This opinion is nonprecedential except as provided by Minn.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
A22-0673

Shawnae Feltus,
Respondent,

vs.

Jeffrey Niemala, et al.,
Appellants,

and

RE/MAX Thousand Lakes,
Respondent.

Filed January 9, 2023
Affirmed in part, reversed in part, and remanded
Cochran, Judge

Itasca County District Court
File No. 31-CV-19-3246

Erik J. Honkanen, Honkanen Law Firm, S.C., Virginia, Minnesota (for respondent Shawnae Feltus)

Miles Ringsred, Duluth, Minnesota (for appellants)

Brian C. Bengtson, Grand Rapids, Minnesota (for respondent RE/MAX Thousand Lakes)

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

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this appeal from partial final judgment entered under rule 54.02, appellants challenge the district court's grant of respondent-vendee's motion for partial summary judgment on issues involving a contract for deed and the district court's denial of their motion for summary judgment. Appellants argue that the district court erred in (1) interpreting the "purchase price" provision; (2) determining that appellants are responsible for ensuring that the property's septic system complies with local regulations; and (3) denying appellants' motion for summary judgment, which requested judicial termination of the parties' contract for deed. We conclude that genuine issues of material fact exist regarding both the amount owed under the "purchase price" provision and the responsibility for the septic system. But we conclude that appellants' argument regarding judicial termination of the parties' contract is forfeited. Thus, we affirm in part, reverse in part, and remand.

FACTS

This case involves a contract for deed entered into between appellants Jeffrey and Linda Niemala and respondent Shawnae Feltus. The following facts are undisputed.

On July 12, 2011, the Niemalas purchased the property in question via a sheriff's sale. The property contains a dwelling and a septic system. In 2012, the Niemalas retained the services of a RE/MAX Thousand Lakes agent to market and sell the property at a sale

price of $49,000. About one year later, respondent Shawnae Feltus and her mother[1] contacted the real estate agent to purchase the property. The RE/MAX real estate agent agreed to act as a dual agent in the sale of the property—representing both the Niemalas and Feltus.

Contracts to Purchase Property

In the summer of 2013, the parties began executing documents for the sale of the property. In July 2013, the parties signed a purchase agreement for the property with a sale price listed at $49,000. The purchase agreement indicated that $3,000 would be paid in cash and the remaining $46,000 would be financed through a contract for deed. The purchase agreement also included a contract-for-deed financing addendum for the amount of $44,000 (rather than $46,000) "payable in installments of $500.00 per month or more at the option of the Buyer, including interest at the rate of 6.5% per annum computed on unpaid balances." The addendum further provided that "[p]ayments shall be credited first to interest and remainder to principal." The financing addendum also stated that the entire balance of the contract for deed is "due and payable in full no later than August 2023."

On March 6, 2014, the parties signed a subsurface sewage treatment system (SSTS) ordinance compliance form which stated that "[t]he Buyer accepts total responsibility of the existing SSTS and shall be responsible for the necessary upgrading as set forth in the Itasca County Subsurface Sewage Treatment System Ordinance and Minnesota Rules Chapter 7080." The responsible party listed was Feltus.

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[1] Feltus's mother was a co-signer on most of the legal documents but ultimately did not sign the contract for deed at issue in this case.

On April 14, 2014, the parties recorded the final contract for deed. The parties used a six-page "fillable" form to memorialize their agreement. The payment terms included in the contract for deed differ from those in the purchase agreement. Regarding the purchase price, section 4 of the contract for deed states:

> Purchase Price. Purchaser shall pay to Seller at Electronic Funds Transfer E.F.T. the sum of FORTY-NINE THOUSAND Dollars ($49,000), as and for the purchase price (the "**Purchase Price**") for the Property, payable as follows: 83 payments of $750.00 beginning on January, 2014.

Section 3 provides that upon purchaser's "full performance of this [c]ontract," seller shall convey marketable title to the purchaser. The form document contains no indication that the contract for deed contains an addendum. But an unsigned page entitled "Exhibit 'A' Additional Terms" was attached to the contract-for-deed form when recorded. Exhibit A contains six additional terms including one stating that "[d]uring the term of this contract if the septic system fails Purchaser and Seller shall negotiate its replacement."

Feltus lived on the property from 2014 to 2019 and made monthly payments of $750. In total, Feltus made at least 68 payments of $750 for a total payment of around $51,000. Feltus did not make any payments after October 2019.

Septic System

On April 25, 2014, Itasca County sent Feltus a letter notifying her that she is responsible for the septic system on the property and that the county required a certificate of compliance for the existing septic system. The letter stated that a licensed professional must be contacted to issue the certificate of compliance and that if the system is not in compliance, it must be replaced or repaired. The letter stated that Feltus had until April 14,

2016 to provide a certificate of compliance. In 2017, Feltus applied for a $15,000 loan for updates to the septic system on the property, but the loan was denied. In 2018, the county sent Feltus a letter stating that she violated the county ordinance by failing to provide a certificate of compliance for the existing septic system.

Legal Proceedings

On September 30, 2019, Jeffrey Niemala sent Feltus a letter by mail notifying her that he had "begun proceedings under Minnesota Statutes, Section 559.21 to terminate" the contract for deed. The letter stated that Feltus was in default for (1) failing to make payment in March 2018; (2) failing to maintain insurance; (3) failing to pay property taxes in 2016, 2017, 2018, and 2019; (4) failing to maintain the property; and (5) leasing or renting the property to a nonparty to the contract. The notice stated that Feltus had 30 days to fix the issues before the contract for deed would be terminated. The Niemalas then sent a letter to Feltus's attorney demanding additional payments in the amount of $12,750, which was later revised to $11,250.

Feltus filed a complaint against the Niemalas in district court, raising nine causes of action and asserting that the contract for deed was paid in full. The Niemalas answered, raised counterclaims against Feltus including breach of contract, and joined RE/MAX with crossclaims of breach of fiduciary duty and professional negligence. RE/MAX remains a party in this case but has not participated in this appeal.

On December 21, 2020, Feltus filed a motion for partial summary judgment asking the district court to (1) declare the purchase price of the property to be $49,000; (2) declare that no interest rate was provided in the contract for deed; (3) declare that Feltus satisfied

the contract for deed; and (4) order the Niemalas to execute all documents necessary to provide Feltus title of the property in fee simple. Feltus also requested reimbursement for the overpayment on terms of the contract for deed and $15,000 for "septic costs." The next day, the Niemalas filed a motion for summary judgment, asking the district court to terminate the contract for deed. Both parties submitted affidavits along with approximately 20 exhibits including depositional testimony.

In his deposition, Jeffrey Niemala testified that "the purchase price" of the property was 83 payments of $750. He testified that when he listed the property, it was listed for $49,000 but that amount was the purchase price for a *cash sale*. Jeffrey Niemala testified that, although an interest rate was not expressly included in the contract for deed, the interest rate was implicit in the document itself. He further testified that he called the Minnesota Department of Commerce to determine an appropriate interest rate for the contract for deed and applied that interest rate to the original $49,000 purchase price to arrive at the total purchase price of 83 payments of $750. As to the septic system, Mr. Niemala testified that, after March 2014, Feltus "accepted total responsibility for the existing . . . septic system, and the upgrades necessary for it."

In her deposition, Feltus testified that the purchase price of the property was $49,000 under the contract for deed. She testified that she understood that "there was going to be some interest" but she also understood the full purchase price to be $49,000. Feltus testified that she did not know whether the language "83 payments of $750" in the purchase-price provision was a mistake or not because her mother did most of the negotiations, but she understood that her family would only ever pay $49,000 in total for

the property. As to the septic system, Feltus testified that she believed it needed to be upgraded to a “mound system” and that she understood she would pay half of the cost and the Niemalas would pay the other half.

The district court held a hearing on the respective motions for summary judgment, hearing first from the Niemalas. The Niemalas argued that Feltus materially breached the contract for deed by failing to maintain property insurance and make property tax payments, and they asked the district court to judicially terminate the contract. Feltus responded that the Niemalas failed to properly serve the notice of cancelation of the contract for deed. She also argued that she did carry homeowners’ insurance for the property during the relevant time period, and, alternatively, that the absence of insurance would not constitute a material breach. Finally, she argued that she has satisfied the contract for deed by paying more than $49,000 in monthly payments and requested the overpayment in damages.

On June 21, 2021, the district court issued its order granting Feltus’s motion for partial summary judgment and denying the Niemalas’ motion for summary judgment. The district court concluded that the “purchase price” of the property is unambiguously $49,000 under the terms of the contract for deed. It further concluded that “[i]f it would be the eventuality that [Feltus] would overpay [the Niemalas] by following the charted [monthly] payments, she would be due reimbursement.” Accordingly, it ordered the Niemalas to reimburse Feltus for monthly payments she made over $49,000. The district court also determined that the septic tank is noncompliant and concluded that the Niemalas are responsible for updating the system. Based on these conclusions, the district court ordered

the Niemalas to execute all documents necessary to provide Feltus title in fee simple and to pay $24,624.88 to Feltus.

The Niemalas appealed the June 21 order to this court, and we dismissed concluding that the order was a partial judgment and thus an appeal was premature. The Niemalas submitted a motion for entry of final partial judgment to the district court. Feltus opposed, arguing that not all claims have been adjudicated between the parties. On March 15, 2022, the district court entered final partial judgment. This appeal follows.

DECISION

The Niemalas challenge the district court's grant of summary judgment to Feltus, raising three arguments. Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A genuine issue of material fact exists when there is sufficient evidence regarding an essential element . . . to permit reasonable persons to draw different conclusions." *St. Paul Park Refin. Co. v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2020) (quotation omitted). We review a district court's decision to grant summary judgment de novo, viewing "the evidence in the light most favorable to the nonmoving party and resolv[ing] all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted).

The Niemalas argue that the district court erred by granting summary judgment to Feltus on issues relating to the "purchase price" provision and responsibility for the septic system. The Niemalas also argue that the district court erred by not granting summary

judgment to them with respect to their breach of contract claim. We address each argument in turn.

I. A genuine issue of material fact exists regarding the purchase-price provision.

The Niemalas first argue that the district court erred by granting summary judgment with regard to the amount owed by Feltus under the purchase-price provision—section 4 of the contract for deed. They contend that the purchase-price provision unambiguously requires all 83 payments of $750 (totaling $62,250) before the terms of the contract for deed can be satisfied. Feltus responds that the purchase price in section 4 of the contract for deed is unambiguously $49,000.

The parties' arguments present an issue of contract interpretation that we review de novo. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). The goal of contract interpretation is "to determine and enforce the intent of the parties." *Staffing Specifix, Inc. v. TempWorks Mgmt Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (quotation omitted). "[A] contract is ambiguous if it is susceptible to two or more reasonable interpretations." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). But "[a] contract's terms are not ambiguous simply because the parties' interpretations differ." *Staffing Specifix*, 913 N.W.2d at 692.

With these principles in mind, we turn to the language of the contract for deed. Section 4 of the contract for deed reads:

> Purchase Price. Purchaser shall pay to Seller at Electronic Funds Transfer E.F.T. the sum of FORTY-NINE THOUSAND Dollars **($49,000)**, as and for the purchase price (the **"Purchase Price"**) for the Property, payable as follows: **83 payments of $750.00** beginning on January, 2014.

(Emphasis added.) As the district court noted in its order, 83 payments of $750 equals $62,250.

The district court concluded that the purchase price of the property, "pursuant to the Contract for Deed, is unambiguously the sum of forty-nine-thousand dollars ($49,000)." The district court recognized that there is a discrepancy between the sum and the charted payments but determined that "the foremost of these terms is the purchase price." The district court also noted that "no interest rate [was] expressed in [the contract for deed]."

In support of their respective motions for summary judgment and on appeal, the parties argue that the language of the purchase-price provision supports their contrary contract interpretations. The Niemalas argue that the purchase-price provision expressly and unambiguously requires "83 payments of $750," which equals $62,250. They further contend that this amount includes interest, which the parties intended to be part of the total payment obligation under the terms of the contract for deed. Feltus counters that the contract unambiguously lists $49,000 as the "purchase price." Because the purchase-price provision specifically lists the two differing amounts, we conclude that both interpretations are reasonable and thus the "purchase price" provision is ambiguous.

When a contract term is ambiguous, the construction of the contract is a question of fact absent conclusive extrinsic evidence. *Donnay v. Boulware*, 144 N.W.2d 711, 716 (Minn. 1966). And when the terms of a contract are ambiguous and disputed by the parties, summary judgment is generally not appropriate. *Bank Midwest v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004) (citing *Donnay*, 144 N.W.2d at 716). Here, extrinsic

evidence in the record does not clearly reveal the parties' intent. Jeffrey Niemala testified in his deposition that the purchase price was listed as $49,000 *for a cash sale* but that the purchase price in the contract for deed agreed to by the parties was 83 payments of $750 for a total cost of $62,250. The dual real estate agent for RE/MAX testified in his deposition that the 83 payments of 750 "included the prescribed interest rate of the day as well as the balance of the balloon payment spread out over time." He testified that he explained that exact concept to Feltus and that the "agreement toward the purchase price was 83 payments of $750." But Feltus testified in her deposition that she understood the total purchase price was $49,000 and that would be the full amount she would ever owe the Niemalas.

In sum, because the purchase-price contract provision is ambiguous and extrinsic evidence does not conclusively reveal the parties' intent, a factual question remains regarding the payments required to satisfy the purchase-price provision. Thus, the district court erred by granting summary judgment for Feltus on this issue, and we reverse and remand to the district court for further proceedings regarding the contractual purchase-price provision.

II. A genuine issue of material fact exists regarding the septic system.

The Niemalas next argue that the district court erred by granting summary judgment to Feltus on issues related to the cost and replacement of the septic system, including ordering the Niemalas to pay $15,000 for replacement of the system. They contend that the parties agreed that Feltus, not the Niemalas, would be responsible for the septic system. The Niemalas also argue that the record lacks evidence showing the septic system needs

replacing and the cost of replacement. Feltus counters that the district court did not err in granting summary judgment because the parties agreed to negotiate the septic system's replacement should it fail, and the record shows that the Niemalas failed to negotiate.

In its order, the district court determined that the septic system "is non-compliant and [the Niemalas] must update the same to comply with Itasca County Sub-Surface Sewage Treatment Ordinance Section 2.5.3(A) and (B)." But the district court also noted that the contract for deed states that the parties "will negotiate the septic [system] if it fails during the term of the [c]ontract." Without further discussion of this provision, the district court then included $15,000 for replacement of the system in its calculation of the amount that the Niemalas owe Feltus.

Viewing the summary-judgment record as a whole and in the light most favorable to the Niemalas, we conclude that the district court erred by granting summary judgment for Feltus on the issue of the septic system. First, it is not clear from the record whether the septic system is out of compliance. Rather, the record reflects only that the city requested that Feltus submit a certificate of compliance. Second, there are conflicting documents in the record creating an issue of fact as to who is responsible for ensuring that the septic system complies with applicable regulations. For example, in 2013, when the parties began negotiations for the sale of the property, the parties signed an SSTS contingency addendum that included a note stating that "[i]f [the] septic system fails during the term of this contract Buyers + Sellers will negotiate its replacement." One year later, on March 6, 2014, the parties signed an SSTS ordinance compliance form which stated that "The Buyer accepts total responsibility of the existing SSTS and shall be responsible for

the necessary upgrading as set forth in the Itasca County Subsurface Sewage Treatment System Ordinance and Minnesota Rules Chapter 7080." The responsible party listed was Feltus. But on the same day, the parties signed the contract for deed which, when filed, included an addendum stating: "During the term of this contract if the septic system fails Purchaser and Seller shall negotiate its replacement." Thus, the district court's determination that the Niemalas are solely responsible for the septic system as a matter of law was an error.

Finally, if the septic system is out of compliance, as Feltus asserts, the work needed to bring the septic system into compliance and the cost of such work is not clear. The district court relied solely on Feltus's loan request for $15,000 for the septic system updates, without any underlying documentation, to conclude that the Niemalas were responsible for that exact amount. Feltus testified in her deposition that she believes the septic system needs a mound system. But the record contains no evaluation from a licensed professional showing that the system is out of compliance. Nor is there a quote or other document revealing what the cost would be, if any, to bring the septic system into compliance.

In sum, whether the septic system is currently out of compliance, which party is responsible for ensuring the septic system is compliant, and the cost, if any, to bring the septic system into compliance remain genuine issues of material fact. Thus, we reverse and remand for further proceedings on issues relating to the septic system.

III. The Niemalas' argument about their breach of contract claim is forfeited.

Finally, the Niemalas argue that the district court erred by denying their motion for summary judgment on their breach of contract claims. The Niemalas assert that Feltus breached the contract for deed by failing to maintain property insurance and ask us to judicially terminate the contract for deed. But the Niemalas do not cite to any precedential caselaw or statutory authority to explain how we could provide the requested relief. When a party makes an argument that is unsupported by legal analysis or citation, we may decline to address the argument. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or citation); *see also State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers*, *Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an issue that was inadequately briefed). Because the Niemalas failed to support their argument on appeal with sufficient legal analysis, we decline to consider the issue on the merits.

Affirmed in part, reversed in part, and remanded.