

*This opinion is nonprecedential except as provided by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
A22-0548**

Cheryl Orcutt,
Respondent,

vs.

Jon Crews, et al.,
Appellants.

**Filed December 5, 2022
Affirmed
Rodenberg, Judge***

Olmsted County District Court
File No. 55-CV-19-1135

Andrew L. Davick, Meshbeshier & Spence, LTD., Rochester, Minnesota; and

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Considered and decided by Reilly, Presiding Judge; Cochran, Judge; and
Rodenberg, Judge.

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

NONPRECEDENTIAL OPINION

RODENBERG, Judge

In this second appeal arising from a 2012 motor-vehicle crash, appellants Jon Crews and David Gosch argue that the district court erred by denying their motion to enforce a settlement agreement between respondent Cheryl Orcutt and appellants' primary insurer and deem a default judgment against them satisfied and, alternatively, that it erred by granting respondent's motion to add prejudgment interest to the default judgment. We affirm.

FACTS

In October 2012, respondent was injured in a collision with a pickup truck and trailer that appellant Crews was driving and appellant Gosch owned. In 2016, respondent entered into a settlement agreement with appellants' primary insurer, Auto-Club Insurance Association (ACIA). The agreement, titled "*Drake v. Ryan*^[1] Agreement: Satisfaction of Future Judgment and Receipt of Advanced Payment," provides that ACIA will pay respondent \$100,000, the policy limit under its policy providing liability coverage for appellants as the owner and driver of the pickup. The agreement further provides that respondent will "partially satisfy any judgment" against appellants in that amount, but also provides that respondent "preserves any claims which [she] may have against [appellants], or either of them, which are covered by any other liability insurance policy." Respondent also agreed

¹ *Drake v. Ryan*, 514 N.W.2d 785 (Minn. 1994).

[B.2] To refrain from collecting or attempting to collect any unsatisfied portion of such judgment from the personal assets of [appellant] Gosch and/or [appellant] Crews, except for any claims, causes of action, or other rights which [appellant] Gosch or [appellant] Crews, or either of them, may have against any other insurer. At the conclusion of any proceedings or claims which may be asserted against any other insurer under this Agreement, [respondent] will execute or cause to be executed all necessary releases, to discharge and release [appellants] from liability under any judgment that [respondent] may obtain against [appellants]. The release and discharge contemplated by this Agreement will not become effective until all proceedings against any other insurer are concluded or until March 1, 2020, whichever comes first.

Finally, the agreement states that “[n]othing herein is intended to release any claim which [respondent] has or may have against any other insurer.”

Respondent subsequently brought a declaratory-judgment action against her insurer, Grinnell Select (Grinnell), seeking underinsured motorist (UIM) benefits. In 2018, she settled the UIM claim for \$55,000.

Upon settling her UIM claim, respondent initiated this action against appellants. Appellants tendered the claim to their secondary insurer, also Grinnell,² which told them that: (1) it was denying coverage, (2) it would not defend the action, (3) appellants needed to hire counsel at their own expense, and (4) if appellants failed to respond to the complaint, a default judgment would result. Appellants did not respond to the complaint. Respondent

² At the time of the crash, appellant Gosch had a Grinnell insurance policy with a liability limit of \$750,000; appellant Crews had a Grinnell insurance policy with liability limits of \$100,000 per person and \$300,000 per accident. It is unclear from the record exactly when respondent learned of these policies, but the district court found that it was “after the UIM claim began” and that Grinnell “had an opportunity to disclose the additional insurance policy information to their client [respondent] and failed to do so.”

filed the complaint with the district court and moved for a default judgment. The district court granted the motion in May 2019 and, based on respondent's testimony about her injuries and damages, determined respondent's damages to be \$1,062,100.01 and entered default judgment against appellants. Shortly thereafter, the district court vacated the judgment for want of an affidavit of judgment debtor. After respondent corrected this deficiency, the district court entered a new judgment on June 19, 2019, noting that the judgment, "pursuant to the underlying *Drake* release, is limited to recoveries available through any additional insurance policies that apply to this loss."

Shortly thereafter, appellants moved to vacate the judgment, which the district court denied. They appealed. We dismissed that appeal because the June 2019 judgment, as entered, did not specify the amount of damages, and therefore was not appealable. The district court then entered a new judgment for \$1,062,100.01 on April 14, 2020, retroactive to June 19, 2019. Appellants again appealed, challenging the default judgment and the district court's order denying their motion to vacate the judgment. While the appeal was pending, appellants moved this court to stay the appeal to pursue a motion to enforce the *Drake-Ryan* settlement; we denied the stay because the proposed motion involved issues separate and distinct from those presented in the appeal.

We affirmed the default judgment, including the award of \$787,100.01 in past medical expenses and pain and suffering. But we reversed the amount awarded for future medical expenses and remanded to the district court for explanatory findings. *Orcutt v. Crews*, No. A20-0823, 2021 WL 772602, at *1 (Minn. App. Mar. 1, 2021), *rev. denied* (Minn. May 26, 2021).

Shortly after we issued our decision, respondent's counsel wrote to the district court requesting a possible settlement conference to address, in relevant part, the remanded damages issue and the addition of prejudgment interest under Minn. Stat. § 549.09, subd. 1 (2020). Appellants requested that respondent proceed through motion practice. Appellants also petitioned the supreme court for further review of our nonprecedential opinion.

The day after the supreme court denied appellants' petition for review, appellants moved the district court "for enforcement of the [*Drake-Ryan*] settlement agreement and satisfying the [default] judgment." They argued that, in paragraph B.2, respondent agreed to discharge them from liability no later than March 1, 2020, and since that date passed, the default judgment must be discharged and deemed "satisfied." They acknowledged that this would effectively preclude respondent from recovering from Grinnell. The district court denied the motion. It reasoned that the agreement is ambiguous but that granting the motion would defeat its purpose as a *Drake-Ryan* settlement. The district court also noted that respondent has at all times acted consistent with the agreement and has made no attempt to collect from appellants' personal assets.

Four days after that denial, respondent filed a motion seeking interest on the judgment under Minn. Stat. § 549.09, subd. 1, from the commencement of the action until entry of judgment. She argued that statutory interest is mandatory and that the district court should correct its erroneous omission of an interest award as a clerical error under Minn. R. Civ. P. 60.01 (permitting correction of clerical errors "at any time"). The district court granted the motion, first reducing the judgment by \$155,000 to account for the settlement

payments that respondent had previously received and then adding prejudgment interest of \$25,717, resulting in a judgment of \$692,817.01.³ This appeal followed.

DECISION

I. The district court did not err by denying appellants' motion to enforce the settlement agreement by deeming the default judgment satisfied.

A settlement agreement is “contractual in nature.” *Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008). A court construing a settlement agreement must view it “as a whole and attempt to harmonize all of its clauses.” *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). If possible, the court will discern and give effect to the parties’ intent based on the plain and ordinary meaning of the agreement’s terms. *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012). If the agreement as a whole is reasonably susceptible to more than one interpretation, it is ambiguous and requires fact-finding. *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). But contract terms “are not ambiguous simply because the parties’ interpretations differ.” *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018). If the agreement is unambiguous, its interpretation presents a question of law that we review de novo. *Id.* Whether an agreement is ambiguous is also a question of law subject to de novo review. *Id.*

³ The district court also issued new findings regarding future medical expenses and reduced the award for such damages from \$275,000 to \$35,000. The new judgment reflects that award, which appellants do not challenge. Neither do appellants challenge in this appeal the district court’s computation of prejudgment interest.

Because the agreement in question expressly invokes the supreme court's decision in *Drake*, we begin our analysis with a review of that case. See *Booth v. Gades*, 788 N.W.2d 701, 705-06 (Minn. 2010). There, like here, a woman was injured in a crash with a vehicle driven by one man and owned by another. *Drake*, 514 N.W.2d at 786. The woman and her husband (plaintiffs), the driver and owner of the vehicle that had rear-ended the woman's car (defendants), and the defendants' primary insurer entered into a settlement agreement. *Id.* Under the agreement, the insurer paid the plaintiffs as partial satisfaction of any claims they had against the defendants; the plaintiffs agreed that "defendants will have no personal liability" but "specifically reserve[d] any and all claims" against them up to the limit of a named secondary insurer. *Id.* The driver-defendant thereafter moved for summary judgment, arguing that the plaintiffs had released him from personal liability so he was no longer a proper party to the lawsuit. *Id.* at 787. The district court denied the motion and, in response to a certified question, the supreme court affirmed. *Id.* at 786.

The *Drake* court held that the settlement agreement did not release the defendant from all liability. Instead, it merely protected his personal assets by limiting satisfaction of any judgment to the available insurance coverage limits. *Id.* at 788. The defendant "continues to be a real party in interest, notwithstanding the fact that he . . . has no immediate financial incentive to defend." *Id.* The court also observed that this arrangement was necessary for the plaintiffs to be able to recover insurance proceeds from the additional insurer because, under Minnesota law, insurance contracts are "contracts of indemnity" and "[i]f the insured tortfeasor is dismissed from the action, the lawsuit fails." *Id.* at 787-88. In practice, then, a *Drake-Ryan* release "allow[s] an injured plaintiff to settle

with the tortfeasor but preserves the ability to continue the action against an excess liability insurer.” *Booth*, 788 N.W.2d at 706.

Here, it is undisputed that the agreement between respondent and ACIA, like that in *Drake*, was intended to provide for a settlement that guaranteed respondent recovery up to the \$100,000 ACIA policy limit and protected appellants’ personal assets while permitting respondent to pursue a judgment against them, to be satisfied first from the ACIA funds and thereafter to the limits of any other insurance policy. But appellants contend that the agreement also established a deadline of March 1, 2020, for respondent to pursue satisfaction from any other insurer. Specifically, they argue that paragraph B.2 requires respondent to discharge them from “any judgment” by that date. Since a discharge extinguishes a legal obligation, they reason, the judgment should now be deemed satisfied.

The plain language of paragraph B.2 does not sustain appellants’ interpretation. That provision does contain a deadline of March 1, 2020, but the conduct required of respondent by that date is not a discharge of “any judgment.” Rather, she must “discharge and release [appellants] *from liability* under any judgment.” (Emphasis added.) In short, the focus of the discharge is appellants’ individual liability, not any judgment against them.

This distinction is consistent with the supreme court’s reasoning in *Drake*. Discharging or satisfying a judgment ends an action against a judgment debtor and effectively eliminates any further opportunity to recover from an excess secondary insurer. *See Drake*, 514 N.W.2d at 788 (explaining that dismissing the tortfeasor causes the lawsuit to “fail[.]”); *see also McCallum v. W. Nat. Mut. Ins. Co.*, 597 N.W.2d 307, 308 (Minn. App. 1999) (stating that a judgment that is “satisfied of record” generally “ceases to have any

existence” (quotation omitted)). But merely discharging appellants from liability as in the *Drake* case protects appellants’ personal assets while permitting determination of their culpability and possible recovery from their insurer. *Drake*, 514 N.W.2d at 788 (explaining that a tortfeasor’s liability may be “dissected” to permit a judgment holding him liable but limiting satisfaction of the judgment to insurance coverage limits). Paragraph B.2 unambiguously refers to the latter, discharging appellants from liability precisely as contemplated in *Drake*.

To stave off this conclusion, appellants urge us to disregard *Drake* because the agreement in that case did not contain a comparable deadline. But this distinction actually confirms our reading of paragraph B.2. In *Drake*, the settlement agreement expressly and immediately discharged the defendants from liability. It provided simply that “defendants will have no personal liability.” *Id.* at 786. Here, the settlement agreement did not contain an immediate discharge of liability but a promise to execute a “discharge and release . . . from liability” within a specified time frame. The difference is one of timing, not effect. And respondent timely satisfied this obligation by ensuring that the default judgment is “limited to recoveries available through any additional insurance policies that apply to this loss.” The intent of the parties to the *Drake-Ryan* agreement is expressly identified as being that respondent “preserves any claims which [she] may have against [appellants], or either of them, which are covered by any other liability insurance policy.” Appellants proposed reading of paragraph B.2 would contravene this clearly expressed intention of the parties to the agreement. In sum, the *Drake-Ryan* agreement unambiguously requires only a discharge of appellants’ personal liability, which appellants have enjoyed throughout the

protracted life of this case. Therefore, the district court did not err by denying appellants' motion to enforce the agreement as they argue that it should be read and understood.⁴

II. The district court did not err by adding prejudgment interest to the judgment.

Under Minn. Stat. § 549.09, subd. 1, a prevailing plaintiff is generally entitled to prejudgment interest on a money judgment. *See Miller v. Soo Line R.R. Co.*, 925 N.W.2d 642, 652 (Minn. App. 2019). *But see* Minn. Stat. § 549.09, subd. 1(b)(2) (prohibiting interest on “future damages” except in limited circumstances). This interest award serves “(1) to compensate prevailing parties for the true cost of money damages incurred, and (2) to promote settlements when liability and damage amounts are fairly certain and deter attempts to benefit unfairly from delays inherent in litigation.” *Blehr v. Anderson*, 955 N.W.2d 613, 618 (Minn. App. 2021) (quotation omitted). We review *de novo* the interpretation of the prejudgment-interest statute and a district court’s decision regarding prejudgment interest. *Id.*

Appellants do not dispute that respondent is entitled to prejudgment interest under Minn. Stat. § 549.09, subd. 1, or challenge any aspect of the district court’s calculation of interest. Rather, they argue that the district court erred in granting respondent’s “belated” motion to add interest because her “failure to request prejudgment interest was her mistake—not a clerical mistake.” This argument is unavailing.

⁴ Respondent argues, as alternative support for the district court’s decision, that appellants’ enforcement motion was barred by the “finality of appeals doctrine.” Because we affirm the district court’s denial of the motion on the merits, we need not address this alternative argument.

The prejudgment-interest statute provides that where, as here, no statutory exception is claimed or applies, the court “shall . . . compute[] . . . and add[]” prejudgment interest when awarding a money judgment. Minn. Stat. § 549.09, subd. 1(a), (b). The word “shall” indicates that the action is mandatory, not discretionary. *See* Minn. Stat. § 645.44, subd. 16 (2020) (“‘Shall’ is mandatory.”); *see also Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 141 (Minn. 2017) (stating that “section 549.09 provides preaward interest on all awards of *compensatory damages* that are not excluded by the statute”). Nothing in the statute conditions the addition of interest on a party’s request. And the statute imposes no time limit for adding interest. To the contrary, we have recognized that a district court retains jurisdiction to amend a judgment to add interest even after an appeal. *Fette v. Peterson*, 406 N.W.2d 594, 597 (Minn. App. 1987) (explaining that prejudgment interest is a collateral matter “not intertwined with the merits of a case”), *rev. denied* (Minn. June 30, 1987).

Appellants suggest that a party entitled to prejudgment interest may forfeit that right by delay when prejudgment interest is erroneously omitted from the judgment. They cite no binding authority for adopting such a rule. Nor have they demonstrated that forfeiture would be appropriate in this case.

Shortly after the district court entered judgment in respondent’s favor, appellants began the multi-year process of challenging that judgment—moving to vacate the judgment; finalizing the judgment for an appeal; pursuing a partially successful appeal; and then, immediately after the appeal was finalized, seeking to enforce the *Drake-Ryan* agreement as they contended it should be interpreted and therefore, to deem the judgment

satisfied. While the district court retained jurisdiction to address the issue of prejudgment interest during that time, *id.*, the ongoing litigation made the status of the underlying judgment uncertain. The final amount of the judgment was unknown until the district court denied appellants' enforcement motion on September 10, 2021, and respondent requested the addition of statutory prejudgment interest on September 14, 2021. If there is a case where a party's delay in seeking prejudgment interest should constitute a waiver or forfeiture because of prejudicial delay, this is not that case.

We discern no error in the district court's implicit determination that respondent did not forfeit her right to prejudgment interest by waiting to file a motion for interest until four days after the court denied respondents' enforcement motion.⁵

Affirmed.

⁵ Appellants also contend that respondent's motion to add prejudgment interest to the judgment effectively waived their default and therefore invalidated the default judgment. They assert that if respondent is "entitled to have the default judgment amended to better reflect substantive law, so are [they]." But appellants cite only to cases establishing that an attorney may waive a default on behalf of a client, and they cite none holding that an award of prejudgment interest after a default judgment waives the earlier default. Regardless, prejudgment interest is collateral to the merits of the judgment itself, *Fette*, 406 N.W.2d at 597, and merely "added to the judgment," Minn. Stat. § 549.09, subd. 1(a). As such, the district court did not err by implicitly rejecting this argument.