tillable acres. Brent and Brenda's mother and father, Darlene and Thilmer Legred, farmed and lived on the property for many years. Thilmer and Darlene each owned an undivided one-half interest in the property.

In the early 2000s, after Thilmer's health declined, Thilmer and Darlene began renting parts of the property to Brent and to their nephews for their respective farming operations. In 2009, Brent began renting the whole property.

Thilmer passed away in 2011. His will provided that his interest in the property was devised to Darlene but, if Darlene elected to disclaim all or part of that interest, the disclaimed portion would be distributed and administered as the Thilmer M. Legred Credit Shelter Trust. As provided in Thilmer's will, Darlene was trustee of the trust. The trust instrument provided that the trust was irrevocable and, upon the death of Thilmer's spouse, the net proceeds of the trust would be given to Brent and Brenda in equal shares.

Darlene disclaimed an undivided 60.485% of Thilmer's one-half interest in the property. As a result, Darlene owned a 69.7575% interest in the property and the trust owned a 30.2425% interest in the property.

Following Thilmer's death, Brent continued to rent the property. Each year, he paid $43,951.74 to Darlene and $67,276.25 to the trust.

Darlene's Will

Darlene died in 2018. At the time of her death, Darlene still owned a 69.7575% interest in the property and the trust still owned a 30.2425% interest. As relevant here, Darlene's will stated:

> 2.4 I give my son **Brent Legred** a right of first refusal to purchase any and all interest which I may have at the time of my death in the following described tracts owned by me and by the Thilmer Legred Family Trust:
> . . . .
> 2.5 I give my son **Brent Legred** an option to rent all of my agricultural real estate described in paragraph 2.[4[2]] excluding my building site at 90% of the *average fair rental value in Faribault County*.

(Emphasis added.)

Darlene's will also appointed Brent and Brenda as personal representatives for Darlene's estate. In addition, under a trust provision that triggered on Darlene's death, Brenda became trustee of the trust.

Following Darlene's death, Brent continued to farm the whole property. However, Brent and Brenda could not agree on the meaning of "average fair rental value in Faribault

[2] The parties agree that Darlene's will contains a clerical error stating 2.3 instead of 2.4.

County" in the rental option in paragraph 2.5 of Darlene's will. That disagreement over the amount of rent that Brent should pay triggered this litigation. During the litigation, Brent continued to make the same rent payments, split between the estate and the trust.

District Court Proceedings

In July 2020, Brenda sought to recover rent for the property from Brent by filing petitions in the file for Darlene's estate (22-PR-18-444) and the trust file (22-PR-20-413).

Parallel to her efforts to recover rent, Brenda sought to disentangle her and Brent's interests in the property. In November 2020, Brenda, in her capacity as trustee, distributed the trust's undivided 30.2425% interest to Brent and Brenda as tenants in common. Then, in December 2020, Brenda sought partition of the property by filing a partition action against Brent (22-CV-20-675) and a petition in the trust file (22-PR-20-413).

Brenda brought a motion for partial summary judgment, asserting that (1) the rental option in paragraph 2.5 of Darlene's will was void under Article I, section 15 of the Minnesota Constitution; (2) in the alternative, the option to rent the property distributable by Darlene's will should be limited to 21 years after 2018; and (3) the rental option in paragraph 2.5 of Darlene's will did not apply to the trust's 30.2425% interest in the property.

After a hearing, the district court granted in part and denied in part Brenda's motion. The district court determined that the rental option was not void, that disputed facts precluded summary judgment on Brent's exercise of the rental option, and that the rental option applied only to Darlene's interest and not to the trust's interest.

Following the grant of partial summary judgment, the three district court files—the estate file, the trust file, and the partition action—were consolidated. The district court held a four-day bench trial addressing (1) the meaning of "fair rental value" in paragraph 2.5; (2) whether Brent owed rent for 2018; (3) whether Brent owed additional rent for 2019, 2020, and 2021, and if so, how much; and (4) the extent of the parties' respective interests in the property.

The district court, in its order following trial, determined that (1) the "average fair rental value in Faribault County" under the rental option is $240 per tillable acre; (2) Brent owed the estate and the trust a total of $111,228 in rent for 2018; and (3) Brent owed the estate additional rent of $63,112.08 per year for 2019, 2020, and 2021.

The district court also filed an order and judgment for partition, stating that Brent and Brenda each had a 15.12125% undivided interest in the property originating from the trust and a 34.87875% undivided interest in the property originating from Darlene's estate.[3] The order stated that Brenda's 15.12125% undivided interest originating from the trust was not "subject to any encumbrance created by Darlene's will."

Brent appealed in each of the three district court files, challenging the grant of partial summary judgment, the order following trial, and the order and judgment for partition. These appeals were consolidated, and Brenda filed a notice of related appeal, challenging the denial of partial summary judgment and the damages award in the order following trial.

[3] The five-acre homestead on tract 5 and a "hog barn site" on tract 7 were excluded from that partition.

These consolidated appeals were stayed pending a dispute about an alleged settlement between the parties. After Brent's counsel filed a copy of the district court's order denying a motion to enforce the alleged settlement agreement, we dissolved the stay. We then denied Brent's motion to stay these appeals based on his appeals of that order.

DECISION

Because of the interconnected nature of the issues raised by the parties, we address the issues as follows. First, we address Brenda's argument that paragraph 2.5 of Darlene's will is void under article I, section 15 of the Minnesota Constitution. Second, we address Brent's contentions that the right of first refusal and the rental option in Darlene's will applied to both Darlene's interest and the trust's interest in the property. Finally, we address the parties' challenges to the district court's findings relating to rent.

I. The rental option in Darlene's will is not unconstitutional.

Brenda contends that the district court erred by denying the part of her motion for summary judgment seeking a determination that the rental option given to Brent in paragraph 2.5 of Darlene's will is void. Brenda contends that the rental option violates Article I, section 15 of the Minnesota Constitution. That section states, "All lands within the state are allodial and feudal tenures of every description with all their incidents are prohibited. Leases and grants of agricultural lands for a longer period than 21 years reserving rent or service of any kind shall be void." Minn. Const. art. I, § 15. The interpretation of the Minnesota Constitution presents a question of law that we review de novo. *Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022).

When interpreting the Minnesota Constitution, appellate courts first examine the language of the constitutional provision to determine whether it is ambiguous. *Id.* "'The rules applicable to the construction of statutes are equally applicable' to the construction of the Minnesota Constitution." *Id.* (quoting *Clark v. Ritchie*, 787 N.W.2d 142, 146 (Minn. 2010)). As a result, "[w]hen [appellate courts] determine that the language of a constitutional provision is unambiguous, the language is 'effective as written and [appellate courts] do not apply any other rules of construction.'" *Id.* (quoting *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005)).

The question before us is whether paragraph 2.5 of the will implicates article I, section 15 of the constitution. Section 15's durational limitation applies to "[l]eases and grants of agricultural lands for a longer period than 21 years reserving rent or service of any kind." A "grant" is "[a]n agreement that creates a right or interest in favor of a person or that effects a transfer of a right or interest from one person to another." *Black's Law Dictionary* 844 (11th ed. 2019). A "lease" is a type of grant, *id.*, and is defined as "[a] contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent," *id.* at 1066.

The rental option here is neither a grant nor a lease. Paragraph 2.5 of Darlene's will gave Brent "an option to rent all of [Darlene's] agricultural land." Such an option, even though it implicates agricultural lands, is not itself a right or an interest in the land. Under well-settled Minnesota law, an option "conveys no interest in land" before its exercise. *M.L. Gordon Sash & Door Co. v. Mormann*, 271 N.W.2d 436, 439 (Minn. 1978). As a result, even if the exercise of the rental option could lead to a lease or grant exceeding 21

years, the option in paragraph 2.5 is not itself a lease or a grant of agricultural land subject to section 15 of the constitution. This conclusion accords with the limited persuasive caselaw from outside Minnesota involving the application of such a durational limitation to an option. *See, e.g.*, *Klepper v. Hoover*, 21 Cal. App. 3d 460, 465-66 (Cal. Ct. App. 1971) (holding that an option gave only a contractual right to extend a lease and that "[o]nly when the option is exercised does the lease become one for 20 years").

Brenda contends that our analysis should be guided by *Minnesota Valley Gun Club v. Northline Corp.*, 290 N.W. 222 (Minn. 1940). In that case, the supreme court considered the applicability of section 15 to a written instrument whose validity and nature the parties disputed. *Id.* at 225. The supreme court explained that the instrument's "substantive character must govern" and determined that the instrument granted a profit à prendre.[4] *Id.* The supreme court then explained that, "assuming [the] plaintiff's various interests would exceed 21 years within the meaning of the prohibition," the profit à prendre was not forbidden under section 15 because the agricultural use of the subject property was "only infringed incidentally." *Id.* at 225.

Brenda asserts that, under *Minnesota Valley Gun Club*, our inquiry should focus on the rental option's "substantive character" and whether it "burdens the agricultural land with an encumbrance restricting the landowner's ability to put it to agricultural use herself." But even if we adopt Brenda's analytical framework, section 15 still does not void

[4] A profit à prendre is "[a] right or privilege to go on another's land and take away something of value from its soil or from the products of its soil (as by mining, logging, or hunting)." *Black's Law Dictionary* 1464 (11th ed. 2019).

the rental option. The "substantive character" of the will provision is a rental option, and, as Brenda acknowledges in her briefing, it is the exercise of the rental option—not the rental option itself—that "could create a lease or grant of an interest in agricultural lands beyond a 21-year period." The fact that the rental option could be used in an unconstitutional manner does not render the rental option itself unconstitutional.[5]

In sum, the district court did not err by denying in part Brenda's motion for partial summary judgment on the basis that the rental option is void under article I, section 15.

II. The right of first refusal and the rental option devised to Brent in Darlene's will do not apply to the trust's interest in the property.

Brent challenges the district court's determination in the order and judgment for partition that Darlene's will did not apply to the trust's interest in the property.[6] Brent

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[5] To the extent that Brenda contends that Brent's exercise of the rental option is unconstitutional, that argument is not properly before us. The district court denied her motion for partial summary judgment because a genuine dispute of fact precluded summary judgment, and Brenda did not raise this constitutional issue in her pretrial briefing, at trial, or in her posttrial briefing. As a result, Brenda has forfeited her argument related to Brent's exercise of the rental option. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)). Furthermore, the district court's denial of partial summary judgment on this issue is outside our scope of review following the bench trial. *See* Minn. R. Civ. App. P. 103.04 ("On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment."); *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 918 (Minn. 2009) (explaining that a denial of a motion for summary judgment based on a genuine dispute of fact cannot be characterized as "affecting the judgment" after a trial on the merits).

[6] In a related argument, Brent challenges the district court's grant of summary judgment in favor of Brenda that paragraph 2.5's rental option did not apply to the trust's interest. Because the district court's partition order following trial incorporates that summary judgment determination, we decline to address Brent's contention that the district court

argues that the district court erred because the right of first refusal in paragraph 2.4 and the rental option in paragraph 2.5 apply to "all interests" in the property—i.e., both Darlene's interest and the trust's interest in the property.

This court's primary task when interpreting a will is to discern the testator's intent. *In re Est. & Tr. of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003). That determination requires a "full and complete consideration of the entire will." *In re Est. of Lund*, 633 N.W.2d 571, 574 (Minn. 2001). The threshold question in will interpretation is whether its language is ambiguous. *In re Tr. of Shields*, 552 N.W.2d 581, 582 (Minn. App. 1996). Extrinsic evidence may be admitted to resolve an ambiguous provision, but extrinsic evidence is inadmissible if the will is unambiguous. *In re Est. of Arend*, 373 N.W.2d 338, 342 (Minn. App. 1985).

Relevant to the issues here, Darlene's will stated as follows:

> 2.4 I give my son **Brent Legred** a right of first refusal to purchase any and all interest which I may have at the time of my death in the following described tracts owned by me and by the Thilmer Legred Family Trust:
> . . . .
> 2.5 I give my son **Brent Legred** an option to rent all of my agricultural real estate described in paragraph 2.[4] excluding my building site at 90% of the average fair rental value in Faribault County.

We conclude that the unambiguous language of paragraphs 2.4 and 2.5 gave Brent a right of first refusal and a rental option only for Darlene's interest in the property.

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should not have granted summary judgment based on disputed material facts about Darlene's intent. *See Bahr*, 766 N.W.2d at 918 (explaining that a denial of a motion for summary judgment cannot be characterized as "affecting the judgment" after a trial on the merits).

Paragraph 2.4 gave Brent a right of first refusal with respect to "any and all interest which *[Darlene] may have at the time of [her] death*" in the property owned by Darlene and the trust. At the time of Darlene's death, because she had disclaimed part of her interest in the property following Thilmer's death, Darlene's interest in the property was an undivided 69.7575% interest. Thus, Darlene's will gave Brent a right of first refusal for only that 69.7575% interest. Similarly, paragraph 2.5 gave Brent an option to rent to "all of [Darlene's] agricultural real estate." Like paragraph 2.4, that language unambiguously encompasses only Darlene's 69.7575% interest. Neither paragraph 2.4 nor paragraph 2.5 can reasonably be read to apply to the interest owned by the trust.

Brent asserts that the right of first refusal and the rental option apply to both Darlene's interest and the trust's interest because Darlene was trustee. That argument is unavailing. Brent is correct that Darlene was trustee before her death. But Brent's argument improperly conflates Darlene's status as an individual with her status as trustee. Darlene the individual and Darlene the trustee were separate legal entities. *See Norwest Bank Minn., N.A. v. Ode*, 615 N.W.2d 91, 95 (Minn. App. 2000), *rev. denied* (Minn. Oct. 17, 2000). Darlene, in her capacity as trustee, held legal title to the trust's interest in the property, while the trust's beneficiaries had "the beneficial and equitable interest" in the trust's interest in the property. *See United States v. O'Shaughnessy*, 517 N.W.2d 574, 577 (Minn. 1994). As a result, Darlene's status as trustee does not mean that the trust's interest in the property was Darlene's interest.

And even if we interpreted paragraphs 2.4 and 2.5 to apply to the trust's interest, Darlene did not have the authority to encumber the trust's interest in the property via her

will. As a general matter, "a trustee is forbidden from purchasing or dealing in the trust property for his own benefit or on his own behalf, either directly or indirectly." *O'Shaughnessy*, 517 N.W.2d at 577 (quotation omitted); *see also Ode*, 615 N.W.2d at 95. Thus, Darlene could not convey a rental option to the trust's interest in her will.

We are unpersuaded by Brent's argument that the trust instrument created a power of appointment that gave Darlene such authority. "A power of appointment . . . enabl[es] the donee to designate, within the limits that may be prescribed by the donor, the appointees of the property." Minn. Stat. § 502.82, subd. 1 (2022). In support of his argument that the trust instrument created a power of appointment, Brent quotes Minnesota Statutes section 502.85 (2022), which provides that "an effective exercise of a power of appointment does not require an express reference to the power." Minn. Stat. § 502.85, subd. 1(a). But section 502.85 governs the *exercise* of a power of appointment, not the *creation* of a power of appointment. *Compare* Minn. Stat. § 502.85, *with* Minn. Stat. § 502.83 (2022) (rules for creation of a power of appointment).

To *create* a power of appointment, the donor "must manifest the donor's intention to confer the power on a person capable of holding the appointive property." Minn. Stat. § 502.83(3). Here, the trust instrument did not confer any power on Darlene. Instead, it authorized the "the *Credit Shelter trustee(s)* to invest, reinvest, manage, transfer, and convey any and all property held in this Credit Shelter Trust." *Cf. Govern v. Hall*, 430 N.W.2d 874, 876 (Minn. App. 1988) (addressing a revocable trust that authorized wife to exercise a power of appointment by stating, "Wife's Power of Appointment —the settlor's wife shall have the power to appoint the entire corpus of the trust estate by her last will and

testament" (emphasis omitted)), *rev. denied* (Minn. Jan. 9, 1989). As a result, Brent has provided no legal authority that the trust instrument—which created an irrevocable trust that, upon Darlene's death, would be distributed in equal shares to Brent and Brenda—gave Darlene the power to convey the property via her will.

In sum, we conclude that Darlene's will unambiguously gave Brent a right of first refusal and a rental option solely for Darlene's interest in the property.[7] As a result, the district court did not err by determining that the right of first refusal and the rental option in Darlene's will did not apply to Brenda's undivided 15.12125% interest in the property originating from the trust.

III. The district court did not err in its findings relating to rent.

Brent challenges three findings in the district court's order following trial: (1) that he failed to pay the 2018 rent; (2) that the "average fair market value in Faribault County" was $240 per tillable acre; and (3) that he owes additional rent for 2019, 2020, and 2021. Brenda challenges the district court's finding that Brent owes $189,336.24 for the 2019, 2020, and 2021 rent.

[7] We decline to address Brent's alternative argument that this court should reform Darlene's will or the disclaimer that transferred interest in the property from Darlene to the trust. He states that he has provided clear and convincing evidence of Darlene's intent to give him a right of first refusal and rental option to the whole property and thus that reform is appropriate under Minnesota Statutes section 524.2-805 (2022). But this issue is not appropriate for appellate review because Brent did not present it to the district court. *Thiele*, 425 N.W.2d at 582. Moreover, "[i]t is not within the province of [appellate courts] to determine issues of fact on appeal." *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966).

A. The district court did not err by finding that Brent failed to pay the 2018 rent.

Brent contends that the district court erred by finding that he failed to pay rent for the property for 2018, the year that Darlene died. A finding is clearly erroneous if it is "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) (quoting *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985)). When reviewing findings of fact for clear error, appellate courts engage in "a review of the record to confirm that evidence exists to support the decision." *Id.* at 222. Our role is not to "weigh, reweigh, or inherently reweigh the evidence." *Id.* at 223. Instead, "[w]hen 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.* (quotation omitted).

The district court found that Brent began renting the whole property in 2009, that he paid rent at the end of each year, and that he failed to pay rent for 2018. In challenging these findings, Brent relies on his own testimony that he began renting the property in 2010 and that, each year from 2010 to 2017, he prepaid rent for the following year. He cites a document showing that a rent check dated December 2017 was not deposited in the trust account until September 2018. Brent argues that, because the 2017 tax return—filed before the December 2017 rent check was deposited—shows rents received, the December 2017 rent check must have been a prepayment of the 2018 rent. Brent concedes that the 2018 tax

return shows no rents received, but he contends that his testimony along with the documentary evidence show clear error by the district court. We disagree.

The essence of Brent's argument is that the district court rejected his testimony characterizing his rental practices and certain documentary evidence. But we defer to the credibility determinations of the district court, and the district court implicitly rejected his testimony as not credible. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

Moreover, when the district court's findings are supported by the record, it does not matter that there may be evidence supporting a contrary finding. *Kenney*, 963 N.W.2d at 223. Here, the record amply supports the district court's findings that Brent failed to pay rent in 2018. In determining that Brent paid rent at the end of the year and thus the December 2017 rent check was for the 2017 rent, the district court cited (1) entries on Brent's rent checks indicating that checks issued in December of each year were for that year's rent, (2) accounting for the trust that matched check deposits in January to the preceding year's rent payment, and (3) Darlene's deposit tickets indicating that rent checks deposited in January were for the preceding year's rent.

In sum, the district court's finding that Brent failed to pay rent in 2018 was not clearly erroneous.

B. The district court did not err in determining that $240 per tillable acre was consistent with the phrase "average fair rental value in Faribault County."

Brent contends that the district court erred in determining that "average fair rental value in Faribault County" was $240 per tillable acre. We review a district court's

construction of an unambiguous will de novo. *In re Anderson*, 654 N.W.2d at 687. But if the will is ambiguous and the district court's interpretation relied on extrinsic evidence about the testator's intent and expert opinions about the will's language, a "clearly erroneous" standard of review applies. *See id.*

Paragraph 2.5 of Darlene's will gave Brent the option to rent Darlene's agricultural real estate at "90% of average fair market value in Faribault County." The district court concluded that this phrase was ambiguous, a conclusion that Brent does not dispute. Based on testimony from the attorney who drafted Darlene's will, which the district court found to be credible, the district court determined that Darlene intended that "fair rental value" meant "what [a] person, with knowledge of Faribault County farm rents, would recognize as fair to both landlord and tenant and not representative of the lowest or highest rent in the area." The district court then considered the extensive evidence about methods for determining rent. It found that Darlene's nephew Thomas Legred, who previously rented the property from Darlene and farmed around 2,000 acres in Faribault County, "credibly testified that $240 per tillable acre is considered 'a pretty good average' rent." As a result, the district court found that $240 per tillable acre was consistent with "average fair rental value in Faribault County."

We find no merit in Brent's assertions that the district court's findings "obstructed" Darlene's intent or "did violence to the language of Darlene's will" by improperly excluding the word "average." Generally, we defer to the district court's credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And here, both the district court's findings about Darlene's intent and average fair rental value relied on

its credibility determination about testimony from the attorney who drafted the will. And contrary to Brent's assertion, the district court explicitly referenced Thomas Legred's testimony that "$240 per tillable acre is considered 'a pretty good average' rent." As a result, Brent has identified no clear error in the district court's findings.

In sum, the district court's findings of fact about the phrase "average fair rental value in Faribault County" were not clearly erroneous.

C. The district court did not err by awarding damages for the 2019, 2020, and 2021 rent.

In its order following trial, the district court found that Brent was operating under the exercise of the rental option in 2019, 2020, and 2021 and thus, based on the district court's determination of 90% of "average fair rental value" in the rental option, Brent owed additional rent for those years. Brent contends that the district court erred by requiring him to pay damages premised on additional rent owed for 2019, 2020, and 2021. As the district court found, Brent paid $111,228 in rent—the amount he had paid under his prior lease with Darlene—each of those years. Brent argues that these payments satisfied his rent obligations because he was still renting the property pursuant to his prior lease. In the alternative, Brent contends that, even if the prior lease does not control, he does not have to pay additional rent for 2021 because the trust's interest in the property was distributed to Brent and Brenda as tenants in common in November 2020. We address each argument in turn.

1. Brent is operating under the rental option, not his prior lease.

Brent first argues that the district court erred by requiring him to pay additional rent for 2019, 2020, and 2021 because he never received notice that his prior tenancy with Darlene ended. He asserts that the prior tenancy was a year-to-year tenancy-at-will and, as a result, Minnesota Statutes section 504B.135 (2022) required notice to terminate the tenancy and the notice requirement was not met. He argues that terms of the lease with Darlene are thus still controlling despite Darlene's death in 2018. We are not persuaded.

The district court determined that Brent received notice of termination of his tenancy with Darlene when he, as a co-personal representative of his mother's estate after her death, indisputably had knowledge of her will and thus had notice of the provision that the property was subject to a rental option. We need not decide whether the district court erred in determining that the will's rental option itself provided notice that the lease with Darlene was terminated if any error is harmless. *See* Minn. R. Civ. P. 61. In the circumstances here, the alleged error is harmless because the district court found that Brent did, in fact, exercise the rental option and thus entered into a new lease with a higher rent rate for 2019, 2020, and 2021. This finding is supported by the record.

The district court found that "Brent Legred is currently operating under his exercise of the rental option provided to him in the Will." Because the rent under the rental option exceeded the rent that Brent paid for 2019, 2020, and 2021, the district court found that Brent owed additional rent for those years. Brent asserts that he only *tried* to exercise his option to rent the property but could not do so because he and Brenda did not agree on a rental rate. But Brent provides no legal authority to support the assertion that their dispute

over the rental rate meant that the parties were not operating under the rental option. Nor does Brent explain how the district court's factual finding that Brent exercised the rental option—a finding based on Brent's own testimony at trial—is clear error. Based on our review of the record, we discern no error in that finding.

2. Brent's status as tenant in common does not affect his responsibility to pay rent under the rental option.

Brent also contends that, because he was a tenant in common with Brenda and Darlene's estate in 2021, he does not have to pay additional rent to Darlene's estate for that year. We disagree.

At common law, a tenant in common generally cannot recover rent from another tenant in common. *Arnold v. De Booy*, 201 N.W. 437, 439 (Minn. 1924); *O'Connor v. Delaney*, 54 N.W. 1108, 1108 (Minn. 1893). Here, the district court did not explicitly address Brent's contention that Darlene's estate cannot recover additional rent from him for 2021 because the estate was his cotenant. But the district court found that Brent exercised the rental option and thus was renting under an agreement with his cotenants. Brent does not dispute—and in fact concedes—that a cotenant may be liable to a cotenant for rent based on a rental agreement. *See O'Connor*, 54 N.W. at 1108 (Minn. 1893) ("[B]y agreement, one may become tenant of the other of his part of the estate."); *see also Fagan v. Schafer Bros.*, 271 N.W. 458, 458 (Minn. 1937) (action to recover rent from a cotenant).

Moreover, even without an agreement, a tenant in common who has been excluded by their cotenant may recover the reasonable rental value of their interest in the property. *Sons v. Sons*, 186 N.W. 811, 811-12 (Minn. 1922). We are not persuaded by Brent's

assertion that he excluded only Brenda and did not exclude Darlene's estate. Brent's testimony that he farmed the entire property and that Brenda could not farm or rent the property to others applies equally to Darlene's estate. Brent's argument that, based on tenancy in common, he cannot be ordered to pay additional rent for 2021 is without merit.

D. The district court did not clearly err in determining the amount of additional rent owed to Darlene's estate for 2019, 2020, and 2021.

Brenda challenges the amount of the district court's award of damages to Darlene's estate for 2019, 2020, and 2021. "[T]he amount and extent of damages is a question of fact." *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 789 (Minn. 1989). Generally, an appellate court "will not disturb a damage award unless the 'failure to do so would be shocking or would result in plain injustice.'" *Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (quoting *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986)).

In their posttrial briefing, both Brent and Brenda made arguments about how the district court should determine damages for the 2019, 2020, and 2021 rent. Brenda proposed that the district court calculate the rent owing based only on Brent's payments to the estate, not on his total payments—split between the trust and the estate—to rent the property. By contrast, Brent proposed that the district court should exercise its equitable discretion and account for his payments to both the trust and the estate. In its order following trial, the district court found that Brent and Brenda are the sole beneficiaries of both the trust and the estate and awarded damages of $63,112.08 per year, a figure that Brenda now challenges. She contends the proper amount is $77,662.74 per year.

For the purpose of our analysis, we accept Brenda's contention that the district court considered Brent's rental payments to the trust when calculating rent owed to the estate. But we are not persuaded that the district court's damages are clearly erroneous. The district court received Brent's and Brenda's alternative methods of determining rent owed to Darlene's estate and found that Brent and Brenda are the sole beneficiaries of the trust and Darlene's estate. Under those circumstances, the district court's consideration of Brent's payments to the trust when calculating rent owed to Darlene's estate is supported by the record. As a result, "it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Kenney*, 963 N.W.2d at 223.

In sum, the district court did not abuse its discretion by awarding damages of $63,112.08 per year for the 2019, 2020, and 2021 rent.

Affirmed.